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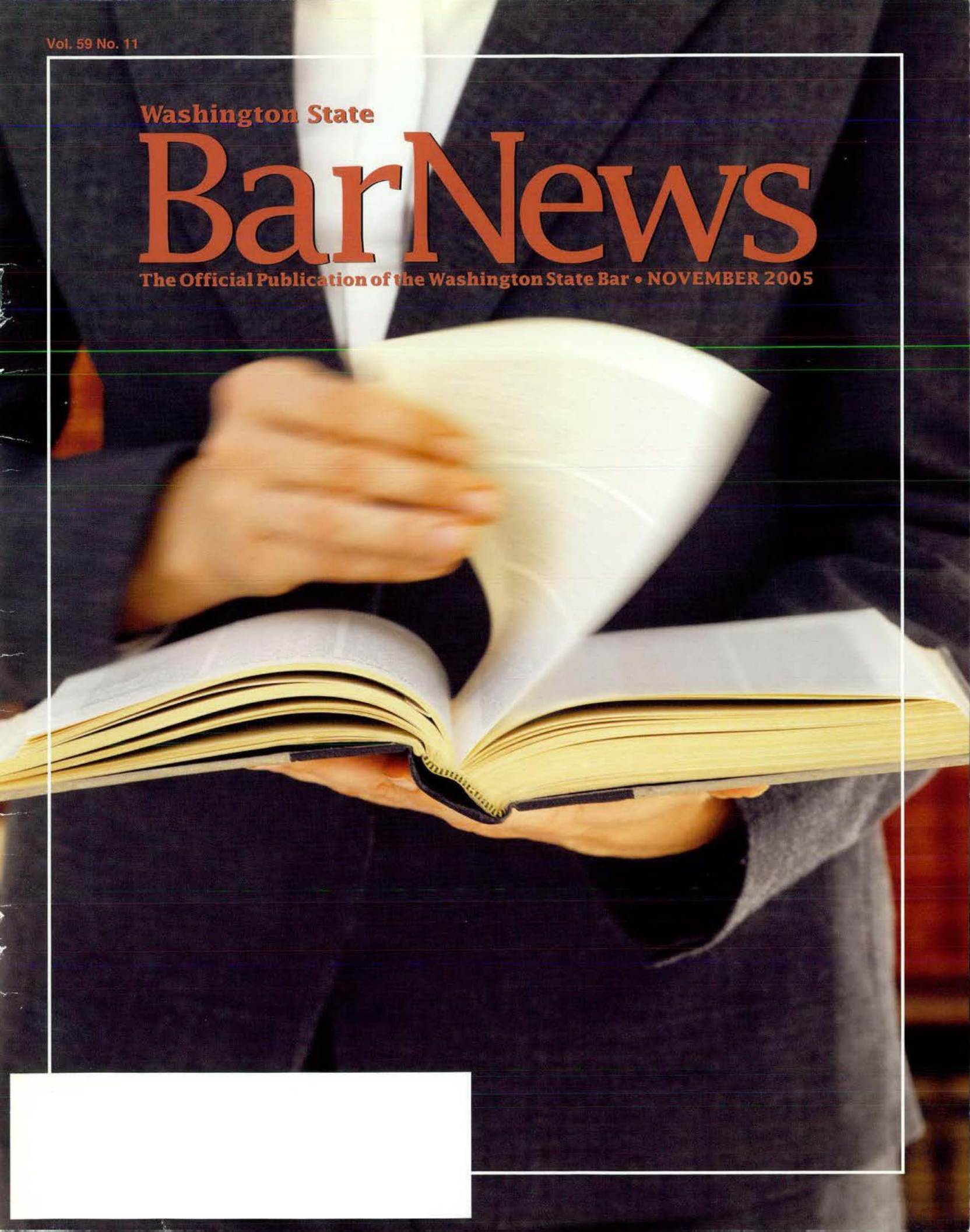

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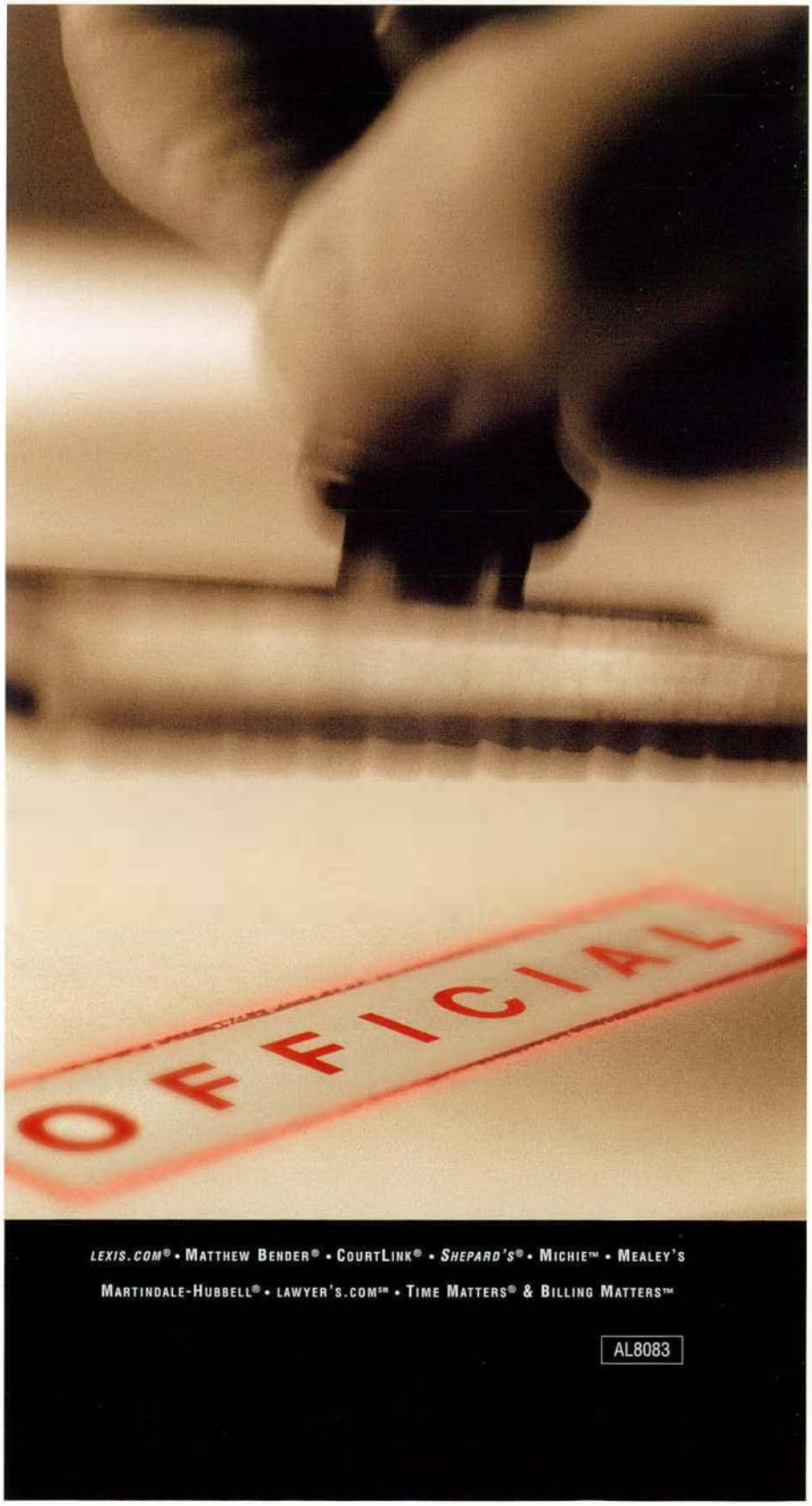

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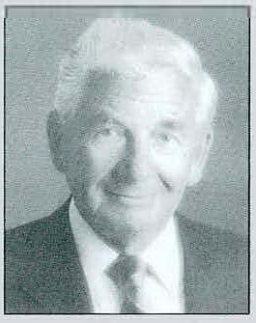

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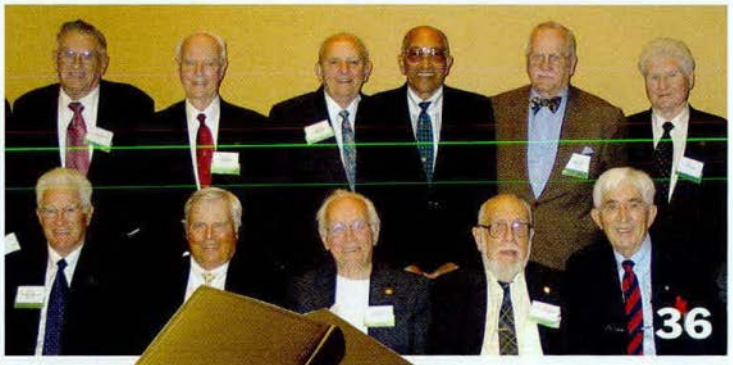

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Malpractice awards amount to a rounding error

I read Ron Ward's article ("Initiative 330 — the Medical Malpractice Initiative," *Bar News*, August 2005) with interest. Recently the *Seattle Times* carried an article reporting on a study conducted by the Johns Hopkins School of Public Health. It reported that medical malpractice costs account for less than one percent of spending, and the U.S., Canada, the UK and Australia all had malpractice payments that represented less than 0.5 percent of total health care spending.

Melvin Rubin, Kirkland

WSBA should stick to licensing and such

I write in response to Ron Ward's editorial with regard to caps on medical malpractice awards. Someone always pays medical malpractice awards and settlements for general damages. The money does not come from the tooth fairy. Some of it comes from doctors who pay insurance premiums, some comes from patients, and the rest comes from the general public. Mr. Ward argues that the cost is not substantial enough to be a reason to cap damages. However, many doctors report refusing to practice or limiting their practice or leaving a jurisdiction because of the fear of med mal litigation. Mr. Ward does not talk about what the actual premiums are for different specialties, such as obstetrics. Our society needs doctors who are willing to go into business to help patients, and those doctors are thoroughly deterred by the need to pay unpredictably increasing premiums, combined with the risk that their practice may someday be nationalized anyway. This is not an environment that encourages doctors to practice medicine. As far as patients are concerned, which is all of us, the cost of insurance and medical care is already a crisis. It is said that General Motors is in financial distress partly because of the high cost of medical insurance. Mr. Ward's malpractice lawyers add more, on top of the burden we all face in paying for health care for ourselves and others.

Mr. Ward makes the incredible argument that awards do not affect the cost of insurance. That is like saying that the cost of building a car does not affect the price of the car. Of course, award and settlement and litigation expenses come out of the revenue of the company. He also argues that caps make no difference. Caps obviously make a difference because they affect not only maximum verdicts but also the settlement of cases that never see a courtroom. They also affect the likelihood of difficult and expensive cases; if a case is questionable and expensive and not capable of bringing a huge return to

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the lawyer, it will not be brought. It may be that rates have not declined after caps were imposed, but that does not answer the relevant question of how high the rates would have gone had caps not been imposed. Obviously, other variables can and do affect litigation and insurance rates.

I therefore disagree that the cost of supporting medical malpractice lawyers is one easily borne by our society.

Second, many contingency fee lawyers believe or claim that they support a noble cause. Not so. Litigation is never a proper forum for setting social or legislative policy because courts are lobbied only by the two lawyers, and those two lawyers have an extremely limited range of interests. In the legislature, or in agencies, the decision makers are lobbied by all the public interests that care about a particular bill. Using an example outside medical malpractice, the legislature in considering whether to salt roads can hear from municipal and safety and environmental and business interests. In court, the judge hears only from two lawyers. I simplify here, and the legislative process is not perfect, but this system, representative democracy, is better than any other system devised to date.

There is little or no benefit to society in entrusting policy decisions to judges and plaintiff lawyers and insurance lawyers.

Third, the WSBA has no business entering a partisan issue in which Republicans tend to favor caps and Democrats oppose them. The WSBA is a regulatory agency, like the Department of Licensing, and it should remain neutral in political issues. It is disgraceful that the WSBA constantly becomes active in politics and frequently lobbies the legislature. The obligation to be neutral is even stronger because the WSBA is somewhat a subsidiary of the Supreme Court, and the Supreme Court, as a part of state government organized in a republican form with three branches — as required by the federal constitution — must remain neutral and detached in all matters. This includes medical malpractice cases and the desirability of asking the public to pay for general damages.

The WSBA should avoid involvement in political issues such as medical malpractice.

Roger Ley, Seattle

WSBA should sit on its hands

This is in regard to an e-mail from the Washington State Bar Association's Board of Governors, indicating that it voted to take "no position" on I-336, but "opposes" I-330. In part, this letter cites to now former WSBA President Ron Ward's recent article attacking I-330, which the WSBA has authorized and condoned as the WSBA President's, and the WSBA's.

The I-330/I-336 debate is a controversial and political one involving tort reform. I-336 has received the apparent support of those who sue and seek limitless recoveries against doctors and other health care providers; I-330 appears to have been supported by doctors, businesses and pro-business organizations, and even some lawyers who defend health care providers when they get sued. Sides are divided on the I-330/I-336 packages and debate.

Perhaps most WSBA members share the BOG's views, and even Mr. Ward's views on the I-330/I-336 debate. Perhaps most WSBA members are glad the WSBA has taken a stand. I am not.

In the past, WSBA members have expressed the view that the WSBA sometimes appears to embody an almost elitist perspective and fails to recognize the perspective of all of its members, especially those who do not happen to practice law in Seattle. Fair or unfair, such criticisms have root in WSBA membership's compulsory nature.

By contrast, groups like the Washington State Trial Lawyers Association may be joined voluntarily. WSTLA is a largely pro-plaintiff organization that has undertaken a considerable campaign to oppose I-330. Some say WSTLA is responsible for the majority of money funding advertisements against I-330 to try to see its defeat. Mr. Ward is a WSTLA member, and so am I. It is wonderful that groups such as WSTLA so eloquently exercise free speech rights on important issues like this one.

The WSBA's compulsory membership renders it significantly different from WSTLA such that it truly should not get involved in political side-taking on whether voters should vote for I-330, I-336, or neither. The WSBA's proper role would be to encourage everyone to know the significance and consequences of votes on either I-330 or I-336. It could serve well to educate the public. But the WSBA should take affirmative steps away from, rather than toward, any particular personal or political view on the I-330/I-336 vote.

The WSBA should not be in the business of adopting personal or political views on items slated for a public vote, particularly when it seeks to do so on behalf of all of its members without all of its members' consent. The WSBA and the BOG essentially adopted Mr. Ward's opinions as the WSBA's own on behalf of all WSBA members. Now the BOG has

even gone to the length of contacting each member to urge Mr. Ward's opinions on them. Many believe the WSBA should not have done that, and I am one of them. Many will say that they, as WSBA members, are offended that the WSBA has chosen to chime in where it should not have. They will say WSBA has no business in this I-330/I-336 issue, and that it is properly left to the people to decide.

All lawyers, as responsible members of a profession charged with furthering justice and fairness, should encourage fellow citizens to make intelligent, informed, and thoughtful decisions on such matters of importance as the I-330/I-336 debate. Individually, we each should exercise our free speech rights to tell people what we think of the proposals, and encourage others to do the same. Mr. Ward's election to take sides is fine, of course, as long as he does so on his own and in his personal capacity. Mr. Ward's article, however, may be construed as the WSBA's stamp of approval of one side's or another's in a debate that should be left to the people.

Initiatives in our state lend themselves to the temptation to take sides, but sometimes side-taking is best left to ourselves as individuals and to groups like WSTLA and the Association of Washington Businesses. Sometimes it is hard to accept that education and understanding alone are the better course for groups like the WSBA. Just as judges sometimes exercise restraint in speaking out on certain issues, here the WSBA erred by refusing to resist temptation on this tantalizing issue.

As a result of the BOG's decision to take sides, the WSBA will see an already festering problem worsen. WSBA members who previously voiced their view that the WSBA appears to improperly speak only for a few, not for all, will point to this as proof that they were correct. It would be of no moment if the BOG had even conducted its own poll for member views before it decided to take sides, because this was simply something the WSBA had no business taking sides on in the first place. The BOG should have known to avoid taking sides. It should have known to take steps to distance itself from, rather than authorize, condone, and embrace Mr. Ward's personal views as those of the WSBA. It should have known Mr. Ward's WSTLA connection may make the public believe the WSBA is beholden to WSTLA's agendas, rather than to doctors wrongly sued.

The WSBA and the BOG made a serious mistake to take sides, and many may see that as a lapse in judgment or a failure of responsible leadership.

I again want to stress that I respect Mr. Ward and his views and I respect his right to say them.

Alan M. Singer, Seattle

WSBA should mind its business

On June 2nd and July 29th, the Board of Governors of the Washington State Bar Association formally voted to "oppose" passage of Washington Initiative 330 (sponsored by the Washington State Medical Association) and voted to take "no position" on Washington Initiative 336 (sponsored by the Washington State Trial Lawyers Association). Because these initiatives are emotionally charged and divi-

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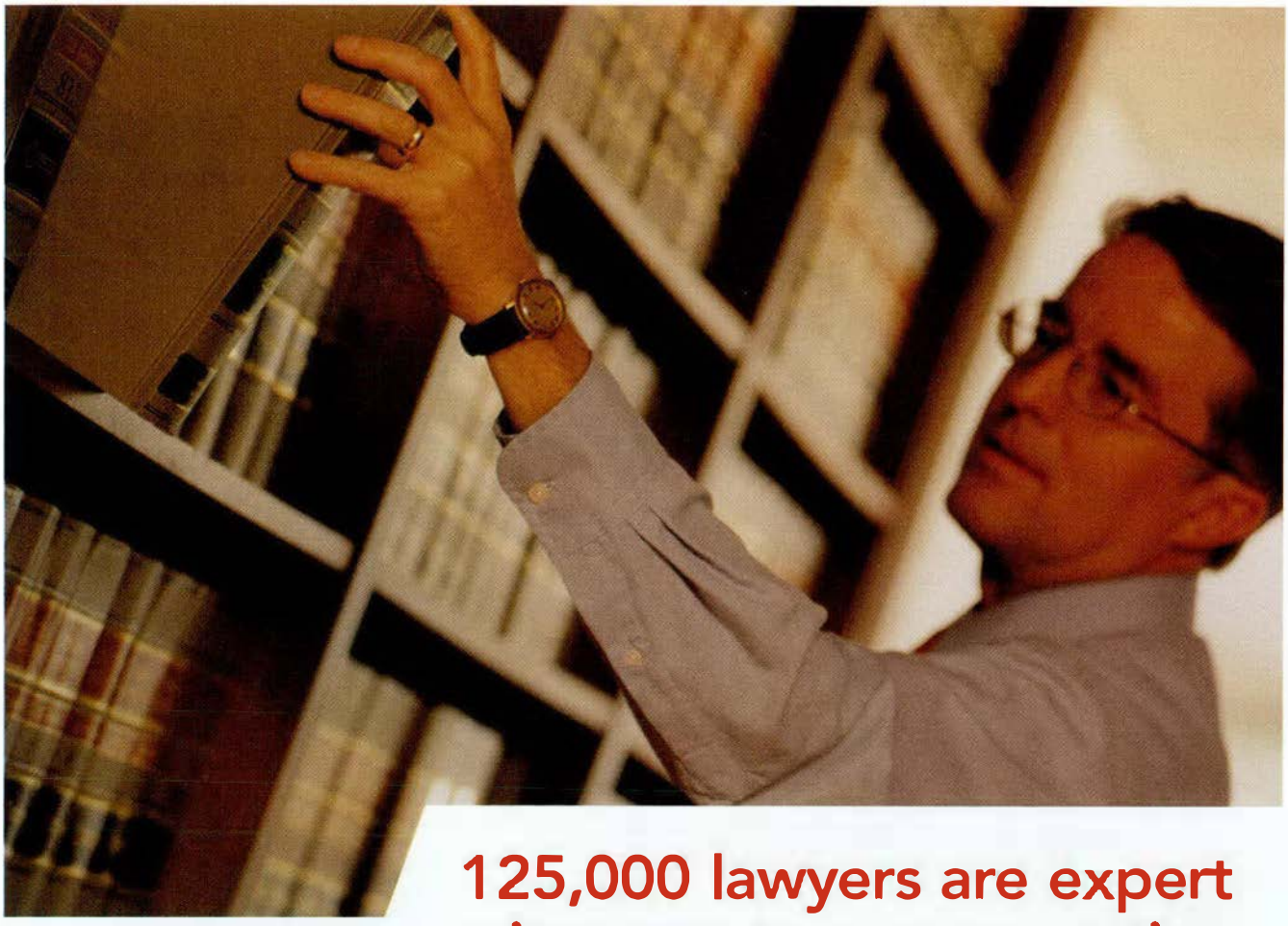

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sive within the Bar membership, the Board of Trustees of the Washington Defense Trial Lawyers (WDTL) urged the Board to take "no position" on both initiatives. The Board of Governors, citing GR 12, apparently felt compelled to take a position on I-330, voting unanimously to oppose it, with one abstention. WDTL is gravely concerned that the Board has taken a position on a controversial public initiative in the name of the entire Bar Association when it is clear that WSBA members are divided on the issues presented by these two competing initiatives.

In his article in the August *Bar News*, President Ward stated that "[f]ollowing discussions of the merits, the Board of Governors concluded that the elements encompassed in Initiative 330 are within GR 12, i.e., they relate to, or affect, the practice of law or the administration of justice, and that the WSBA could take a position on the initiative." But his cite is to GR 12(c), which refers to what the bar association *will not* do. Specifically, GR 12(c)(2) provides that the Bar Association will not "[t]ake positions on political or social issues which do not relate to or affect the practice of law or the administration of justice." It does not logically follow, however, that the Bar *must* take positions on issues that do affect the practice of law or the administration of justice. At best, this is the type of issue on which the Bar *may* take a position. Respect for the divergent opinions of the membership of the Bar Association should have dictated that the Board take "no position" on I-330 and I-336.

GR 12(a)(5) provides that the Bar Association strives to "[f]oster collegiality among its members and goodwill between the bar and public." Taking a position on either of these initiatives satisfies neither of these goals. It is the specialty voluntary bar organizations that are better suited to take positions on controversial issues. The WDTL believes that as a *compulsory membership association and integrated bar*, WSBA should not offer its name in support of (or in opposition to) political issues that are ideologically and financially divisive to the WSBA membership.

These initiatives affect not only the tort trial lawyers of the state, but also those lawyers representing the business

interests of healthcare providers, health services businesses, the insurance industry and ultimately the state's taxpayers. A general position statement by the state Bar Association in opposition to the personal and professional welfare of many members and their clients should have been avoided.

The WDTL therefore believes the WSBA's wisest course, and the only course consistent with GR 12(c), was to adopt a "no position" stance as to both initiatives. The WDTL requests that, in the future, the Board of Governors carefully consider any potential action or inaction in light of the entire text of GR 12, and in the spirit of representation of all lawyers of Washington state as an integrated Bar.

Washington Defense Trial Lawyers executive officers: Jill Haavig Stone, president, Tacoma; Steve Stocker, president-elect, Spokane; Ted Buck, secretary, Seattle; Richard Roberts, treasurer, Seattle

Diversity menu seems limited sometimes

Your July column on diversity (Editor's Page, "Diversity — have it your way," *Bar News*, July 2005), really hits the mark. The current touchy-feely politically correct proponents of diversity — come hell or high water — truly vindicate the old saying of the late George Orwell: "All people are created equal. Some are more equal than others." It would be nice to see these current proponents rise to include those of us who are senior citizens who nonetheless ply our trade on a five-day-a-week basis.

Richard L. Gemson, Seattle

Shut up, the voters explained

In a frame on my wall is the following quote: "Majority rule only works if you are also considering individual rights. Because you cannot have five wolves and one sheep voting on what to have for supper." Contrary to Mr. Ley's assertion in his letter to the editor (*Bar News*, August 2005), the electorate cannot be the sole arbiter of individual rights, responsibilities and freedoms. Absent a judiciary to ensure no tyranny of the "wolves" those of us "sheep" can never sleep comfortably. Some attribute this quote to Larry Flynt during one of his legal struggles with censorship. I am not personally a fan of Mr. Flynt or his "body of work" but his struggles, and this quote, epitomize for me what Oliver Wendell Holmes, Jr. had to say about freedom and the role of the judiciary in protecting freedom: "If there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought — not free thought for those who

agree with us but freedom for the thought that we hate."

Wilhelm Dingler, Philadelphia, PA

Slippery slopes, skid row, and linguistic traps for the unwary

Thank you for the amusing and edifying article by Robert Cumbow ("got grammar?," *Bar News*, August 2005). His discussion of the evolution of the expression "it's all downhill from here" to mean the opposite of its original meaning put me in mind of the curious phenomenon of words that also mean their opposite. "Cleave," for example, means both to cut apart and to adhere together (as in the traditional wedding vow where the bride and groom promise to "cleave" to one another.) My favorite in this genre of words is "sanction," which simultaneously means to permit and to punish. Imagine my confusion when I receive a legal brief that exhorts: "the court should not sanction this type of behavior!"

Andrea Darvas, Judge, King County Superior Court, Seattle

And even further downhill

I really enjoy Robert Cumbow's articles. I share his passion for precision in writing, albeit not quite to the degree or extent of his. A couple of thoughts occurred to me regarding his examples of how our language changes ("got grammar?," *Bar News*, August 2005).

"It's all downhill from here." My experience has been that this precise phrase means exactly what it always has: the hard part of a task has been accomplished (we've reached the summit) and what is left is going to be relatively easy. However, a different nuance comes from: "It all went downhill from there." This phrase, if used as one is describing an experience to another, is understood more in the sense of Mr. Cumbow's "current" usage: "everything was fine until___, and then it all went downhill from there." This second sense, if intended to mean the situation deteriorated, usually is accompanied by the qualifying introduction suggested above. Notice, also, that in the first sense, the speaker is performing the action, so it can be inferred that the trip down the hill is volitional. The nuance in the second is that "it" went down the hill, presumably by itself and not by my choice; drawing to my mind the mental image of a Conestoga wagon breaking free and rumbling on down the steep slope to imminent destruction (not a good thing!).

The "carrot and the stick." I have never understood that phrase to mean that the carrot was hung from a stick, although that may be the way Spanky and his Gang did it. As used in this phrase, the "carrot" has always meant a reward for good conduct (or agreement with my proposition) whether proffered by hanging on a string from a stick or otherwise, and the "stick" has always meant a punishment for bad conduct (or some sort of adverse consequences).

"Splitting the baby." When I hear someone use this phrase, it is usually in relation to what they consider to be a bad decision entered or pronounced to resolve a dispute. Although I agree with Mr. Cumbow

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that, oftentimes in today's vernacular, the speaker means that the decision simply divided in half the available resources or the requested relief. However, when I hear it, I always understand it to mean that, although both sides got virtually the same award, neither of them really "won" since the baby, obviously, died in the process. Sort of like a Pyrrhic victory.

Thank you, Robert, for your continued efforts to maintaining, or at least advocating, excellence in writing. After all, isn't that what most of our jobs are about?

Ron Mattson, Renton

Just the facts, please

In her letter to the editor in the September 2005 *Bar News*, Jeanette Burrage says, "The Supreme Court of the United States ruled that government may 'take' private property for *private* use." She is evidently referring to the recent *Kelo v. New London* case. I think it far from right that a former superior court judge and former candidate for the state Supreme Court should comment on a case without having read it. The majority in *Kelo* did not say government could take private property for private use. The majority in *Kelo* simply agreed with a Connecticut statute and a unanimous Connecticut Supreme Court that taking private property for economic development is a public use under the Fifth Amendment.

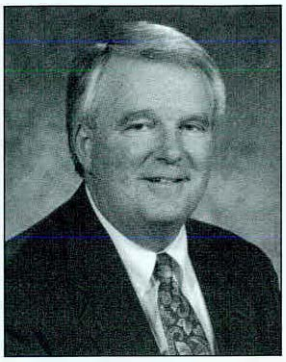
Burrage is entitled to agree with the four dissenters in *Kelo*, but to call the decision "bizarro" and assert the majority lacked "judicial integrity" demonstrates a lack of respect for the rule of law and promotes the continuing erosion of the institutions of democracy that have served us so magnificently for more than 200 years. These pages should be a forum for reasoned and principled legal analysis, not talk show, sound bite rhetoric.

Bernard H. Friedman, Olympia

Private lawyers not really needed, but thanks for asking

I applaud the *Bar News* for publishing Stephen Carpenter's article, "Federal Criminal Practice: A Military Justice Primer" (*Bar News*, September 2005). Although the article contained some minor inaccuracies, it should raise readers' awareness of the military justice system. I do however strongly disagree with a major premise of the article that there is a "large underserved uniform population" that "presents a great opportunity to expand a litigation practice." Military personnel are represented free of charge at courts-martial by highly trained and dedicated Judge Advocates who work as defense counsel. To imply that uniformed personnel are underserved by these well qualified defense attorneys who have an intimate knowledge of the military justice system is grossly inaccurate. This statement also creates the false impression that the military system needs the assistance of civilian attorneys to represent this population. Unfortunately, in my many years of experience as a military prosecutor, military defense counsel and supervisor, far too often I have seen soldiers pay for inadequate representation from the civilian defense bar when they would have been much better served by a military defense attorney.

Victor Hansen, Lieutenant Colonel (Retired), Judge Advocate General's Corps, Boston, MA



It's Fundamental: Democracy, Justice, and America's Courts

S. Brooke Taylor, WSBA President

Deming is a rural community in eastern Whatcom County. You will find it approximately 18 miles east of Bellingham on Highway 542. Home to a few hundred residents, this traditional logging town boasts the Deming Logging Show, Mount Baker High School, The Nooksak River Casino, and the Deming Library, one of several branch libraries in the Whatcom County Library System. It is at the Deming Library where our story begins.

The citizens of Deming are proud of their relatively new library, as well they should be, since they made it happen. Despite the need and the desire for a library, the Whatcom County Library System could not afford to build a new branch, so the citizens of Deming raised the money themselves.

One of many volumes to be found in the Deming Library is a book entitled *Bin Laden: The Man Who Declared War on America*, written by Yossef Bodansky. While reading this book, a regular patron discovered some disturbing marginal notations made by a previous reader, praising the mission of the terrorist mastermind. He turned the book over to local law enforcement authorities, who brought in the FBI.

On June 18, 2004, an FBI agent entered the library, approached the front desk attendant, and requested records showing the identity of all those who had checked out *Bin Laden* since November 15, 2001. The library attendant, citing established written protocols regarding the confidentiality of customer records, refused the request, and contacted library system Director Joan Airoldi. The director in turn contacted the library system's counsel, Deborra Garrett, a partner in the firm of Zender Thurston, PS in Bellingham. Ms. Garrett had worked with the director and library board to establish the written privacy protocols in question, and the director asked her to contact the FBI agent directly for further information.

Ms. Garrett contacted the FBI agent, who explained what he was looking for, and why, and read to her the marginal note in the book which was the cause for concern. The library system's written protocols were explained to the agent, together with the need for a subpoena to make a proper request for the records. A few days later, the agent returned with a grand jury subpoena for the same records, and served it on Deborra Garrett, as she had requested.

This is a story of one courageous lawyer who undertook the task of protecting the rights of citizens who probably never knew their privacy was threatened.

At this point, the executive branch of our government is seeking private records in which the library customers have a reasonable expectation of privacy. The records are sought as evidence in a legitimate anti-terrorism investigation using powers granted by our elected representatives in the legislative branch. The library system has only the judicial branch for protection against what it sees as government overreaching and invasion of the rights of its patrons.

Deborra Garrett went to work. Her research convinced her that the government's demand for records, on these facts, was trumped by the citizen's right to privacy. She determined that the request for records was an invasion of fundamental privacy rights guaranteed by the First Amendment, and that the standards required to compel disclosure had not been met. She filed a motion and brief to quash the subpoena, and the subpoena was voluntarily withdrawn by the U.S. Attorney's Office before a hearing could be held.

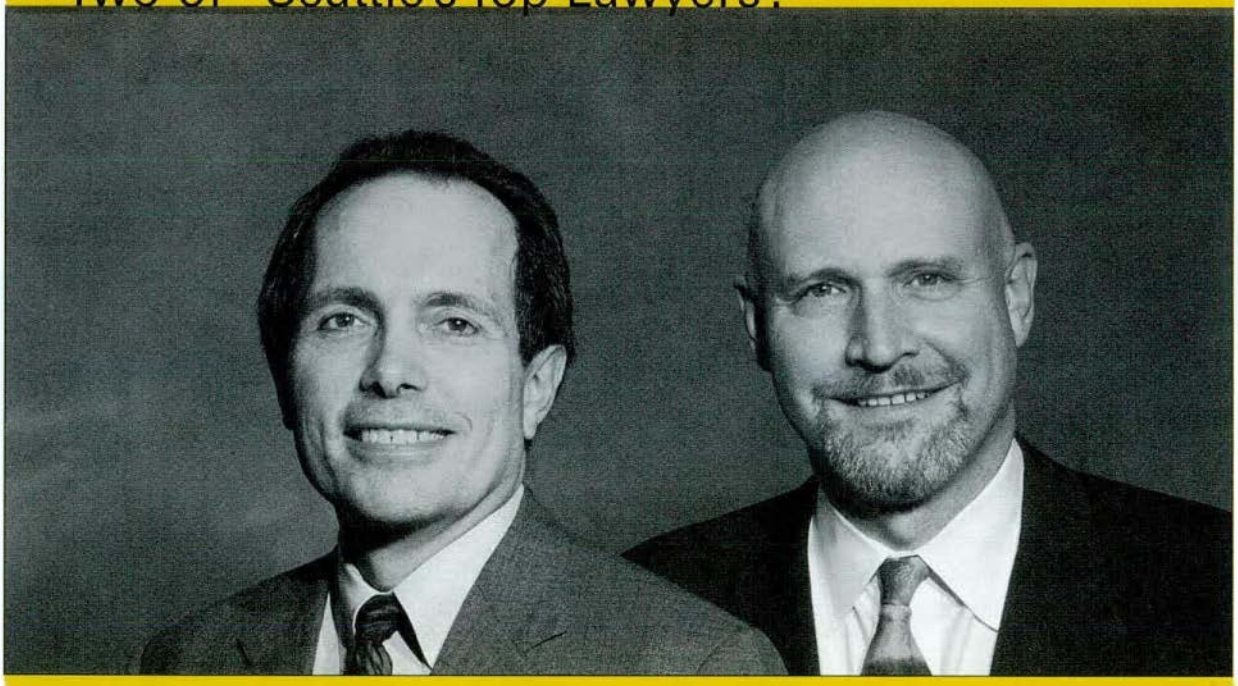
It should be noted at this point that no disrespect is intended for the FBI or the U.S. Attorney's Office. To the contrary, Deborra Garrett herself will tell you that both the FBI agent and the assistant U.S. attorney with whom she dealt were courteous, reasonable, and professional in all her dealings with them. In fact, the assistant U.S. attorney presumably made a conscious decision not to employ the extreme powers afforded by the Patriot Act to obtain these records. This is not surprising, considering the reputation which the Office of the U.S. Attorney for the Western District of Washington enjoys for integrity and professionalism. They were just doing their job, and an attorney in private practice was doing hers.

This is a story of one courageous lawyer who undertook the task of protecting the rights of citizens who probably never knew their privacy was threatened. This is a story of one lawyer who took on the government and prevailed, with great determination, and little fanfare. In doing so, she provided all of us with another example of the "Four Corners of Freedom." The rule of law carried the day. The separation of powers was maintained.

A thank you to our peers for
the honor of your votes.

William S. Bailey

Two of "Seattle's Top Lawyers".*



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Checks and balances were applied. And the very existence of a strong, independent judiciary made it happen. The fact that no judge actually had to rule in this case is not important. What is important is that a strong, independent judge was available, and both parties knew it. What is important is that two good lawyers, representing their respective clients with diligence and reason, achieved that balance so essential to the survival of our democracy and our freedom.

I have never been to Deming, but I feel like I have. It is like a thousand other communities across our nation where stories such as this are played out daily by lawyers just doing their jobs, and in the process, highlighting the beauty of our system. Deborra Garrett was awarded the WSBA Local Hero Award at a meeting of the Board of Governors held in Bellingham on July 29, 2005, a tradition started in 2000 by former WSBA President Jan Eric Peterson as part of his "Proud to Be a Lawyer" campaign. The goal of this campaign is to recognize those lawyers who exemplify the best our profession has to offer without ever drawing much attention to themselves. In this case, Deborra Garrett made us all proud to be lawyers.

The Deming Library story, like the Terri Schiavo case discussed in the October issue of *Bar News*, is an easily understood example all of us can employ to explain to others these fundamental principals that lay at the core of our democracy: The rule of law, separation of powers, checks and balances, and judicial independence. We only need to read the excellent article by retired Justice Robert F. Utter, found in this issue, describing the heroic efforts by Iraqi judges to establish something similar in their war-torn country, to appreciate how truly precious our system is, and why it is the envy of others around the world. It is our duty as lawyers and judges, privileged to work in this system, to make sure that it is fully understood, and never taken for granted.

Brooke Taylor may be reached at 360-457-3327 or sbtaylor@plattirwintaylor.com. If you would like to write a letter to the editor on this topic, please e-mail it to letterstotheeditor@wsba.org or mail it to WSBA Bar News, Attn: Letters to the Editor, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

"The Most Accurate and Useful Law Books Possible"

Wash. Terr., Wash., Wn.2d, and Wn. App. — Milestones of Official Case Reporting in Washington

BY TIM FULLER

Washington's official court reports reflect the development and exponential growth of the state's common law. After the Supreme Court of the Washington Territory decided its first case in 1854, it took 25 years for sufficient opinions to accumulate to fill the first of the three volumes of the *Washington Territory Reports*. Today, the opinions of the Supreme Court and the Court of Appeals together fill eight volumes per year.[1]

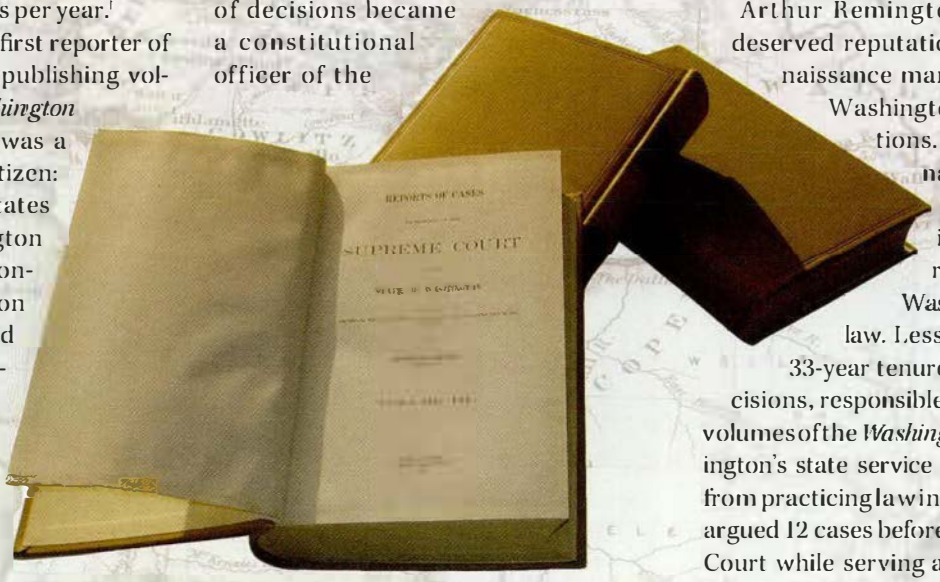
John B. Allen was the first reporter of decisions. In addition to publishing volumes 1 and 2 of the *Washington Territory Reports*, Allen was a prominent lawyer and citizen: he served as a United States attorney for the Washington Territory, a delegate to Congress from the Washington Territory, and a United States senator after statehood.[2] An elementary school named after him is now the home of the Phinney Neighborhood Association in Seattle.[3]

Henry G. Struve published the third and final volume of the *Territory Reports*. Like Allen, Struve was a leading early Washingtonian, having served as a U.S. district attorney in Vancouver, a judge advocate general of the Washington Territory, a probate judge for Clark County, a two-term mayor of Seattle, the director of the Seattle Public Schools, a four-term president of the board of regents of the Washington University (now the University of Washington), and general counsel for the Northern Pacific Railroad.[4]

Although little is known about internal court procedures of that era, the Territorial Supreme Court Rule XIII,[5] adopted in 1887, provides a hint of the postfiling processing of an opinion:

"All opinions of the court shall be recorded by the clerk in a well-bound volume, and the original filed with the papers in the case, and shall not be furnished by the clerk for publication until a copy, in print or typewriting, has been furnished the judge rendering the same, and been by him revised."

With the ratification of the Washington Constitution in 1889, the reporter of decisions became a constitutional officer of the Supreme Court.[6] In 1891, the first reporter poststatehood, Eugene G. Kreider, published *Washington Reports Volume 1*, which contains opinions of the newly formed state Supreme Court as well as opinions of the Territorial Supreme Court filed in 1889.



A notable improvement in the timeliness of case reporting occurred in 1905, when the Legislature directed that the publishing contract require the publisher to "issue" Supreme Court opinions "once each week in pamphlet form."[7] Although the 1905 statute also provided that the opinions were to include "appropriate headnotes,"[8] in fact it wasn't until 1959 that headnotes were included in the advance sheets. The 1905 statute also provided that the maximum price that the publisher could charge for each *Washington Reports* bound volume was $2.50 plus an additional 50 cents to receive advance sheets for that volume.[9] The actual charge in 1919 was $1.75 per volume plus 50 cents for the volume's advance sheets.[10] Thereafter, the price of an annual subscription to the advance sheets increased to no more than $4.[11]

Arthur Remington enjoys a well-deserved reputation for being a Renaissance man in the history of Washington's legal publications. Because he lent his name to *Remington's Revised Statutes*, he is best known for his role as a compiler of Washington statutory law. Less well known is his 33-year tenure as reporter of decisions, responsible for publishing 155 volumes of the *Washington Reports*.[12] Remington's state service didn't prevent him from practicing law in Tacoma; in fact, he argued 12 cases before the state Supreme Court while serving as the reporter. His personal and professional standards are described in the Washington Biographies Project as follows:

"He belongs to that school of barristers who never permit themselves to become 'ruffled,' but who are, at all times calm and dignified and in thorough accord with the majesty of the law."[13]

Remington no doubt needed to hold down multiple jobs because the reporter of decisions' annual salary was frozen at $3,500 from 1909 to 1938. The reporter received a $1,300 raise in 1938, which put the reporter's salary on par with the state law librarian. Some other judicial branch salaries in 1938 were: Supreme Court

justices: $7,000; superior court judges: $4,500–$6,000; assistant reporter of decisions: $3,120; Supreme Court clerk: $3,000; reporter's office secretary: $2,100.[14]

The reporter's office budget for the biennium ending March 31, 1939, included the following notable expenditures: blotters $15.00, twine $4.80, rubber bands $.53, clock repairs $3.50, *Webster's International Dictionary* $20.00, telegrams $4.13, 164 lbs. of paper $8.97, 11,000 index cards $8.11, cement floor stain and turpentine $4.83.[15]

The Second Series of the *Washington Reports* began in 1939. The new series was started at the behest of the Bancroft-Whitney Company of San Francisco, the contract distributor of the reports since the publication of *1 Wash. Terr.* Bancroft-Whitney believed that starting a new series would help marketing.

The Commission on Supreme Court Reports was created by statute in 1943 to oversee the publication of *Wn.2d*.[16] The minutes of the first commission meeting indicate that the reports were losing money because of "marked increases in the cost of material and printing . . . and obsolete and unreasonable specifications."[17]

In addition to Supreme Court opinions, the *Washington Reports* publishes proposed and adopted court rules of statewide significance. The first rules, adopted by the Territorial Supreme Court in 1887, take up only seven pages of the *Territory Reports*.[18] Initially, "Rules of Court" was printed at the bottom of the spine of bound volumes containing court rules, but that practice was discontinued in 1979 when it became clear that every *Wn.2d* volume contained some rules revisions. In 1951, the reporter's office compiled and published all the effective court rules in a bound volume, *34A Wn.2d*. Pocket parts updating the rules were issued through 1957.

West Publishing Company began publication of the *Washington Reporter* in 1956. A skeptical attorney in Seattle, loyal to the official reports, wrote to West as follows:

"It happens that we already have an excellent advance sheet and permanent reports system in this state — one of the very best in the country — and controlled by statute.... We need no competition nor duplication there and your service would not be official under the statute, and would, therefore, not find much market among lawyers.

"I suggest that this whole matter be reconsidered by your company.

"What we could use, as you know, is a first class Washington Code. But we do not need another supreme court reporting system, especially one without official standing."[19]

The reporter's office initiated the *Washington Reports Style Manual* in 1963. The manual was discontinued in 1995. Today the office utilizes the *Harvard Bluebook* as its basic citation guide. The *Office of Reporter of Opinions Style Sheet*[20] sets forth additions and exceptions to the *Bluebook*. The *Chicago Manual of Style* is the authority for punctuation and style matters not covered by the *Style Sheet* or the *Bluebook*, and *Webster's Third New International Dictionary* is the authority for spelling.[21]

After statehood, the state printing plant took over responsibility for printing and binding the official reports from the Bancroft-Whitney Company. The Supreme Court continued to contract with Bancroft-Whitney to provide sales, distribution, and accounting services. In 1965, Bancroft-Whitney advertising was eliminated from the advance sheets. In a memorandum to the Supreme Court advocating the prohibition, Reporter of Decisions Richard F. Jones[22] posed the following rhetorical question:

"[S]houldn't [an official advance sheet] which represents the labors of the highest Judges of the State of Washington be packaged with dignity befitting such a high calling rather than allowing the impression of a commercial magazine seeking advertisers for its very existence?"[23]

1969 marked the advent of the Court of Appeals and, with it, volume 1 of the *Washington Appellate Reports*. The first Court of Appeals opinion, with the euphonious name of *State v. Tate*, 1 Wn. App. 1 (1969), was written by Judge Vernon R. Pearson. No case backlog existed at the beginning — the trial court's April 9, 1969, order of competency appealed in the *Tate* case was affirmed by the Court of Appeals on September 10, 1969.

The publishing of Court of Appeals opinions more than doubled the work of the reporter's office. Some relief was afforded in 1971 when RCW 2.06.040 was amended to require that opinions lacking precedential value not be published.[24]

Initially, Court of Appeals advance sheets were issued for two consecutive weeks followed by a Supreme Court advance sheet for the third week. Within a matter of months, however, the present system of publishing each court's advance sheets in alternating weeks was instituted, because the larger number of Court of Appeals opinions was offset by the longer length of Supreme Court opinions.[25]

Wn. App. initiated two improvements not previously tried in *Wn.2d*: (1) advance sheets with uniform pagination (i.e., identical page numbers in the advance sheets and bound volumes), making permanent citations available in the advance sheets and (2) bound volumes with a *Washington Appellate Reports* citation and the parallel *Pacific Reporter* citation in the running head at the top of every page. In 1971, *Wn.2d* followed suit. Before the adoption of uniform pagination in *Wn.2d*, the name of the Supreme Court advance sheets was "Washington Decisions" and all Wash. Dec.[26] cites had to be updated to *Wn.2d* cites when the bound volumes were published.

Further innovations occurred in the mid-1970s:

- Addition of a copyright notice to the official reports.[27]
- The Supreme Court entered an order granting permission to use the copyrighted portions of the official reports to "news media and educational institutions for any purpose, and to any other person or organization for any noncommercial purpose."[28]
- Printing changed from "hot lead" typeset in the state printing plant to camera-ready copy composed from electronic data entered in the reporter's office.
- Addition of summary paragraphs following the headnotes relating the nature of the action and the disposition of the case at each court level. The summary paragraphs, just like the headnotes, were drafted by an attorney in the reporter's office and approved by the judge who authored the opinion.[29]

The reporter's office had a longstanding goal of assuming complete control over every aspect of producing and distributing the official reports. A first step was ac-

complished in 1968 when the commission acquired the entire back inventory of the printed reports (including the lead plates needed for reprinting bound volumes) from Bancroft-Whitney. The final step was accomplished in 1982 when Reporter Richard Jones persuaded the commission and the Supreme Court not to renew the Bancroft-Whitney contract. Washington became the only state in the country with complete control over all aspects of editing, composing, printing, marketing, and accounting for its reports. A single commission employee, whose salary was paid by the subscribers, performed all of the functions previously contracted out.

Subscriber service improved markedly. For example, address changes for which Bancroft-Whitney required six weeks' notice were implemented within minutes of receipt. Bancroft-Whitney's markup over actual cost of production was 75 percent for advance sheets and current bound volumes, and 138 percent for reprinted bound volumes. The state's overhead was far lower, resulting in a dramatic reduction in prices.[30] For the first time, the entire back inventory of reports was in stock and available for sale. The official reports prospered. *Wn.2d* and *Wn. App.* outsold the competing *Washington Reporter* by a ratio of about eight to one.

In 1983, the reporter's office began publication of an annual softbound *Official Rules of Court* deskbook distributed at no cost to all *Wn.2d* advance sheet subscribers. The deskbook was discontinued in 1995.

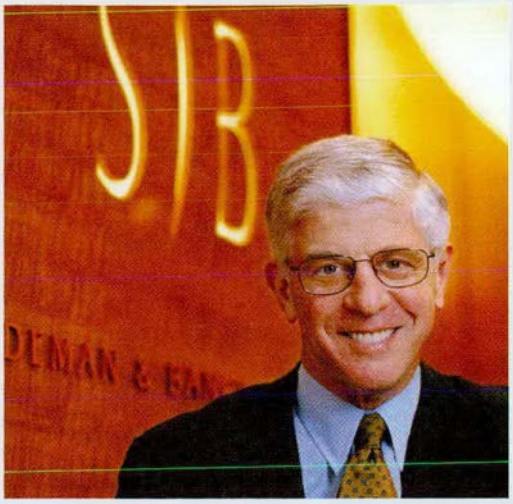
The first *Cumulative Subject Index* was distributed at no cost to all *Wn.2d* advance sheet subscribers in 1987. The *Index* collates all of the headnote index entries from cases back to 1979. In 2004 the *Index* became too large to bind in a single volume. From its inception, the *Index* has grown from 142 pages covering 15 volumes to 1,705 pages covering 160 volumes.

The 1990s brought tumultuous change to the reporter's office. Realizing the benefits of publishing case law electronically, the commission in 1991 authorized the reporter's office to acquire a database of case law. The commission issued a request for quotations and awarded a contract to scan the official reports from 1939 to 1977.[31] In 1994, the commission licensed its case law database to the Washington State Bar Association for use on its bulletin-board system.

The Legislature in 1994 drastically undermined the reporter's office by amending the Supreme Court budget to require the office to become entirely self-supporting, i.e., to pay the salaries of nine Supreme Court employees out of the subscription sales.[32] The Supreme Court responded by hiring the National Center for the State Courts to evaluate the situation. The National Center's study concluded that the Supreme Court had no practical alternative other than to contract out the sales, distribution, accounting, composition, printing, and some editing functions of the official reports. In 1995, the court issued a request for proposals (RFP) and awarded a three-year publishing contract to the Thomson Corporation, a Canadian company.[33] Six of nine employees in the reporter's office and both of the employees in the commission office were discharged. The *Official Rules of Court*, the *Cumulative Subject Index*, and the *Washington Reports Style Manual* ended.

Following the partial contracting out, Thomson possessed the electronic data of, and held the copyright to the editorial enhancements in, the post-July 1995 official reports. Since state publication of the official reports on a CD or the Internet was no longer feasible, the Supreme Court

Richard Sideman, Chairman, Sideman & Bancroft LLP



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in 1995 sold its case law database "as is" to the WSBA and the Statute Law Committee for $4,000, with credit given for previous license fees paid.

Sales of the back inventory of the bound volumes were not sufficient to pay the cost of storage and insurance, so in 1998 the entire inventory[34] was disposed of. Interested parties obtained volumes for the cost of shipping; remaining volumes were recycled.

In 1998, in return for a one-year publishing contract extension, Thomson reinstituted the *Cumulative Subject Index*[35] and gave the Supreme Court, at the end of the contract, a perpetual and sublicensable license to use the materials in the official reports copyrighted by Thomson. After a second one-year contract extension, the Supreme Court issued another RFP and in 2000 awarded the publishing contract to LEXIS Publishing Company.

Three notable advances were instituted during the past decade: (1) in 1996, the Supreme Court oral argument dates were set out above the case captions in *Wn.2d*; (2) also in 1996, both the Supreme Court and the Court of Appeals began posting slip opinions on the judicial branch website;[36] and (3) in 2005, opinion paragraphs were numbered, starting with the first advance sheets of *153 Wn.2d* and *124 Wn. App.*

The publishing contract with LEXIS was extended for two years in 2003. In return for ending the requirement that LEXIS publish the official reports on the Internet and on CD, LEXIS licensed to the Supreme Court (1) the historical database of case law that LEXIS acquired when it purchased CD Law, Inc. (cases from the *Territory Reports* through June 30, 2000) and (2) electronic files of all advance sheets and bound volumes that LEXIS produced under the publishing contract. The Supreme Court then sublicensed the entire case law database to the Statute Law Committee. The data is now included in the Statute Law Committee's case law CDs and is available for free on the Internet at a site maintained by the Municipal Research and Services Center.[37] Pursuant to a second two-year publishing contract extension in 2005, the Supreme Court acquired the right, as of the end of the contract on July 1, 2007, to sublicense the historical case law database to parties other than the Statute Law Committee.

Despite the Washington official reports' acceptance in the marketplace and support by the appellate courts, their long-term viability is uncertain. Legal research and legal reference materials clearly are in transition. The advance sheets and bound volumes retain many devoted subscribers, but subscriptions peaked in 1992 and began a gradual but steady decline as legal research increasingly is performed electronically. Providing free Internet access to slip opinions and the entire historical database of official reports may have accelerated the decline.

The contracting-out system is fragile. Sales declines inevitably lead to higher prices, as fewer subscribers remain to pay the fixed costs of editing and production. If legal publishing companies in the future decline to bid on the publishing contract, the Supreme Court will have to end the official reports or ask the Legislature to fund new staff to provide the editorial and business services that the contract publisher now provides to the state at no cost.

The Washington official reports remain a fundamental cornerstone of the state's common law. The advance sheets and bound volumes are tightly edited and include many features and enhancements not available elsewhere, including headnotes and summary paragraphs approved by the author of the opinion. Further, in a marketplace with a myriad of competing case law databases, there is a greater need than ever for official reports. Unofficial case law databases present version and security issues.[38] In this electronic world, when Internet users cannot be certain of the source and accuracy of the materials they have accessed, it is critical that Washington maintain a single, final, and authoritative version of every opinion — the *Wn.2d* and *Wn. App.* bound volumes. As the gold standard of Washington appellate court opinions, the official reports are well worth preserving.

Tim Fuller is reporter of decisions of the Washington State Supreme Court in Olympia.

NOTES

[1] Even with approximately 75 to 80 percent of Court of Appeals opinions being unpublished, the reporter's office in recent years has published an average of 7,400 *Wn.2d*

and *Wn. App.* advance sheet opinion pages annually. This is more than twice the number of opinion pages published in 1970, the first full year of the Court of Appeals, when all Court of Appeals opinions were published.

[2] Biographical Directory of the United States Congress, 1774-present, http://bioguide.congress.gov/scripts/biodisplay.pl?index=A000130.

[3] HistoryLink.org, The Online Encyclopedia of Washington State History, *at* http://www.historylink.org/output.cfm?file_id=3526.

[4] *Id. at* http://www.historylink.org/essays/output.cfm?file_id=2782; Washington Courts, Educational Resources, Photo History, *at* http://www.courts.wa.gov/education/history/?fa=education_history.display&fileID=judges.

[5] 3 Wash. Terr. at 629.

[6] Article 4, Section 18 of the Constitution provides: "The judges of the supreme court shall appoint a reporter for the decisions of that court . . . ."

[7] Laws of 1905, p. 331, § 4; 11 Rem. Rev. Stat. 11067 (1933).

[8] *Id.*

[9] Laws of 1905, p. 330, § 2; 11 Rem. Rev. Stat. 11065 (1933).

[10] Laws of 1919, p. 287, § 2; 11 Rem. Rev. Stat. 11069 (1933).

[11] *Id.*

[12] Arthur Remington served as reporter of decisions from 1903 to 1936; he was responsible for publishing volumes *33-187 Wash.*

[13] H. James Boswell. *American Blue Book Western Washington 18* (1922), *available at* http://freepages.genealogy.rootsweb.com/~jtenlen/aremington.txt (Washington Biographies Project).

[14] 11 Rem. Rev. Stat. §§ 11053, 11053-1 (1933); letter from Reporter of Decisions Solon D. Williams to Chief Justice William J. Steinert (July 11, 1938) (on file in the Office of Reporter of Decisions). Williams served as reporter of decisions from 1936 to 1958. His son, Ward Williams, served on the Court of Appeals from 1970 to 1989.

[15] Examination Report of the Supreme Court Reporter by the Division of Budget of the Washington Department of Finance, Budget and Business (May 12, 1939) (on file in the Office of Reporter of Decisions).

[16] Laws of 1943, ch. 185, § 1, codified in RCW 2.32.160. The commission's name was changed in 2005 to the Washington Court Reports Commission to reflect the fact that its duties encompass the Court of Appeals as well as the Supreme Court. Laws of 2005, ch. 190, § 1, amending RCW 2.32.160.

[17] Minutes of the Commission on Supreme Court Reports (June 18, 1943) (on file in the Office of Reporter of Decisions).

[18] 3 Wash. Terr. at 625-31.

[19] Letter from attorney Alfred J. Schweppe to Victor J. Holper, managing editor, West Publishing Company (Sept. 26, 1956) (on file in the Office of Reporter of Decisions).

[20] The *Style Sheet* is available to the public at http://www.courts.wa.gov/appellate_trial_courts/supreme/?fa=atc_supreme.style and as appendix 1 to GR 14.

[21] The reporter's office also publishes a comprehensive *Opinion Citation and Style Guide* on the Administrative Office of the Courts extranet that is available only to state court personnel.

[22] Only Arthur Remington served as reporter of decisions longer than Richard Jones, whose tenure extended from 1960 to 1989. A tribute to Richard Jones published following his retirement summarizes his personal commitment to the official reports by stating: "The reports to him are an institution representing the collective wisdom of the appellate judges of this state, and that sentiment motivated his sustained efforts to publish the most accurate and useful law books possible." 111 Wn.2d at iii.

[23] Memorandum from Richard F. Jones to Chief Justice Richard B. Ott (July 3, 1964) (on file in

the Office of Reporter of Decisions).

[24] Laws of 1971, ch. 41, § 1. The first unpublished Court of Appeals opinion was *Nichols v. Lopeman*, noted at 5 Wn. App. 1001 (1971).

[25] Two additional *Wn.2d* advance sheets were published annually from 1983 through 1995: a brown advance sheet dated the first Friday in January containing proposed court rules and a red advance sheet dated the first Friday in July containing adoptions, amendments, and rescissions of court rules. These advance sheets were instituted to implement the schedule for reviewing and adopting court rules that was established by GR 9, adopted in 1982.

[26] "Wash. Dec." was commonly pronounced "wash dish."

[27] *2 Wash. Terr.* and *5 Wash.* through *9 Wash.* also contain a copyright notice.

[28] Wash. State Supreme Court Order No. 25700-B-178 (June 3, 1976).

[29] Other editorial features in the bound volumes were modified or discontinued over the years. In 1939, the table of cases cited was discontinued. In 1962, the table of statutes cited and construed was discontinued. In 1963, the text of headnotes was eliminated from the volume indexes; indexes were limited to the boldface "catchlines" preceding each headnote.

[30] The price of a bound volume fell from $29.50 to $17.50; the price of an advance sheet subscription fell from $75 to $40. The Supreme Court, which purchased 450 copies of each bound volume and 50 advance sheet subscriptions for distribution to various governmental entities in accordance with former RCW 40.04.100 (1979), saved $35,900 annually.

[31] Post-1977 opinions were composed electronically and were stored in computer files.

[32] Laws of 1994, 1st Spec. Sess, ch. 6, § 108 provides: "The supreme court is directed to fully recover all costs, including staff costs, associated with publishing supreme court opinions by the reporter of decisions."

[33] Thomson had acquired several legal publishing companies in the United States, including the Callaghan Clark Boardman Company of Chicago, IL, where it initially assigned editorial responsibility for the Washington official reports project, and Lawyers Cooperative Publishing Company of Rochester, NY, where it transferred responsibility for the project later in 1995. Thomson purchased West Publishing Company in 1996 and transferred responsibility for the official reports to the West editorial office in Eagan, MN, in 1998.

[34] The inventory consisted of 43,675 volumes with a book value of approximately $1 million.

[35] The *Index* was not provided free with a *Wn.2d* advance sheet subscription as it was before July 1995; Thomson charged the same amount as for a *Wn.2d* bound volume.

[36] http://www.courts.wa.gov/opinions/index.cfm.

[37] http://www.legalwa.org. Washington is a leader in providing access to its case law. Slip opinions are available for viewing and copying at appellate court clerk's offices and are available online for free at the judicial branch website (http://www.courts.wa.gov/opinions/index.cfm). The *Wn.2d* and *Wn. App.* advance sheets and bound volumes are sold by LEXIS for a reasonable price and are available at every county law library. The entire case law database on two CDs is sold for $50 apiece by the Statute Law Committee and is available online for free at http://www.legalwa.org.

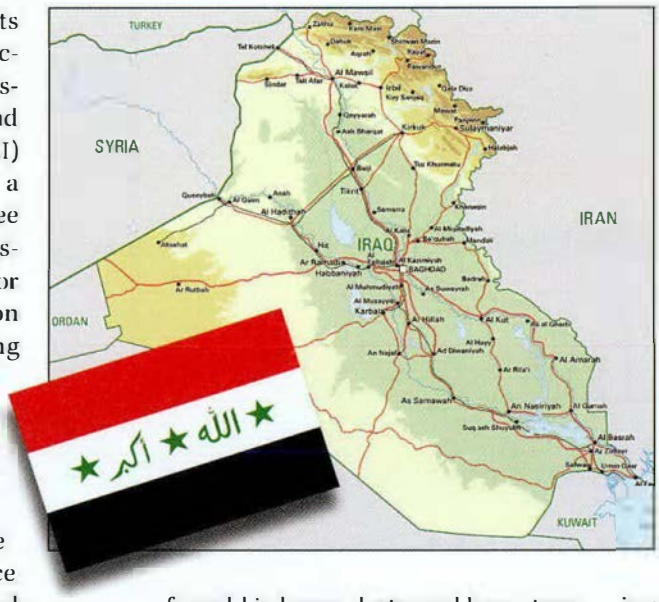
[38] For example: Is the database composed strictly of slip opinions? Does it incorporate formal court orders that change or withdraw opinions? Does it incorporate editorial corrections (nonsubstantive changes to citation, style, form, grammar, etc.) made for the official advance sheets and bound volumes? Has it been modified according to the publisher's editorial standards? Could it have been tampered with?

Iraqi Judicial Profiles in Courage

BY ROBERT F. UTTER

There is a legend of a tribe so fierce that when neighboring tribes became involved in battle they would often ask for assistance. One tribe asked for five hundred warriors. Five were sent. When the requesting tribe complained, a reply was sent asking if they preferred five hundred foxes or five lions.

I found modern counterparts of this mythical tribe in my second trip to the American Bar Association Central European and Eurasian Law Initiative (CEELI) Institute in Prague. Teaching a group of 50 Iraqi judges were three Americans, one Swede, one Austrian, and one Egyptian instructor gathered for a two-week session focused on the subject "Judging in a New Democratic Society." As with the previous course, it was funded by the British Government and coordinated through the Swedish-based International Law Assistance Consortium. Financial assistance was also provided by the Czech Ministry of Foreign Affairs.



To reach the relative safety of Prague, the judges from Iraq faced great challenges. One of them was assassinated in Iraq prior to the course. All had to make the perilous journey from Baghdad to the airport, one of the most dangerous drives in the world. This was just one incident in lives already fraught with peril. An outstanding leader at the seminar, Judge Quais Hashim Shammari, secretary general of the Judicial Council in Iraq, was assassinated when leaving home for work on January 25, 2005, along with his brother-in-law. The following week, Judge Taha Al-Amiri from Basra, a student from our September 2004 seminar, was killed in Basra. The week of March 14, another judge who was a member of the panel trying former leaders was assassinated.

All judges expressed pride in their historic role in ancient Iraqi society. They told of the ancient methods by which judges were selected based on ethics, morals, and learning. The saying was that to be appointed a judge was the same as being slain by a knife — a new life is begun, cut off from the old.

One of the judges spent 17 years in Iranian prisons following his capture after his conscription into the army from a judicial post during the war between Iran and Iraq. After his release he returned to Iraq only to be wrongfully seen by the coalition authority as a suspect member of the judiciary. An American officer investigated his case and had him reinstated to a judicial post. Afterwards, the judge found his home destroyed by a stray artillery shell and members of his family killed. He still works, but without enough funds to reconstruct his home.

When asked about problems in conducting their courts, the common theme was that the insecurity of daily life made normal functions difficult. With the breakdown of normalcy, most of the citizens could only understand the old system of threats, force, and intimidation. One day of the course was spent on the subject of judicial ethics. We used international, European, and American ethics codes as models and then challenged the Iraqi judges to draft their own code. When asked what element they would add that was not in the other codes they replied: "Courage," noting that without courage all other ethical principles were of no value. To survive in the morass that is currently Iraq, they demonstrate courage daily, often with humor and a smile.

When I asked my class whether they had been threatened by litigants in their court duties, most had stories to tell either of individual threats or of threats from tribal members of a defendant. One told of a note delivered by a small child he had received two days before he left for the seminar. It told the judge that he and his five family members would be killed if the note writer's brother was sentenced. As he told the story, the judge shrugged his shoulders and noted that the letter was unsigned and gave no specifics of the case, and that he had no idea who the defendant was. The judge commented that many citizens of Iraq had only a rudimentary understanding of how a justice system worked and that threats were common as a result.

A judge from Kurdistan left the judiciary shortly after graduation from judicial school in 1981. Subsequently, he left to join the guerillas fighting for relief from the oppression of the Iraqi army. For 10 years, he lived as a fugitive, staying in small villages and the fields in that cold mountainous part of the country. During that time he was bombed and hunted by the army, which used all available weapons to suppress the insurgency. Following a truce between the competing Kurdish factions arranged by then Secretary of State Madeline Albright, he returned to his judicial post in the Kurdish portion of Iraq in 1991.

The Iraqi judges displayed a strong commitment to their role as judges and their function in the new Iraq. Within three days after the occupation of Baghdad by coalition forces, the courts were back in business and functioning. In many cases they had to hold their hearings in hallways, alleys, on lawns, or on the streets. They felt a personal commitment to keep processing their cases. When power was unavailable, they would use candles.

A major change from the seminar in September was the presence of three women judges. We were delighted to have

them, as we heard there were only 10 in the country. All their stories were different, but each told of remarkable courage and determination. They all wore traditional clothing. The female judge serving longest was appointed in 1979. Another became a judge after the fall of Saddam Hussein in 2004, even though she married in 1984. She was initially unable to be a judge as she was unmarried, and Saddam decreed that all judges, male and female, must be married to be a judge. The reason, they assumed, was that marriage made you more stable. One judge stated she became a judge as she believed the Koran had been misinterpreted in terms of women's rights and thought Muhammad intended that women be treated equally. In discussions about the future for women in Iraq, they reflected that Iraq had returned to the middle ages. Women suffered from oppression and repression, causing the collapse of the family system. In discussions about future projects for Iraq with Angela Conway, director of the Middle Eastern CEELI program of the American Bar Association, they noted that women should play a significant role in the future. They should focus on social and educational aspects for women. There should be equality with men in all aspects, and women should be granted rights and privileges to take away their burdens.

At the end of the course, we asked the judges to prepare a personal action plan for steps they could take to improve the administration of justice in Iraq. Their suggestions were premised on the restoration of order and security in their society. A common focus emerged based on improved administrative practices, appointment of more qualified judges and court personnel, improved case management, strong continuing education for all court personnel on ethics and legal matters, as well as a need for judges to go outside the courtroom to educate the public and school children about the role of an independent judiciary in a democracy. With more than 150 newspapers in Iraq, a resolve was also expressed to take ideas from one of our sessions on how to educate the press about the court system and ways to establish positive working relations with the media.

In discussions about the future for women in Iraq, they reflected that Iraq had returned to the middle ages. Women suffered from oppression and repression . . . they noted that women should play a significant role in the future. They should focus on social and educational aspects for women.

It was a great privilege to have the opportunity to see courage in action on the part of Iraqi judges and share in their hopes for reestablishment of the rule of law in that beleaguered country. Given the progress made in the elections, I look forward to an active and courageous judiciary taking their rightful part in a new Iraq.

Justice Robert F. Utter served on the Washington State Supreme Court from 1971 to 1995, and as chief justice between 1979 and 1981. Since retiring from the court he has worked in alternative dispute resolution and has been active in the American Bar Association's Central European and Eurasian Law Initiative.

Business Lawyers Pitching In for Public Good

BY JIM BAMBERGER

Business lawyers — *pro bono*. What, you say? Oxymoron. Can't be.

Well, it's true. Across the state of Washington, business lawyers are giving their time, energy, and expertise to nonprofit community-based organizations with needs for civil legal assistance on a broad array of matters. Building on recommendations developed by the Task Force on Washington State Business Law *Pro Bono*, and encouraged by new and successful business law *pro bono* models developed and tested in other parts of the country, a new organization was formed in 2003 called the Washington Attorneys Assisting Community Organizations (WAACO). Not a small town in Texas or a pejorative characterization of the dysfunctional attorneys who took the plunge, WAACO (pronounced Wah-ko) is an independent organization with an ever-expanding base of participating business attorneys working to make timely and competent legal assistance available to undercapitalized and often nascent community-based nonprofit organizations that more often don't realize the need for legal assistance — until it is too late.

Nonprofits throughout Washington state improve their communities by providing social, educational, and charitable services, and promoting economic development in distressed areas. Today, more than ever, community organizations need legal assistance with everything from straightforward corporate formation, taxation, intellectual property, and employment law matters, to complex mergers, reorganizations, and real estate transactions. These organizations require ongoing legal assistance to stabilize their operations and increase their capacities. Unfortunately, many lack the understanding and resources to find an attorney. Without access to timely and competent *pro bono* legal assistance, they may fail to execute their philanthropic missions. Part of the problem is that many Washington nonprofits do not identify their ongoing legal needs or seek legal help with organizational and transactional matters. The "culture of poverty" embedded in the nonprofit community breeds a fire-drill approach to legal issues. Driven by their charitable missions and thwarted by their budgets, nonprofits often will not pause to address or even realize fundamental legal needs unless the organization confronts a lawsuit.

Just two years old, WAACO has already established itself as a statewide clearinghouse with a successful record of recruiting and matching volunteer business law attorneys with charitable and community-based nonprofits that are unable to pay for business-related legal services. Through community outreach and legal workshops, WAACO has begun to inform community organizations in our state of their business-related legal needs and to refer them to volunteer attorneys who can address those needs.

Just two years old, WAACO has already established itself as a statewide clearinghouse with a successful record of recruiting and matching volunteer business law attorneys with charitable and community-based nonprofits . . . .

WAACO is governed by an 11-member board of directors. Its work is supported by a statewide advisory committee consisting of 15 members representing the nonprofit, legal-aid, access-to-justice, and business-law communities. With financial and in-kind support from local law firms, the WSBA Business Law Section, the King County Bar Association, the Seattle Foundation, and others, WAACO has been able to hire a part-time coordinator, Mette Mai. Ms. Mai serves as the point of contact between WAACO, the organizations that need legal assistance, and the attorneys who have signed up to provide assistance. She is also in charge of the organization's attorney-recruitment efforts and efforts to reach out to nonprofit community-based organizations throughout the state.

To date, more than 40 cooperating business-law attorneys have provided legal assistance on more than 70 discrete legal issues facing client nonprofit organizations. Assistance has ranged from brief consultation and advice to detailed drafting of policies, procedures, contracts, and organizational documents. Board Chair Judy Andrews, a principal with the firm Gottlieb, Fisher & Andrews, PLLC, is enthusiastic about WAACO's success to date: "We pulled this thing together on a shoestring. There was every reason for this initiative to fail. But fail it won't. The business-law community has embraced the challenge, and more and more attorneys are signing up to share their expertise with community organizations throughout the state. As the word has gotten out, we have received more requests for assistance from a wide variety of community-based nonprofit organizations. Knock on wood — we have been able to connect these organizations with cooperating business-law practitioners. But, we know all too well that demand will shortly exceed supply; and we are continually looking to expand the base and diversity of our cooperating volunteer attorneys."

WAACO recognizes and thanks the attorneys who have helped meet the *pro bono* challenge assisting community organizations in making a difference. Business lawyers who have not yet found a way to contribute their considerable skills and abilities to a good cause are encouraged to contact WAACO.

Washington Attorneys Assisting Community Organizations (WAACO)
Mette Mai
Staff Coordinator
866-288-9695 (toll-free)
PO Box 2134
Seattle, WA 98111-2134
contact@waaco.org

To learn more about WAACO, check out www.waaco.org.

A Big Thank You to the Following WAACO Volunteer Attorneys

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questions@wsba.org

50 Years and Counting

Honoring Washington State Bar Association's 50-Year Members

At a celebratory luncheon held September 29 at the Seattle Sheraton Hotel and Towers, the WSBA honored its 43 members who are celebrating 50 years of membership in the WSBA this year. Nineteen, pictured here, were present at the celebration. In appreciation of their service to the WSBA and the public, WSBA President **S. Brooke Taylor** and members of the WSBA Board of Governors presented 50-year certificates and lapel pins to the members — who had joined the WSBA the year Disneyland opened, *Rebel Without a Cause* immortalized James Dean, "Rock Around the Clock" hit number one, and *The Honeymooners* debuted on television. The honorees — some of whom had not seen each other since law school and were eager to reunite — and their families enjoyed good food and a delightful afternoon.

50-year members pose for a memorable photo at the 2005 50-Year Member Tribute Luncheon.

Fifty-year members present at the luncheon included former Supreme Court Justice **Charles Z. Smith** and past WSBA President **Patrick C. Comfort**. Other dignitaries in attendance included **Richard Mitchell**, counsel to Gov. Christine Gregoire; former Supreme Court Chief Justices **Keith M. Callow**, **Richard P. Guy**, and **Vernon R. Pearson**; and several former WSBA presidents and state and federal judges.

The luncheon began with President Taylor welcoming and introducing the guests of honor, then delivering a speech entitled "1955: A Moment in Time."

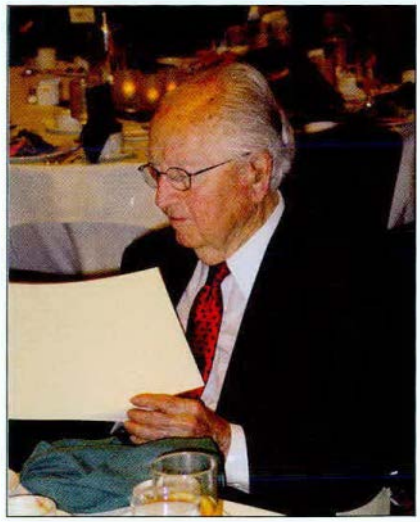
In 1955, he told the 100-plus honorees and guests present, the average income was $4,100, the average cost of a house was $22,000, and a new Ford would set you back $2,300. In Seattle, you could get a hamburger at the newly opened Dick's Drive-in on Capitol Hill for 19 cents. Not everything was cheaper back then: a microwave oven cost $1,300. President Taylor continued with a litany of events that occurred in 1955, many of which changed the course of history.

The presentation of certificates and lapel pins was followed by a message from the WSBA Senior Lawyers Section, represented by past chair **Peter Francis**.

The Honorable Charles Z. Smith and Eleanor Smith enjoy the luncheon.

WSBA Governor Mark Johnson honors Daniel Sullivan for 50 years of service.

WSBA Governor Kristen Olson visits with 50-Year Member Leon Uziel.



Joseph Gordon Sr. received special recognition for 70 years of membership in the WSBA.

The 2005 WSBA 50-year members

Robert Berst, Seattle
Lucius Biglow, Medina
Jack Burtch, Aberdeen
Gordon Byrholdt, Anacortes
William Cavanagh, Tacoma
Patrick Comfort, Tacoma
Byron Coney, Seattle
Roderick Dimoff, Seattle
David Dorsey, Wenatchee
The Honorable Maurice Epstein, Mercer Island
Vincent Gadbow, Tacoma
Leo Gese, Tacoma
Daniel Goodwin, Mercer Island
John Gose, Seattle
Eugene Greenway, Edmonds
Walter Hageman, Seattle
The Honorable Robert Hamack, Edmonds
James Henriot, Tacoma
John Henry, Edmonds
A'Lan Hutchinson, Edgewood
John Keough, Seattle
Milburn Kight, Wenatchee
Richard Krutch, Seattle
Charles Magnuson, Los Angeles, California
James McNally, Ione
Laurence Moore, Fredericksburg, Virginia
Wesley Nuxoll, Colfax
Lester Thomas Parker Jr., Aberdeen
John Piper, Seattle
Richard Quinn, Eugene, Oregon
The Honorable Joel Rindal, Bellevue
Theodore Rosenblume, Seattle
Anthony Savage, Seattle
Robert Schaefer, Vancouver
Gordon Scraggin, Tacoma
Emmett Shearer, Spokane
Hollis Small, Gig Harbor
The Honorable Charles Z. Smith, Olympia
Daniel Sullivan, Seattle
The Honorable Jack Tanner, Tacoma
John Tomlinson, Seattle
Leon Uziel, Seattle
Benjamin Westmoreland, Everett

Exceeding Excellence

Congratulations to WSBA's 2005 Annual Awards Recipients

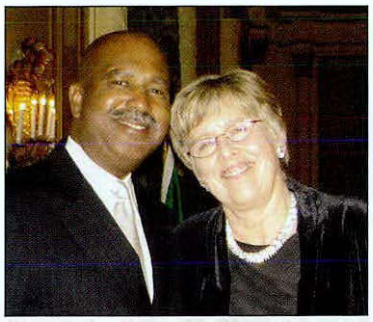
Congratulations to this year's Annual Awards recipients! The awards, with the exception of the *Pro Bono* Award and the President's Award, were presented at the Annual Awards Dinner held September 15 at the Fairmont Olympic Hotel in Seattle. For more information about each recipient, see the news releases on the WSBA website at www.wsba.org/media/releases/pr2005.htm.

Award of Merit: Barbara C. Clark
First given in 1957, this is the WSBA's highest honor. The Award of Merit is most often 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 awarded to individuals only — both lawyers and nonlawyers.

Professionalism Award: Robert H. Lamp
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.

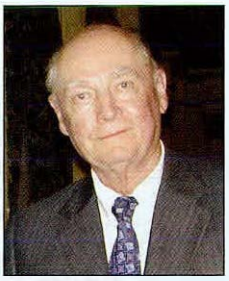
Angelo Petruss Award for Lawyers in Public Service: Rafael A. Gonzales
Named in honor of the late Angelo R. Petruss, a senior assistant attorney general who passed away during his term of service on the WSBA Board of Governors, this award is given to a lawyer in government service who has made a significant contribution to the legal profession, the justice system, and the public.

Outstanding Judge Award: The Honorable Deborah D. Fleck
This award is presented for outstanding service to the bench and for special contribution to the legal profession at any level of the court.


Barbara C. Clark with WSBA President Ron Ward.


Sen. Stephen L. Johnson


Rep. Patricia Lantz

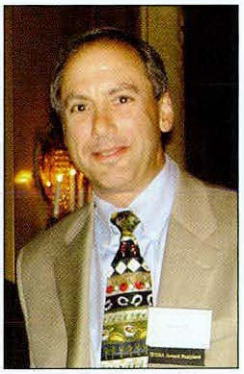

Robert H. Lamp


WSBA President Ron Ward reads the inscription on James Williams's President's Award.


Paula E. Boggs


Starbucks Director of Corporate Counsel Kathleen Albrecht


WSBA Executive Director Jan Michels congratulates Rafael A. Gonzales.


James A. Bamberger


Julian "Pete" Dewell


Marcia Newlands


Paula T. Crane addresses the Access to Justice Conference participants.


The Honorable Deborah D. Fleck with WSBA President Ron Ward.

Pro Bono* Award: Paula T. Crane
This award is presented to a lawyer, nonlawyer, law firm, or local bar association for outstanding efforts in providing *pro bono* services. This award is based on cumulative efforts, as opposed to a lawyer's or group's *pro bono* hours or financial contribution.

Courageous Award: James A. Bamberger and Marcia Newlands
This award is presented to a lawyer who has displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession.

Excellence in Diversity Award: Paula E. Boggs and Starbucks Coffee Company
This award is made to a lawyer, law firm, or law-related group that has made a significant contribution to diversity in the legal profession's employment of ethnic minorities, women, and disabled persons.

Outstanding Elected Official Award: Senator Stephen L. Johnson and Representative Patricia T. Lantz
This award is presented to an elected official for outstanding service, with special contributions to the legal profession. It is awarded to an individual who has demonstrated a commitment to justice beyond the usual call of duty.

Lifetime Service Award: Julian C. "Pete" Dewell
This is a special award given for a lifetime of service to the WSBA and the public. It is given only when there is someone especially deserving of this recognition.

President's Award: James Williams**
The President's Award is given annually in recognition of special accomplishment or service to the WSBA during the term of the current president.

* *The* Pro Bono *Award was presented at the Access to Justice Conference in Bellevue on June 4, 2005.*

** *The President's Award was presented at the President's Dinner on September 14, 2005.*

Washington State Bar News Extent and Nature of Circulation	Average No. Copies Each Issue During Preceding 12 Months	Actual No. Copies of Single Issue Published Nearest to Filing Date
Total Number of Copies (net press run)	27,444	27,746
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Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Non-USPS-paid Distribution	0	0
Other Classes Mailed Through the USPS	181	184
Total Paid and/or Requested Circulation	27,444	27,746
Free Distribution by Mail	70	65
Free Distribution Outside the Mail	30	30
Total Free Distribution	100	95
Total Distribution	27,544	27,841
Copies Not Distributed	150	150
Total	27,694	27,991
Percent Paid and/or Requested Circulation	100	100

The Board's Work

BY LINDSAY THOMPSON

Seattle, September 15, 2005

In WSBA's calendar, September is the Janus month. The outgoing president outgoes. The incoming president incomes. Governors leave and their successors arrive. The annual meeting (which is not the old, long-canceled bar convention) is held and awards are given.

September's also a deck-clearing month for the BOG. President Ron Ward summarized a meeting the BOG officers held with the Supreme Court the week earlier. Subjects included the Practice of Law Board's idea for licensing nonlawyers to do some things legal; court funding; and an American Bar Association team that will do a performance audit of WSBA disciplinary processes for the first time since the early 1990s. That one led to a multiyear effort to increase staff and reduce case backlogs that has by general agreement proved worth the effort.

Another BOG innovation of recent years, the consent calendar, allows for processing a lot of matters not expected to inspire any discussion or controversy: committee appointments, for example. A big slug of such items won approval, saving loads of time.

Lawyer **James Connolly** of Olympia chairs the Lawyers' Fund for Client Protection. Funded by a surcharge on licensing fees, it makes discretionary payments to clients whose lawyers have cost them money through dishonesty and when there is no other recourse, like insurance. The fund board proposed an amendment of its rules to exonerate people who make claims from liability (such as the lawyer suing them for libel). Since the rule copies one in ELC 2.12, there was not much discussion, and the BOG voted to send it on to the Supreme Court for consideration and action.

Summarizing the Fund's annual report, Connolly told the Board the Fund authorized $147,000 in gifts over the last year. A lawyer who abandoned his practice and moved overseas, leaving multiple clients in the lurch, largely drove the sum. While about $900,000 remains in the fund, Connolly warned that there are some big potential claims in the pipe for the coming year.

Governor **Eron Berg** wondered if there was a way to communicate the Fund's example to other professions in the state, calling it one of the more useful things WSBA does and noting it could set an example.

One of WSBA's delegates to the American Bar Association, **David Tang**, having been appointed to a House of Delegates seat from a section to which he belonged, a vacancy was created in the state delegation. After considering a number of candidates, the Board elected Chelan County District Court Judge **Thomas Warren** to fill the seat, and satisfy a desire several BOG members expressed in getting some more eastern-Washington members into the ABA delegation.

In a nice example of how one member can move the bar association, Everett lawyer **Robert Friedman** convinced the Board to adopt a resolution calling on Congress to allow veterans to represent them in administrative and judicial proceedings over denial of benefits. Friedman told the BOG the government is not only making it harder to get benefits, but is reviewing hundreds of thousands of past claims to see if any can be terminated. With the law tying one hand behind vets' backs by effectively denying them counsel, it's hardly a fair return for services rendered to the nation. The Board approved his resolution.

Barbara Clark is executive director of the Legal Foundation of Washington for another month. After 20 years on the job, she retires in December. WSBA conferred the Award of Merit on her this year, an honor entirely deserved. Under her leadership, LFW has funded legal services to Washington's poor through seemingly endless legislative attacks and a challenge that went all the way to the U.S. Supreme Court. Clark told the Board funding looks increasingly stable for the coming year, and with gradually increasing interest rates, more of it will come in as well. She introduced her successor, **Caitlin Davis Carlson**, who has run LAW Fund in the past and aced the top job in a national search.

A wild card in the agenda was another report from the Board's *ad hoc* committee on governance, which has been laboring away for two years on improvements to how governors and WSBA presidents get elected. The committee rolled out its tentative ideas for governor elections a few months previously, and was keen to get a vote in this meeting so the new governors wouldn't have to ramp up on the subject.

The committee's big idea was that some people, in some parts of the congressional districts we use to elect governors, just can't get elected because there are big population centers elsewhere in the districts. Some districts have informal rotation agreements to try and address this, but the committee felt the BOG should step in and make them fixed and enforceable.

Governor **Mike Pontarolo** opposed the plan, saying it won't work in the 5th District, which has lots of thinly populated space and Spokane. He argued a fixed system providing that every several elections a few hundred non-Spokane lawyers would get to elect a governor didn't really accomplish anything, since his district has the best record for contested elections.

Snohomish County Bar Association President **Geoffrey Gibbs** told the BOG (a) he didn't know anything about the plan, and (b), having just heard of it, didn't think much of it. He argued the proposed rotation for his district wouldn't really line up with where the lawyers live, which would result in elections skewing toward members in areas where they don't. He wondered why WSBA should tinker with systems local groups have in place already.

Governor **Marcine Anderson** cited the dissent of committee member and former WSBA Governor **Zulema Hinojos-Fall**, who predicted the proposed fixed rotations would create barriers to service and reduce diversity. Governor **Randy Gordon**, who was leaving the Board and is running for Congress in the 8th District, was disappointed that in his two years on the BOG these issues hadn't gotten resolved already. He felt the proposed plan clearly wasn't the answer, citing President Cleveland's comment that his main achievement was not so much anything he got done "as it was how many damned fool ideas I stopped."

Governor **Andrea Brenneke** thought you don't run a representative democracy from the top down; Governor **Mark Johnson** called on the BOG to "butt out" of local bar politics.

Overall, the proposal seemed becalmed, if not holed below its waterline, various

other views were expressed, for and against. The Board voted 8-6 to table it and go talk to the county bars some more about whether such an idea is really needed.

Along came **Steve Crossland**, who chairs the Practice of Law Board. He told the Board his board intends to continue to receive input from people on their idea to license and regulate nonlawyers to do some legal things. They hope to have a new discussion draft out in December or January. Crossland referred to the discussion with the Supreme Court (see earlier) but no one outside the big table knew what he was talking about, so I can't really help you with that bit.

CLE Director **Mark Sideman** wrapped up the meeting with an interesting report on how WSBA CLE is doing. The report was pretty impressive. Not only are they segueing into streaming media and other technologies to make CLE more accessible, they've cut overhead from 49 percent a few years ago to an anticipated 35 percent in 2006.

The Board then went into executive session and everyone else left. After that, the new governors were sworn in and a few hours after that the annual meeting and dinner was held. Lots of people were honored for impressive deeds. You can read about them on page 38 in this issue.

As such events go, it went, in a perhaps record three hours. The new president, **Brooke Taylor**, outlined his program, which I leave to him to tell you about because presidents get their own column in *Bar News*. As for me, that's it. I'm outta here. BN

Taking Stock: Investing in Clients

BY MARK J. FUCILE

Investing in clients has long been a dicey prospect. The disciplinary reports are filled with cases that illustrate the conflicts — whether the lawyer handled the transaction involved for the client or simply participated in a business deal with a client where the client implicitly relied on the lawyer for legal advice.[1] Moreover, because conflicts in this setting easily translate into breaches of the fiduciary duty of loyalty, unwaived conflicts can translate with equal ease into claims, fee forfeiture, and violations of the Consumer Protection Act.[2]

Although the ardor for investing in clients cooled in the wake of the "dot com bust," lawyers and law firms still find investment opportunities coming their way — either from their own initiative or clients' requests. Neither the current Rules of Professional Conduct nor the proposed amendments *prohibit* a lawyer from investing in a client — either directly or in lieu of a fee. Rather, they both require clear disclosure and client consent. The proposed amendments express their wariness by making the consent requirements even more exacting:

Current RPC 1.8(a):
A lawyer who is representing a client in a matter:
(a) Shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
(1) The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client;
(2) The client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
(3) The client consents thereto.

Proposed Amended RPC 1.8(a):
(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
(1) The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
(2) The client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
(3) The client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

Lawyers and law firms considering investing in clients would be wise to include four items on their list of required reading.

The first is ABA Formal Ethics Opinion 00-418. Both the current Washington rule and the proposed amendment are based on ABA Model Rule 1.8.[3] Opinion 00-418 was issued in July 2000 near the peak of the "dot com boom" when law firms saw investing in clients as a lucrative source of new revenue. Although not a "cookbook" for aspiring lawyer-venture capitalists, Opinion 00-418 does a good job of walking through ABA Model Rule 1.8(a), identifying the potential pitfalls and offering useful tips to minimize the risks of claims to lawyer-investors. On these last two points, Opinion 00-418 stresses throughout the absolutely essential need to thoroughly disclose to a client the risks of having a lawyer-investor advising on a transaction and the equally essential need to document the client's consent.[4]

The second is *Holmes v. Loveless*, 122 Wn. App. 470, 94 P.3d 338 (2004). *Holmes* involved a more mundane, but very lucrative, investment in a real estate development that a law firm took in return for discounting its fees during a two-year start-up period. Over nearly 30 years, the investment generated $380,000 on the initial $8,000 in discounted fees. The client eventually argued that continued payment would constitute an unreasonable fee under both RPC 1.8(a) and RPC 1.5(a), which governs fees generally. The Court of Appeals concluded that although the arrangement may have been reasonable when it began, the fee generated became unreasonable as time went by, because the lawyer's risk diminished while the certainty and amount of the fee 30 years later became disproportionate. The Court of Appeals refused to enforce the agreement going forward. *Holmes's* temporal gauge for measuring the reasonableness of a fee suggests that lawyers need to emphasize in their disclosure letters to clients that if the business is wildly successful the lawyers may receive a fee far in excess of what was available under an hourly fee arrangement.

The third is *In re McMullen*, 127 Wn.2d 150, 896 P.2d 1281 (1995). *McMullen* concerned a series of loans from a client to her lawyer. The lawyer included disclosures in the loan documentation, but the client was elderly and unsophisticated. The Supreme Court concluded that the client did not understand the transactions involved and, therefore, the lawyer violated RPC 1.8(a) notwithstanding the disclosures. The point *McMullen* illustrates is that investing in clients should be left to situations where the clients are sophisticated and will understand the nature of the disclosure.[5]

The fourth is *Cotton v. Kronenberg*, 111 Wn. App. 258, 44 P.3d 878 (2002), *rev. denied*, 148 Wn.2d 1011, 62 P.3d 890 (2003). The lawyer in *Cotton* took real estate as an element of a fee and was later disqualified before the legal services were completed. The Court of Appeals found that RPC 1.8(a)'s "reasonableness" requirement continued over the life of the agreement and that the lawyer's disqualification before completing the services rendered the transaction unreasonable. *Cotton* involved claims for breach of fiduciary duty, fee forfeiture, and violations of the Consumer Protection Act. As such, it serves as a sobering example of the range of "bad things" that can happen if the inherent conflicts of a lawyer taking an investment in lieu of a fee are not fully disclosed and client consent is not documented.

The cases involving lawyer investments in clients display motives ranging from the best to the worst on the part of

the lawyer-investors. What they all share, however, is the theme that this area is fraught with potential conflicts and that lawyers' motives will be subject to intense scrutiny after the fact. In that context, the best investment a lawyer can make is a thorough conflict waiver.

Mark J. Fucile is a partner with Stoel Rives LLP, where he handles legal ethics, regulatory, and attorney-client privilege matters for lawyers, law firms, and legal departments throughout the Northwest. He is past chair of the WSBA's Rules of Professional Conduct Committee and coeditor of the WSBA's Legal Ethics Deskbook.

NOTES

1 *See, e.g., In re McKean*, 148 Wn.2d 849, 64 P.3d 1226 (2003) (lawyer both formed and invested in a company with clients he was representing); *In re Johnson*, 118 Wn.2d 693, 826 P.2d 186 (1992) (client implicitly relying on lawyer for legal advice regarding a loan); *see generally In re McGlothlen*, 99 Wn.2d 515, 663 P.2d 1330 (1983) (discussing business transactions with clients).

2 *See Eriks v. Denver*, 118 Wn.2d 451, 824 P.2d 1207 (1992) (discussing the relationship between violations of the professional rules governing conflicts and corresponding breaches of the fiduciary duty of loyalty; *Short v. Demopolis*, 103 Wn.2d 52, 691 P.2d 163 (1984) (applying the CPA to the business aspects of law practice).

3 ABA Model Rule 1.8(a) was amended to its current version in 2002. It is that updated version upon which proposed Washington RPC 1.8(a) is patterned. The proposed amendments to the Washington RPCs were pending before the Supreme Court as this column was written.

4 *See also* WSBA Informal Ethics Opinions 1557 (1994), 1198 (1988) and 1191 (1988), all of which deal with investments in clients and are available on the WSBA's website at www.wsba.org.

5 Even with sophisticated clients, thorough documentation is essential. *See, e.g., Valley/50th Avenue, L.L.C., v. Stewart*, ____ Wn. App. ____, 2005 WL 1502021 (June 21, 2005) (unpublished) (client argued unsuccessfully that a deed of trust taken as part of a fee was unenforceable because disclosure was inadequate under RPC 1.8(a)).

OPPORTUNITIES FOR SERVICE

Board for Judicial Administration, Court Independence Response Team

Application deadline: December 1, 2005

The WSBA Board of Governors is accepting letters of interest from members interested in serving a three-year term on the Board for Judicial Administration's Court Independence Response Team (CIRT).

The membership of this committee will consist of judges from municipal, district, and superior courts; court administrators; representatives of cities and counties; city and county attorneys; the WSBA; the ACLU; public defenders; and the Attorney General's office. The CIRT will be a forum for discussion and resolution of issues that arise between a court and the executive or legislative authority in the court's jurisdiction. The WSBA will nominate a representative based on demonstrated familiarity with their constituency and his or her willingness to work cooperatively to address issues that may arise between the judiciary and other government branches. The Washington State Supreme Court Chief Justice will make the appointment. The committee will meet once annually and at other times as is necessary.

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

Bench-Bar-Press Committee of Washington

Application Deadline: December 1, 2005

The WSBA Board of Governors is accepting letters of interest and résumés from members interested in serving a three-year term on the Bench-Bar-Press Committee of Washington. A written expression of interest and a résumé are also required for any incumbent seeking reappointment. The three-year term will commence on February 1, 2006.

The Bench-Bar-Press Committee was formed in 1963 to foster better understanding and working relationships among judges, lawyers, and journalists. Its mission is to reconcile, as much as possible, the tension between the constitutional values of a free press with those of a fair trial through educational events and relationship building. The committee is chaired by the Washington State Supreme Court Chief Justice and includes representatives from the legal profession, judiciary, law enforcement, and news media. The committee meets as a whole once or twice each year. Subcommittees of volunteers are organized on an ad hoc basis to plan events. Further information about the committee can be found at www.courts.wa.gov.

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

WSBA Ethics Opinions Now Searchable Online

The WSBA announces the availability of a new online search tool for Washington ethics opinions. Lawyers can now search both formal and informal WSBA ethics opinions at http://pro.wsba.org/io/search.asp. Opinions can be searched by number, year issued, ethical rule, subject matter, or keyword. Ethics opinions are issued by the WSBA to assist members in interpreting their ethical obligations in specific circumstances. The opinions are the result of study and analysis in response to requests from WSBA members. For assistance, call the Ethics Line at 800-945-9722, ext. 8284, or 206-727-8284.

Legal Foundation of Washington Names New Executive Director

The Board of Trustees of the Legal Foundation of Washington (LFW) announced that **Caitlin Davis Carlson** will serve as executive director of the LFW beginning December 1, 2005. Ms. Carlson has served as associate director of the LFW for the past two years, and has broad experience in grant making, raising funds, and running a nonprofit from her service as membership and development officer at the King County Bar Association and from her consulting work.

Thinking of Changing Your Status? Consider Emeritus

Annual WSBA training: January 18, 2006

APR 8(e) creates a limited license status of Emeritus for attorneys otherwise retired from the practice of law to practice *pro bono* legal services through a qualified legal services provider. A qualified legal services provider is a not-for-profit legal services organization whose primary purpose is to provide legal services to low-income clients. There are no MCLE requirements (although attorneys may attend optional CLE seminars at no cost to stay apprised of changes in the law). The 2006 license fee for Emeritus status is $117. Under most circumstances, Emeritus attorneys can remain so indefinitely without having to retake the bar exam if they return to active status.

Volunteering for a qualified legal services organization allows you to control your own schedule. Most importantly, the Emeritus program provides an opportunity for attorneys to give something back to their communities by helping those who are less fortunate.

"*Pro bono* representation of clients as an Emeritus attorney is truly a different experience from similar *pro bono* work done as an adjunct to a private practice," says Emeritus attorney Don Ericson of his experience. "[T]he time element is totally different. Meetings are, for the most part, relaxed, with time to get to know the family background, to understand why decisions are made, and to help the client understand the implications of those decisions. I thank the Emeritus program for giving me this experience — a real example of 'psychic income.'"

Qualified legal service organizations include Columbia Legal Services, a statewide legal services program; Northwest Justice Project, a central statewide point of access for clients; specialized legal services programs (such as Northwest Women's Law Center, Unemployment Law Project, and others); and county volunteer attorney programs. These organizations exist in most counties and offer a variety

of volunteer opportunities, such as direct representation, mentoring, advice and self-help clinics, telephone advice, document preparation, and membership on a volunteer board of directors for a qualified legal services provider. Emeritus status also allows for *pro bono* services for criminal cases through some public defender agencies. The WSBA will do its best to find the right fit for each attorney's legal expertise, interest, and schedule.

An Emeritus training session has been scheduled for January 18, 2006, at the WSBA office. This training is a requirement for changing to Emeritus status and will provide an opportunity to meet qualified legal services providers. Travel expenses will be reimbursed. For more information about the Emeritus Program, contact Sharlene Steele, WSBA access to justice liaison, at 800-945-WSBA, ext. 8262 or 206-727-8262, or e-mail sharlene@wsba.org.

Washington Attorneys with Disabilities to Reactivate

A group of Washington state attorneys with disabilities is planning to reactivate an interest group and/or bar organization beginning this fall. If you are interested in becoming an active and dynamic member of this group, want to meet other attorneys with disabilities, and learn more about ADA and other issues of interest to attorneys with disabilities, we will be having an organizational meeting in November. In addition to having regular meetings, we plan to hold a kick-off reception, offer CLEs and seminars, and conduct a survey of Washington attorneys with disabilities. For more information, please contact Shawn Murinko at Spokane City Prosecutor's Office, 909 W. Mellon Ave., Spokane, WA 99201-2129; phone 509-835-5988; e-mail smurinko@spokancity.org; or contact Joslyn K.N. Donlin, diversity advocate, WSBA, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330; phone 206-727-8216; or e-mail joslynd@wsba.org.

New MCLE Compliance Report in 2006 License Packets

All active members who are not due to report MCLE compliance at the end of this year, including new admittees, will receive a new report — the C4/C5 form — in their 2006 licensing packets. APR 11.6(a)(3) requires that the WSBA provide an annual report to all active members regarding the credits and courses posted to their MCLE online rosters. This new report will help non-reporting active members to better track their credits, ensuring correct reporting and compliance at the end of their reporting period.

If you receive the new C4/C5 form in your 2006 license packet, it is for your information only. No action needs to be taken.

To make corrections to your WSBA MCLE roster, go to http://pro.wsba.org. Click on the "Member" tab, and then on "Member Login." The online instructions will lead you through the process of creating a password and using the system. Help is available online. You can also contact the WSBA Service Center at 800-945-WSBA, 206-443-WSBA, or e-mail questions@wsba.org to have corrections made or request an MCLE system instruction booklet.

MCLE Certification for Group 2 (2003-2005) — Complete Credits by December 31, 2005

Active WSBA members in MCLE Reporting Group 2 must report compliance with

MCLE credit requirements for the 2003-2005 reporting period at the end of this year. Members in Group 2 include active members who were admitted to the WSBA in 1976-1983 or in 1992, 1995, 1998, or 2001. (Members admitted in 2004 are also in Group 2 but are not due to report until the end of 2008. Their first reporting period will be 2006-2008, but any credits earned on or after the day of admittance to the WSBA may be counted for compliance.)

If you are a Group 2 member, you will receive a Continuing Legal Education Certification (C2) form in the license packet that will be mailed to you at the beginning of December. The C2 form, not your online profile, is the official record of MCLE compliance. This form is an affidavit that lists all WSBA-approved courses that were on your 2003-2005 MCLE online profile at the beginning of October 2005. If you have taken other classes since the C2 was printed and they are all listed in your online profile, you may print and attach a copy of the online profile to the C2 form. Indicate on your C2 form that the attached profile is the true and correct record of the courses taken for the reporting period. Alternatively, you may simply add the additional WSBA-approved courses you took to the back of the C2 form (the C3 form). The deadline for completing the C2 form and returning it to the WSBA is February 1, 2006.

All WSBA-approved courses you list on your C2 form must have an Activity ID number. This number is listed on your online MCLE profile and is assigned at the time the Form 1 for each course is reviewed. If you have taken courses that have not yet been approved by the WSBA, please submit Form 1s for these courses immediately to ensure that they are approved before your C2 is due. Form 1s submitted electronically (at http://pro.wsba.org) could take at least four weeks to process if they are submitted in October through February, due to high volumes. Paper Form 1s may take at least six weeks to process during the same period. If you submit a paper Form 1, you will be notified by mail of the Activity ID number assigned to it after the Form 1 is processed. If you have questions about the Form 1 process, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail questions@wsba.org.

See the section that follows for more information about MCLE compliance.

MCLE Certification for Active Members Due Date for MCLE Reporting

WSBA members are divided into three MCLE reporting groups based on year of admission. (Newly admitted members are exempt. See "Newly Admitted Members" below.)

Group 1: Admitted through 1975, 1991, 1994, 1997, 2000, 2003, or 2006
Group 2: Admitted in 1976 through 1983, 1992, 1995, 1998, 2001, or 2004
Group 3: Admitted in 1984 through 1990, 1993, 1996, 1999, 2002, or 2005

Reporting Group	Next Reporting Period	Complete Credits by	File C2 Form by
Group 2	2003-2005	December 31, 2005	February 1, 2006
Group 3	2004-2006	December 31, 2006	February 1, 2007
Group 1	2005-2007	December 31, 2007	February 1, 2008

Credit Requirements. The following credit requirements must be met by December 31 of the last year of an active member's reporting period:

- At least 45 total credits of WSBA-approved CLE activities must be taken, which need to include a minimum of 30 live credits and six ethics credits.
- A/V courses cannot be more than five years old, except approved "skills-based" courses.
- Six *pro bono* credits can be earned per year. Two of these credits are for approved annual training, which must be taken prior to being able to earn credit for the *pro bono* work. Four *pro bono* credits may be earned each year if at least four hours of *pro bono* work was provided through a qualified legal services provider.

Carry-over CLE Credits. Carry-over credits from the previous reporting period may be used to meet the requirements of the current reporting period. If your current reporting period credits total exceeds 45, you may carry over a maximum combined total of 15 credits to your next reporting period. Only two ethics credits and five A/V credits may be carried over.

C2 Reporting Requirement. All active members due to report are required to file a Continuing Legal Education Certification (C2) form with all CLE courses taken for credit compliance. The deadline for filing your C2 form is February 1 of the year following the end of your reporting period. Note:

- Your online roster is not a substitute for filing the C2 form.
- The C2 form is an affidavit and must be signed and dated, and the city and state where signed must be identified.
- C2 forms are included in the license packets sent in early December to all members due to report (which will be Group 2 members this year).
- All CLE courses listed on member rosters as of October 2005 will be printed on the back of the C2 form. If you took more CLE courses after October 1, they appear on your online roster, and you do not want to hand-write them on the back of the C2 form, you may print a copy of your roster and attach it to your C2 form. State on your C2 form that the attached online roster printout is a true and correct statement of the CLE courses taken for credit compliance.

MCLE Late Fees. All active members who have not completed their credits by December 31 of the last year of their reporting period, or who submit their C2 reporting forms after March 1 of the following year (the end of the grace period after the February 1 deadline), must pay a late fee of $150. The late fee increases by $300 for each consecutive three-year reporting period of noncompliance.

Newly Admitted Members. If you are a newly admitted member, you are exempt from reporting CLE credits for the year of your admission and the following calendar year. If you were admitted in 2004, you will not report for this reporting period (2003-2005) even though you are in Group 2. You will first report at the end of the 2006-2008 reporting period. When you report at the

end of your first reporting period, you may claim all CLE credits earned on or after your date of admission to the WSBA.

MCLE Comity. If you are an active member of the WSBA and your primary office for the practice of law is in Oregon, Idaho, or Utah, you may meet your Washington mandatory CLE requirements by providing proof of current MCLE compliance from the Oregon, Idaho, or Utah state bar. Only a Certificate of MCLE Compliance from your primary state bar (not a "Certificate of Good Standing"), sent with your WSBA C2 form, will satisfy your MCLE requirements in Washington.

MCLE System – Course Listing and Member Profiles. Members may use the online MCLE system at http://pro.wsba.org to:

- Review courses taken and credits earned.
- Apply for course approval.
- Apply for writing credit, *pro bono* credit, or prep-time credit.
- Search for approved courses being offered.

To use the MCLE system, go to http://pro.wsba.org, click on the "Member" tab, then select "Member Login." The online instructions will lead you through the process of creating a confidential password and using the system. Online help is available. If you have any questions about using the MCLE system or about the MCLE compliance requirements, see the online FAQs at www.wsba.org/lawyers/licensing/faq-mcle.htm, call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail questions@wsba.org.

2006 License Fee Renewal Packets

The 2006 license fee renewal packets are scheduled to be mailed in early December. Please call the WSBA to request a duplicate packet if you have not received yours by December 31, 2005. (Please note: If you list a home address as your public contact address, that address will be provided as your contact information to all inquirers.) APR 13(b) requires all attorneys to update their office addresses and telephone numbers within 10 days of a change. APR 13(c), which went into effect September 1, 2005, provides as follows:

"Electronic mail address: An attorney should advise the Washington State Bar Association of a current business electronic mail address if one exists. An attorney whose business electronic mail address changes should, within 10 days after the change, notify the Executive Director of the Washington State Bar Association, who shall forward changes weekly to the Office of the Clerk of the Supreme Court for entry into the state computer system. Use of electronic mail addresses for court notice, service and filing must comply with GR 30."

You can check your contact information by going to the online lawyer directory at http://pro.wsba.org. If your contact information has changed, please update the information by e-mailing questions@wsba.org, faxing the change to 206-727-8319, or calling the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. All requests for contact information changes must be made directly by the member or with the member's approval.

Judge Faye C. Kennedy Memorial Law Scholarship Established

A memorial scholarship has been established on behalf of the late Washington State Court of Appeals Judge Faye C. Kennedy at the University of Idaho College of Law. Judge Kennedy, who passed away on September 16, was elected to Division I of the Court of Appeals in 1990, becoming one of the first women at the appellate level in Washington state. In 2004, Judge Kennedy received the Judge of the Year Award from King County Washington Women Lawyers. She is remembered as a trailblazing attorney and a kind and generous person. Gifts should be mailed to: University of Idaho c/o Gift Administration Office, PO Box 443147, Moscow, ID, 83844-3147. Checks should be made out to the University of Idaho Foundation. Please indicate that your gift is being sent in Judge Kennedy's memory.

New Sexual Orientation and Gender Identity Section Considered

This notice is posted pursuant to the WSBA Bylaws, Article IX, "Sections," regarding a six-month prior notification of intent to establish a new Sexual Orientation and Gender Identity Legal Issues Section. For more information, please contact Rachel da Silva at 360-943-6260, ext. 203, or e-mail rachel.dasilva@columbialegal.org.

Computer Clinic

The WSBA offers a hands-on computer clinic for members wanting to learn more about what Microsoft Office programs — such as Outlook, PowerPoint, Excel, and Word, as well as Adobe Acrobat 6.0 — can do for a lawyer. Are you a total beginner? No problem. The clinic teaches helpful tips you can use immediately. Computers are provided, and seating is limited to 15 members. There is no charge, and no CLE credits are offered. The next clinic will be held on January 9, 2006, from 10 a.m. to noon at the WSBA office. For more information, contact Pete Roberts at 206-727-8237 or peter@wsba.org.

More LOMAP Events

LOMAP hosts a meeting of contract lawyers the first Tuesday of each month. The next meeting will take place December 6 from noon to 1:30 p.m. at the WSBA office. The November dates for "LOMAP & Ethics ... on the Road: The 2005 Traveling Seminar" are November 2 in Everett, November 14 in Tacoma, and November 16 in Tukwila. Registration is $79, and each seminar has been approved for four CLE credits, including two ethics credits. For more information, contact Julie Salmon at 206-733-5914 or juliesa@wsba.org.

Job Seekers Discussion Group

Looking for a job or making a transition? Join us at the Job Seekers Discussion Group the second Wednesday of each month from noon to 1:30 p.m. The group discusses where to look for jobs, how to use your network of contacts, strategies for résumés and cover letters, and how to keep yourself organized and motivated. Exchange information and ideas with other lawyers looking to make a change. Come as you are — no need to RSVP. For more information contact Rebecca Nerison, Ph.D. at 206-727-8269 or rebeccan@wsba.org.

Washington Employment Lawyers Association

The Washington Employment Lawyers Association (WELA) encourages practitioners to identify cases on appeal and to submit requests to WELA to appear as *amicus curiae* in state or federal cases. WELA's mission is to enforce and advance employee rights, in recognition that employment with fairness is fundamental to the quality of life. Please contact WELA Amicus Committee Chair Jeffrey Needle at 206-447-1560, and check the website at www.welaweb.org.

Estate Planning and Probate Titles Coming from WSBA-CLE Publications

WSBA-CLE is releasing three new titles providing definitive coverage of estate planning, probate, and wills in Washington. Scheduled for release in November are the *Washington Estate Planning Deskbook* and *Washington Probate Deskbook*, edited by Thomas R. Andrews, Professor of Law, University of Washington School of Law; John R. Price, Of Counsel, Perkins Coie; and Mark Reutlinger, Professor Emeritus of Law, Seattle University School of Law. In addition, WSBA-CLE is honored to be publishing a new revised edition of Professor Reutlinger's popular *Washington Law of Wills and Intestate Succession*. To view complete tables of contents or order online, go to http://store.yahoo.com/wsbastore. To order by phone, call the WSBA Service Center at 800-945-WSBA or 206-727-8278.

Lawyers Helping Hungry Children

Since 1991, Lawyers Helping Hungry Children (LHHC), an all-volunteer organization of members of the legal community and other concerned citizens, has distributed more than $500,000 to various Washington organizations that feed hungry children. This year, with a fundraising goal of $50,000, the group is partnering with Tortuga Coffee Company to raise needed funds. Sold online at www.tortugacoffee.com, $4 to $10 per bag purchased in LHHC's name will be donated to LHHC. For more information about LHHC, call 206-292-5858.

LAP Solution of the Month: Job Satisfaction

Do you look forward to going to work? If not, why not? If you're unhappy at your job but don't know what to do about it, call the Lawyers' Assistance Program at 206-727-8268 to schedule a free, confidential consultation. Life is short — enjoy it!

Upcoming Board of Governors Meetings

December 9-10 — Bremerton; January 13-14 — Olympia; March 3-4 — Seattle. With the exception of a one-hour executive session the morning of the first day, Board of Governors 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 Board of Governors meeting schedule is available on the WSBA website at www.wsba.org/info/bog/schedule.htm.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in October 2005 was 4.002 percent. Therefore, the maximum allowable usury rate for November is 12 percent. Information from January 1987 to date is on the WSBA website at www.wsba.org/media/publications/barnews/usury.htm.

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.

Note: *More than 29,000 persons are eligible to practice law in Washington state. Some of them share the same or similar names.* Bar News *strives to include a clarification whenever an attorney listed in the Disciplinary Notices has the same name as another WSBA member; however, all discipline reports should be read carefully for names, cities, and bar numbers.*

Suspended

David A. Ambrose (WSBA No. 21764, admitted 1992), of Edgewood, was suspended for two years, effective May 16, 2005, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on his conduct in multiple matters involving lack of diligence, failure to apprise a client of a settlement offer, failure to abide by client decisions regarding the objectives of representation, failure to communicate with clients, failure to refund unearned fees upon termination, failure to appear for depositions and comply with discovery requests, failure to comply with court orders, unauthorized communication with a person represented by counsel, conflicts of interest, and conduct prejudicial to the administration of justice. *David A. Ambrose is to be distinguished from David R. Ambrose of Portland, OR.*

Matter 1: In August 2003, client A hired Mr. Ambrose to prepare a parenting plan/visitation agreement because his daughter's mother had stopped allowing visitation. The client paid Mr. Ambrose $1,800. Shortly thereafter, the client met with Mr. Ambrose, who agreed to have the initial paperwork completed in two weeks. At the end of two weeks, Client A telephoned Mr. Ambrose, who requested an additional week to prepare the paperwork. A week later, when they met to review the papers, Client A found the documents incomplete and inaccurate in many respects. In October 2003, Client A's daughter made some comments at school that caused the school to report the mother to Child Protective Services. When Client A told Mr. Ambrose about this, Mr. Ambrose suggested that Client A seek full custody. Client A, however, told Mr. Ambrose that he discounted the allegations and believed that the mother remained the best custodial parent; Client A reiterated his desire that Ambrose complete the parenting plan as initially requested. Between November 2003 and January 2004, Client A repeatedly telephoned Mr. Ambrose, who failed to respond. In December 2003, Client A wrote to Mr. Ambrose demanding that he finish the work or refund the $1,800. Mr. Ambrose never finished the paperwork, nor did he refund the fee.

Matter 2: Client B hired Mr. Ambrose in January 2003 to recover records allegedly taken by his business partner, M.R., following the dissolution of the partnership. In February 2003, Mr. Ambrose wrote to M.R. demanding that he return the records. Subsequently, Mr. Ambrose commenced an action against M.R. in superior court. Mr. Ambrose failed to comply with the court's initial scheduling order. In April 2003, Mr. Ambrose failed to appear for the client's deposition and the deposition of another witness in the case. Mr. Ambrose failed to comply with a second scheduling order entered by the court in April 2003. In mid-2003, thinking Mr. Ambrose was diligently working on his case, the client gave Mr. Ambrose an automobile valued at $2,500 for legal fees. After Mr. Ambrose demanded further payment, Client B gave him another automobile valued at $3,000.

In October 2003, in ruling on a defense motion to dismiss for failure to make discovery, the court noted that Mr. Ambrose had appeared late for the hearing, ordered Mr. Ambrose to deliver documents he said were in his car to defendant's counsel by 10:30 a.m., and imposed a $1,500 sanction against Mr. Ambrose. Mr. Ambrose did not deliver the documents as ordered by 10:30 a.m. and did not pay the sanctions within five days as ordered. In January 2004, after finding the refusal to comply with the October 2003 order was willful or deliberate, the court dismissed Client B's complaint without prejudice. In January 2004, a commissioner found Mr. Ambrose in contempt of court for failure to comply with the October 2003 order and fined him $150 per day until the documents in his possession were produced.

Client B hired a new lawyer. Upon review of the file, the new lawyer learned that the defendant's lawyer had offered to settle the matter in May 2003 if both parties agreed to dismissal of all claims and to pay their own attorney fees. Mr. Ambrose had never communicated this settlement proposal to Client B. This ultimately cost Client B more than $12,000 in attorney fees assessed against him.

In March 2004, a superior court judge found that Mr. Ambrose had intentionally failed to comply with the court's January 2004 order. The court accordingly awarded a judgment to the defendant's attorney for $10,500 in sanctions.

Although Client B paid Mr. Ambrose more than $8,000 in cash and/or cars, Mr. Ambrose never provided Client B with any billing statements and did not provide Client B with an accounting when requested. Mr. Ambrose provided Client B with his file only after repeated requests.

Matter 3: In early 2003, Client C hired Mr. Ambrose to commence foreclosure proceedings arising from a $17,000 loan made to J.S., which Client C had originally expected would be repaid following the listing and sale of J.S.'s home. Mr. Ambrose did not file a foreclosure action, but instead, in March 2003, obtained from J.S. a durable power of attorney and a trust that named Mr. Ambrose as J.S.'s attorney-in-fact and trustee over all of J.S.'s property. J.S.'s only significant asset was his house; the trust made Mr. Ambrose a potential trust beneficiary. J.S. believed that if Mr. Ambrose located a buyer for the home, he could approve

the offer. He did not understand that the trust documents would be recorded.

In April 2003, a potential buyer, P.L., signed a purchase and sale agreement through the listing agent for J.S.'s property, agreeing to pay $255,000 in cash at closing.

In May 2003, Mr. Ambrose recorded the trust documents as well as an option to purchase the property given by Mr. Ambrose to individuals who were his former and/or current clients. Under the terms of the option, Mr. Ambrose received $1,000 in legal fees.

During a title search in connection with P.L.'s closing, the title company discovered the recorded trust, the quit claim deed from J.S. to the trust, and the option. As a result, J.S. first learned that Mr. Ambrose had recorded the deed and that, as trustee, Mr. Ambrose had sold an option to purchase J.S.'s property. J.S.'s lawyer informed Mr. Ambrose of the P.L. offer and asked him to revoke the trust. Mr. Ambrose refused to respond. Client C instructed Mr. Ambrose to conclude the P.L. sale. Mr. Ambrose refused, and the closing date was postponed.

In July 2003, Mr. Ambrose, as trustee, filed a declaratory judgment action against J.S., P.L., and the holders of the option. Although Mr. Ambrose knew that J.S. was represented by a lawyer in the matter, he contacted J.S. directly by telephone in an effort to convince J.S. that the transaction with the option holders would be better than the P.L. offer. P.L. subsequently abandoned the offer and was dismissed from the lawsuit.

In February 2004, Client C fired Mr. Ambrose. J.S. subsequently obtained Mr. Ambrose's removal as trustee. In September 2004, the pending declaratory action was dismissed. Once the title company received the order dismissing the case, it closed a new sale of J.S.'s property.

Matter 4: In August 2002, a husband and wife hired Mr. Ambrose to resolve a family real estate dispute. Between August 2002 and December 2003, they paid Mr. Ambrose $2,900 in fees and costs. After filing a lawsuit in March 2003, Mr. Ambrose did little or no further work. He did not respond to defendant's discovery requests until they moved for sanctions. He canceled scheduled depositions. In April 2004, he appeared on the trial date and moved for a new judge, asserting bias. Although the motion was untimely, the judge decided not to proceed. Mr. Ambrose agreed to arbitrate the claim, but he did not take steps to do so. Mr. Ambrose did not keep his clients adequately informed about the status of the matter, and did not work on the matter after December 1, 2003. However, between December 13, 2003, and September 17, 2004, Mr. Ambrose collected an additional $2,200 in fees. Following his termination, Mr. Ambrose refused to refund any of the $2,200.

Mr. Ambrose's conduct violated RPC 1.2(a), requiring a lawyer to abide by a client's decisions about the objectives of representation and to consult with the client as to the means by which they are to be pursued, and requiring a lawyer to abide by a client's decision about whether to accept an offer of settlement of a matter; RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions; RPC 1.5, requiring that a lawyer's fee be reasonable; RPC 1.7(b), prohibiting a lawyer from representing a client if the representation may be materially limited by the lawyer's own interests, unless the lawyer reasonably believes the representation will not be adversely affected and the client consents in writing after a full disclosure; RPC 1.8(a), prohibiting a lawyer from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client unless the transaction and its terms are fair and reasonable and fully disclosed and transmitted in writing to the client, the client is given opportunity to seek the advice of independent counsel, and the client consents; RPC 1.8(j), prohibiting a lawyer from acquiring a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for the client; RPC 1.15(d), requiring that a lawyer take reasonably practicable steps to protect a client's interests upon termination of representation, including refunding any advance payment of fee that has not been earned; RPC 3.2, requiring that a lawyer make reasonable efforts to expedite litigation consistent with the interests of the client; RPC 3.4(a), prohibiting a lawyer from unlawfully obstructing another party's access to evidence; RPC 3.4(c), prohibiting a lawyer from knowingly disobeying an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists; RPC 3.4(d), prohibiting a lawyer from failing to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party; RPC 4.2(a), prohibiting a lawyer from communicating about the subject of a representation with a party the lawyer knows to be represented by another lawyer in the matter; RPC 8.4(d), prohibiting conduct prejudicial to the administration of justice; and RPC 8.4(j) prohibiting a lawyer from willfully disobeying or violating a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear.

Linda B. Eide represented the Bar Association. Mr. Ambrose represented himself.

Suspended

James D. Pack (WSBA No. 918, admitted 1970), of Everett, was suspended for 18 months, effective May 16, 2005, by order of the Washington State Supreme Court following a default hearing. This discipline was based on his conduct in 2003 involving lack of diligence and failure to cooperate with a disciplinary investigation, and his conduct between 1987 and 2003 involving trust account matters.

Matter 1: In September 1999, a client hired Mr. Pack to represent him in a workers' compensation matter arising from an employment-related injury. The client sought Mr. Pack's services to appeal a decision of the Washington Department of Labor and Industries denying the client's claim for workers'

compensation. A series of administrative proceedings led to an appeal to the Superior Court of Snohomish County. In July 2003 the superior court entered judgment against Mr. Pack's client and in favor of the employer. After receiving the judgment, Mr. Pack agreed to file an appeal on behalf of the client to the court of appeals. Mr. Pack failed to file a notice of appeal within 30 days of entry of judgment in superior court, as required by court rules. Because Mr. Pack missed the date for filing the appeal, the client lost the opportunity for further judicial consideration of his case.

Matter 2: In March 2003, the Bar Association opened a grievance against Mr. Pack due to his failure to file a Trust Account Declaration for 2001. In a March 6, 2003, letter to Mr. Pack, to which the Association requested a response within two weeks, the Association requested that Mr. Pack: (1) state whether he had filed a Trust Account Declaration for 2001, and if not, why not; (2) state whether he had handled client funds in his law practice in 2001; and (3) if he had handled client funds, state whether he had complied with RPC 1.14 in handling those funds. Mr. Pack did not respond to the request nor to a subsequent letter notifying him that the response was overdue and that a failure to respond would subject him to a deposition.

Between April and October 2003, the Association served Mr. Pack with multiple subpoenas *ducestecum* requiring him to appear for depositions and produce trust account records and information. Although Mr. Pack appeared for three depositions, he repeatedly failed to produce all the documents requested in the original request for response and in the three subsequent subpoenas *duces tecum.*

On July 14, 2003, Mr. Pack filed his Trust Account Declaration for 2001. This declaration was required to have been filed on February 1, 2002. Also on July 14, 2003, Mr. Pack filed his declaration for 2002. This declaration was required to have been filed on February 3, 2003.

Matter 3: On February 2, 2004, the Association's auditor completed an examination of Mr. Pack's IOLTA trust account, covering the period August 10, 1987, to September 1, 2003. During the period covered by the examination, Mr. Pack had failed to maintain adequate IOLTA trust account records, advanced funds of one client on behalf of another, and improperly held funds in his IOLTA trust account by failing to pay out positive client balances to clients who were entitled to receive them. As of September 2003, Mr. Pack's IOLTA trust account was short of funds, because the bank balance was less than the total of positive client balances.

Mr. Pack's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.14(a), requiring a lawyer to deposit client funds into a trust account; RPC 1.14(b), requiring a lawyer to maintain complete records of all funds of a client coming into the possession of the lawyer and to promptly pay or deliver to the client as requested by the client funds in the possession of the lawyer which the client is entitled to receive; former RLD 13.5 and ELC 15.5, requiring a lawyer to complete, execute, and deliver an annual trust account declaration to the Association; and ELC 5.3(e), requiring a lawyer to promptly respond to any inquiry or request for information relevant to grievances.

Kevin M. Bank represented the Bar Association. Mr. Pack did not appear in the proceeding either personally or through counsel. William H. Nielsen was the hearing officer.

Suspended

Vicki L. Walser (WSBA No. 25536, admitted 1995), of Valencia, CA, was suspended for two years, effective May 16, 2005, by order of the Washington State Supreme Court following a stipulation approved by the Disciplinary Board. This discipline was based on her conduct between 2001 and 2003 involving assistance to nonlawyers in the unauthorized practice of law, sharing legal fees with nonlawyers, failure to explain matters to the extent reasonably necessary for clients to make informed decisions regarding representation, lack of diligence, and conflicts of interest.

In the fall of 2001, while working as a contract attorney for a Bellevue law firm, Ms. Walser became affiliated with an entity involved in marketing estate-planning products (hereinafter SELS). SELS sold annuities and other insurance products. SELS sought Ms. Walser's services to assist in the preparation of "living trust packages" (LTPs) for SELS clients.

Ms. Walser began drafting between one and four LTPs per month for clients obtained through SELS. After an SELS nonlawyer agent sold an LTP to a client, the agent would forward a completed "estate planning questionnaire" to Ms. Walser. The information received from the agents included the client's name, asset information, choice of trustees and/or beneficiaries, an engagement letter, and a check for Ms. Walser's services. The SELS agents were not supervised by Ms. Walser or any other licensed Washington lawyer when making sales of LTPs to clients. After receiving the information, Ms. Walser would review the information and draft an LTP using an electronic template. In most instances, Ms. Walser would have a brief telephone conversation with the client to verify factual information. Following her preparation of a draft LTP, Ms. Walser would deliver the draft LTP to SELS, which in turn would deliver the LTP to the client for signature and notarization. Ms. Walser usually did not accompany the SELS agent who delivered the LTP to the client, nor did she usually inquire of SELS as to what happened when the SELS agent delivered the trust document to the client. Ms. Walser never obtained copies of a client's executed LTP from SELS after delivery.

In one instance, in 2001, an SELS agent sold three LTPs and an annuity to a 76-year-old client. The agent collected a check for $900 made out to Ms. Walser's firm for preparation of LTPs for the client and two of her adult sons. The agent also collected two checks totaling $6,285 made out to SELS and a related entity for "legal fees and services," even though SELS and its related entities employed no lawyers. Ms. Walser received the $900 check and drafted LTPs for the client and the client's two sons. The LTPs included "pour over" wills to capture assets not transferred to the living trust at the date of death. When

drafting the LTP, Ms. Walser spoke with the client on the phone for several minutes to verify factual information on the estate-planning questionnaire. Ms. Walser never discussed with the client whether the LTP she had purchased was the most suitable and/or economical estate-planning option for the client's particular needs. Ms. Walser e-mailed the draft LTPs to SELS. The SELS agent delivered the LTPs to the client. Ms. Walser did not accompany the agent on the delivery visit. The agent notarized the LTP documents prepared for the client but failed to have the client's execution of the pour-over will witnessed by two persons, with the result that the pour-over will was legally invalid. The agent never delivered the trusts directly to the client's two sons, and they never executed their LTPs.

In May 2003, Ms. Walser was deposed by the Washington State Office of the Attorney General as part of its investigation of SELS and its related entities for violation of consumer-protection laws. During the deposition, Ms. Walser asserted that she was present on at least one occasion where she witnessed an SELS agent providing legal advice to an SELS client. Ms. Walser terminated her affiliation with SELS several months after the deposition.

Ms. Walser's conduct violated RPC 1.3, requiring a lawyer to act with reasonable diligence and promptness in representing a client; RPC 1.4(b), requiring a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; RPC 1.7(b), prohibiting a lawyer from representing a client if the representation may be materially limited by the lawyer's own interests, unless the lawyer reasonably believes the representation will not be adversely affected and the client consents in writing after a full disclosure; RPC 5.4(a), prohibiting a lawyer from sharing legal fees with a nonlawyer; and RPC 5.5(b), prohibiting a lawyer from assisting a person who is not a member of the Bar in the performance of activity that constitutes the unauthorized practice of law.

Kevin M. Bank represented the Bar Association. Ms. Walser represented herself.

Reprimanded

Mark T. Higgins (WSBA No. 8346, admitted 1978), of Seattle, was ordered to receive a reprimand on March 7, 2005, following a stipulation approved by a hearing officer. This discipline was based on his conduct in 2002 involving a conflict of interest.

In 1993, a client (hereinafter M.M.) hired Mr. Higgins to represent her in the business aspects of a dissolution of marriage proceeding. M.M.'s spouse (hereinafter L.M.), represented himself *pro se* during most of the proceeding. The primary asset of the marriage was an interest in a closely held corporation. It was determined that the best way for the parties to maximize the value of the primary asset was to continue to own it and divide the profits. M.M. did not trust L.M. to operate and manage the business without a monitor.

In December 1994, the parties executed a property settlement agreement that provided L.M. would control and manage the day-to-day operations of the corporation. The property agreement included a provision allowing the removal of L.M. for, among other things, "theft or embezzlement or drug and alcohol abuse which makes [L.M.] unable to properly manage the business." Under the terms of the property agreement, M.M. and L.M. comprised the board of directors of the corporation. The property agreement also provided that the corporation would pay Mr. Higgins's outstanding legal fees for representing M.M. in the dissolution proceeding.

Subsequently, the parties and Mr. Higgins discussed the possibility of Mr. Higgins acting as the corporation's lawyer on various legal matters. Mr. Higgins was aware of potential conflicts of interest if he simultaneously represented M.M. and the corporation, but he believed he could help monitor L.M.'s operation of the business and assist in resolving disputes that might arise between L.M. and M.M. relating to operation of the corporation.

Mr. Higgins drafted a letter to address potential and actual conflicts of interests in simultaneously representing the corporation and M.M. The letter, which purported to disclose the potential conflicts of interest and the advantages and risks involved, was signed by M.M. and L.M. in March 1995. The letter failed, however, to identify or disclose many of the potential conflicts of interests and risks and did not include a waiver of future conflicts. It specifically did not discuss the actual or potential conflicts that would ensue if Mr. Higgins simultaneously represented M.M. and the corporation in the event that M.M. sought to remove L.M. from control of the business pursuant to the property agreement. It also failed to identify Mr. Higgins's potential conflict of interest in being the corporation's lawyer while also being a significant creditor of the corporation for unpaid legal fees.

In 2002, Mr. Higgins was informed that L.M. was allegedly misappropriating or mishandling corporate funds, and he also became aware that the corporation was experiencing other financial problems that threatened its future viability and profitability. Mr. Higgins instigated a legal action to remove L.M. from control and management of the business pursuant to the property agreement. He arranged for M.M. and the corporation to be represented by himself and another lawyer. The fee agreement provided that the corporation would be obligated to pay attorney fees in the matter. L.M. signed the fee agreement on behalf of the corporation, notwithstanding that she had no authority at the time to manage or bind the corporation to such an agreement. Because he incorrectly believed the prior conflicts letter permitted the representation, Mr. Higgins did not inform M.M. or the corporation of potential conflicts regarding his joint representation of them in the removal action, nor did he obtain written consent to potential or actual conflicts of interest.

Under the terms of the fee agreement, Mr. Higgins and another lawyer hired by Mr. Higgins were to be paid fees substantially in excess of their standard hourly rates, an arrangement designed to compensate the lawyers for the risk that the corporation might not be able

to pay for the legal services. The agreement also provided that certain legal fees relating to the removal action had priority over payment of outstanding fees owed to other third-party professionals. Mr. Higgins did not obtain proper authority from the corporation or L.M. to represent the corporation in the removal action or to obligate the corporation to pay legal fees for the removal action.

The removal action was eventually resolved through an arbitration that resulted in L.M.'s removal from management and control of the business owing to his embezzlement from the corporation. Neither M.M. nor the corporation could afford to pay the legal fees incurred in connection with the removal action. Ultimately, L.M. and M.M. sought bankruptcy protection and the corporation ceased business.

Mr. Higgins's conduct violated RPC 1.7(a) and (b), prohibiting a lawyer from representing a client if the representation of that client will be directly adverse to another client, or if the representation may be materially limited by the lawyer's responsibilities to another client or to a third person, or the lawyer's own interests, unless the lawyer reasonably believes the representation will not be adversely affected and the client consents in writing after a full disclosure; and RPC 1.2(a), requiring a lawyer to abide by a client's decisions about the objectives of representation and to consult with the client as to the means by which they are to be pursued.

Jonathan H. Burke represented the Bar Association. Kurt M. Bulmer represented Mr. Higgins. James M. Danielson was the hearing officer.

Reprimanded

James M. Womack (WSBA No. 22161, admitted 1992), of Seattle, was ordered to receive a reprimand on March 22, 2005, following a stipulation approved by a hearing officer. This discipline was based on his conduct in 2003 involving the charging of an unreasonable fee and a conflict of interest.

Commencing in June 2003, Mr. Womack and a lawyer in another firm represented a client in a federal criminal matter. The client entered into a fee agreement drafted by the other lawyer. Mr. Womack did not sign the agreement but he was aware of its terms. The agreement was entitled "flat fee agreement." The agreement stated that the client agreed to hire Mr. Womack and co-counsel for a flat fee that was "earned upon receipt," but it did not describe the fee as nonrefundable. The specified fee was an initial $5,000 for services up to trial, and an additional $10,000 for services for a bench trial and sentencing, or an additional $15,000 for services for a jury trial and sentencing, due within a week of the client's election to proceed to trial. The client paid the other lawyer $5,000, and the other lawyer gave Mr. Womack half of that sum.

In July 2003, the client rejected a plea offer presented by the prosecuting attorney and elected to proceed to trial. Mr. Womack and co-counsel presented the client with a second fee agreement, which required a $15,000 "nonrefundable" fee and stated that the fee was nonrefundable "in the event the matter is resolved prior to, on the date of, or during trial." Unlike the first fee agreement, which specified that the $15,000 was the fee for services at trial, under the terms of the second fee agreement the $15,000 also included pretrial work. The client received no additional consideration in the second fee agreement. A handwritten notation on the agreement indicated that it modified the earlier fee agreement. Although Mr. Womack's representation of the client may have been materially limited by his own interests in having the first fee agreement modified by the second fee agreement, Mr. Womack did not consult with the client regarding a potential conflict of interest, did not obtain the client's consent in writing to a potential conflict of interest, did not fully disclose in writing all the terms of the transaction (including the fact that he was already contractually obligated to provide all pretrial services for $5,000), and did not provide the client with a reasonable opportunity to seek the advice of independent counsel prior to signing the second fee agreement.

The client signed the second fee agreement and subsequently paid Mr. Womack and co-counsel an additional $15,000. In September 2003, the client fired Mr. Womack and co-counsel and hired another lawyer, who assisted the client in resolving the case by plea agreement. After the filing of a formal disciplinary complaint against him and in accordance with the terms of the stipulation to discipline, Mr. Womack refunded his share of the fee to the client.

Mr. Womack's conduct violated RPC 1.5(a), requiring that a lawyer's fee be reasonable; RPC 1.7(b), prohibiting a lawyer from representing a client if the representation of that client may be materially limited by the lawyer's own interests, unless the lawyer reasonably believes the representation will not be adversely affected and the client consents in writing after a full disclosure; and RPC 1.8(a), prohibiting a lawyer from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security, or other pecuniary interest adverse to a client unless the transaction and its terms are fair and reasonable and fully disclosed and transmitted in writing to the client, the client is given opportunity to seek the advice of independent counsel, and the client consents.

Anne I. Seidel represented the Bar Association. Leland G. Ripley represented Mr. Womack. William S. Bailey was the hearing officer.

Nondisciplinary Notices

Suspended Pending Conclusion of Supplemental Proceedings

James E. Freeley (WSBA No. 11251, admitted 1980), of Olympia, was suspended pending the conclusion of supplemental proceedings, pursuant to ELC 7.3 and 8.3(e), effective August 31, 2005, by an order of the Washington State Supreme Court. This is not a disciplinary action.

Suspended Pending Conclusion of Supplemental Proceedings

Bernie W. Potter (WSBA No. 23076, admitted 1993), of Seattle, was suspended pending the conclusion of supplemental proceedings, pursuant to ELC 7.3 and 8.3(e), effective August 31, 2005, by an order of the Washington State Supreme Court. This is not a disciplinary action.

Announcing a New Name

Jeffrey Foote & Associates, P.C. is pleased to announce that Ronald F. Webster has become a shareholder in the firm.

FOOTE WEBSTER, P.C.

Attorneys at Law

We continue in our dedication, representing individuals injured due to:

- Personal injury/wrongful death
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- Trucking accidents
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MEYER & WYSE LLP

Attorneys at Law

is pleased to announce that

Charles J. Pruitt

has joined the firm.

His practice emphasizes
business, real estate, and construction law.

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The Law Firm of Kurt M. Rylander
welcomes new associates

Julie Penry and **Mark Beatty**

Ms. Penry is a graduate in biology and chemistry from Wake Forest University and in law from Lewis & Clark Law School. She served as a trial-certified intern at the City of Vancouver Prosecuting Attorney's Office where she prosecuted trials. She is licensed to practice in Oregon and Washington.

Mr. Beatty is a graduate in engineering from the U. S. Naval Academy and in law from Lewis & Clark Law School. He served as a commissioned officer in the U. S. Navy. He also worked as an engineer for SEH America, Inc. supporting silicon wafer manufacturing equipment.

Ms. Penry and Mr. Beatty are currently sitting for registration to practice as patent attorneys before the U.S. Patent & Trademark Office.

The Firm has changed its name to
RYLANDER & ASSOCIATES PC
and has moved to
The Centennial House, 406 West 12th Street
Vancouver, WA 98660
Tel: 360-750-9931 • Fax: 360-397-0473
www.rylanderlaw.com

MARY ANNE VANCE AND SHEILA C. RIDGWAY

are pleased to welcome

Lisa W. Gafken

as an associate of the firm.

Ms. Gafken is a former Assistant Attorney General with the Washington State Attorney General's Office. Ms. Gafken graduated *cum laude* from Seattle University School of Law in 2001. Her practice will focus on contested and non-contested estate, trust, and guardianship matters. She joins Kenneth Taylor, Ms. Ridgway, and Ms. Vance in fostering the firm's core mission in estate planning, trust, guardianship, and probate administration, as well as litigation in each of these areas under TEDRA.

THE LAW OFFICE OF MARY ANNE VANCE AND SHEILA C. RIDGWAY, P.S.
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For when they insure it is sweet to them to take the money; but when disaster comes it is otherwise and each man draws his rump back and strives not to pay.

— Francesco di Marco Datini —
Florentine businessman, letter to his wife, 14th century.

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Calendar

Please check with providers to verify approved CLE credits. To announce a seminar, please send information to:

WSBA *Bar News* Calendar
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Fax: 206-727-8319
E-mail: comm@wsba.org

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

Antitrust

Annual Antitrust Conference
December 2 — Seattle. 6.25 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Business Law

Valuation of a Closely Held Business
November 10 — Seattle. 6.25 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

The Second Annual Corporate Responsibility Conference
December 1 — Seattle. 7 CLE credits, including 2.5 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

The Indispensable Guide to Handling Private and Public Offerings
December 6 — Seattle. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Wireless and Telecommunications Laws that Affect Your Clients
December 13 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics for Business Lawyers
December 14 — Telephone CLE. 1.5 ethics credit. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Creditor/Debtor

Judgments: What to Do After You Win
December 2 — Seattle. 6.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Third Annual Law of Lawyering Conference
December 15-16 — Seattle. 6.25 ethics credits. Register for either day or both days. By WSBA CLE. 800-945-WSBA or 206-443-WSBA.

Creditor-Debtor Law: Hot Topics
December 8 — Spokane. 6 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Bankruptcy Abuse, Prevention and Consumer Protection Act of 2005: Now What? (video replay with live moderator)
December 19 — Seattle. 6 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Employment Law

Ethics for Employment Law Lawyers
December 13 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Environmental Law

Annual Water Law Conference
November 18 — Seattle. 6.25 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Estate Planning

50th Annual Estate Planning Seminar: The Golden Anniversary Celebration
November 7-8 — Seattle. 14.5 CLE credits, including 1 ethics. Application will also be made for a variety of other professions and attorneys in other states, including Oregon, Alaska, and Idaho. By WSBA-CLE; 800-945-WSBA or 206-443WSBA.

Ethics for Estate Planners
November 29 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945WSBA or 206-443-WSBA.

When Death and Divorce Collide: Cross-Over Issnes in Estate Planning and Family Law
December 1 — Seattle. 6 CLE credits, including 1 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Advanced Probate (video replay with live moderator)
December 12 — Seattle. 6.25 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics

Ethical Dilemmas
November 2 — Mount Vernon; November 9 — Vancouver; November 14 — Seattle. 4 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

3rd Annual Legal Ethics and Professionalism Seminar, Part 1
November 4 — Internet seminar. By Washington and Oregon Continuing Legal Education Forum; www.freecle.com.

Ethics for General Practitioners
November 15 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Modern Technology and Ethical Dilemmas
November 22 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics for Estate Planners
November 29 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Negotiation Ethics: Winning Without Selling Your Soul, with Marty Latz
November 30 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443WSBA.

Annual Ethics Update
December 1 — Seattle. 4 CLE credits. By WDTL; 206-749-0319.

3rd Annual Legal Ethics and Professionalism Seminar, Part 2
November 4 — Internet seminar. By Washington and Oregon Continuing Legal Education Forum; www.freecle.com.

13th Professional Responsibility Institute
December 10 — Seattle. 6.5 ethics credits pending. By University of Washington School of Law; 800-CLE-UNIV or 206-543-0059.

Ethics for Employment Law Lawyers
December 13 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics for Business Lawyers
December 14 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Litigation Ethics Teleconference, with Stephen Saltzburg and Joel Cunningham
December 14 — Teleconference. 2 ethics

credits. By WSTLA; 206-464-1011.

Annual Spokane Ethics Seminar
December 15 — Spokane. By WSTLA; 206-464-1011.

Third Annual Law of Lawyering Conference
December 15-16 — Seattle. 6.25 ethics credits. Register for either day or both days. By WSBA CLE. 800-945-WSBA or 206-443-WSBA.

Ethics in Literature
December 20 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Family Law

Family Mediation Training for Experienced Mediators, featuring Zena Zumeta, J.D.
November 4-6 — Seattle. 24 CLE credits, including 3 ethics credits. By University of Washington School of Law; 800-CLE-UNIV or 206-543-0059.

When Death and Divorce Collide: Cross-Over Issues in Estate Planning and Family Law
December 1 — Seattle. 5 CLE credits, including 1 ethics credit pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

History and Future of Reproductive Rights, featuring Stewart Jay
December 19 — Seattle. 3 CLE credits pending. By University of Washington School of Law; 800-CLE-UNIV or 206-543-0059.

General

Ethics for General Practitioners
November 15 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Immigration Law

Violence Against Women Act (VAWA) and Special Immigrant Juvenile Status
November 15 — 4.5 CLE credits, including 1.75 ethics credits. By University of Washington School of Law; 800-CLE-UNIV or 206-543-0059.

Intellectual Property

Wireless and Telecommunications Laws that Affect Your Clients
December 13 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Land Use

The Latest on Land Use
December 15 — Seattle. 6.75 CLE credits, including 1 ethics credit pending. By University of Washington School of Law; 800-CLE-UNIV or 206-543-0059.

Law Office Management

LOMAP & Ethics . . . On the Road: The 2005 Traveling Seminar!
November 2 — Everett; November 14 — Tacoma; November 16 — Tukwila; December 1 — Bellevue; December 7 — Spokane; December 13 — Seattle. 4 CLE credits, including 2 ethics. By WSBA Law Office Management Assistance Program; 800-945-WSBA or 206-443-WSBA.

Law Practice Management

Effective Writing for Lawyers
November 2 — Seattle. 6.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Time Mastery for Lawyers
November 3 — Seattle. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Modern Technology and Ethical Dilemmas
November 22 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Retiring or Changing Careers? How to Close Your Law Practice
November 30 — Seattle. 5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Rx for a Financially Sound Law Firm
December 7 — Seattle. 6 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Practice Development Series: Building Your Employment Law Practice

December 14 — Seattle. CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Litigation

Speaking to Win, featuring Steven Stark
November 3 — Seattle. 6 CLE credits. By University of Washington School of Law; 800-CLE-UNIV or 206-543-0059.

Negotiation Ethics: Winning Without Selling Your Soul, with Marty Latz
November 30 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Movie Magic
December 8 — Seattle; December 9 — Spokane. 6 CLE credits, including 2 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Litigation Ethics Teleconference, with Stephen Saltzburg and Joel Cunningham
December 14 — Teleconference. 2 ethics credits. By WSTLA; 206-464-1011.

Miscellaneous

Practice Development Brown Bag — *Voir Dire* Dos and Don'ts
November 30 — Seattle. By WDTL; 206-749-0319, kristin@wdtl.org.

Best of CLE: Encore of Excellence
December 9 — Seattle. 6 CLE credits, including up to 3 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Central Washington Seminar
December 9 — Yakima. 3 CLE credits. By WDTL; 206-749-0319, www.wdtl.org.

Trial Stars, with Paul Luvera and Jimmy Rogers
December 9 — Seattle. By WSTLA; 206-464-1011.

Theories of the Constitution, featuring Ken Himma
December 19 — Seattle. 3 CLE credits pending. By University of Washington School of Law; 800-CLE-UNIV or 206-543-0059.

Technology

Modern Technology and Ethical Dilemmas
November 22 — Telephone CLE. 1.5 ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Tort Law

Tort Law Update
November 4 — Seattle. By WSTLA; 206-464-1011.

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Seattle: Wells Fargo Center, 32nd floor view attorneys' offices. Completely equipped law office, including receptionist, conference room, electronic law library, high-speed DSL access, and kitchen. Call Harris Mericle & Wakayama, 206-621-1818.

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Seattle: Ten-attorney firm, AV-rated, with general civil practice and areas of emphasis within the firm, seeks associate attorney with at least two years' experience in one or more of the following areas: litigation and trials, real estate, business, probate, guardianship, estate planning. Please send résumé to WSBA *Bar News* Box #668.

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Established firm seeks associate attorney. Minimum two-plus years' domestic experience. Salary DOE plus benefits. Send résumés to Tario & Associates, 119 N. Commercial St., #1000, Bellingham, WA 98225.

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Associate attorney wanted. Small AV-rated downtown Seattle law firm with a wide-ranging practice emphasizing business and real estate matters seeks associate attorney with a minimum of two-plus years' experience. Successful candidate will be able to work independently and effectively handle both civil litigation and business transactional matters. Excellent research, writing, and analytical skills are required. Relaxed and friendly work environment and competitive benefits. Salary DOE. Please send résumé and short, unedited writing sample to employment@LH-S.com. No telephone calls please.

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Leading Seattle-area Social Security disability law firm seeks fifth attorney to represent clients in litigation before federal administrative law judges. Grow professionally by working closely with skilled attorneys; earn excellent living helping deserving clients. Competitive salary and full benefits package. Strongly prefer three-plus years of litigation experience. Send résumé and cover letter to johnc@rafalaw.com.

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Will Search

Searching for a will of Helen Mercedes Sprague, born 12/13/1888, died 6/1/1974, resided Bellevue, King County. Hayden Law Office 360-491-9615, fax: 360-491-6325.

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Seeking will of Robert W. Lang. DOB: 5/13/19 — DOD: 6/6/05. Vancouver, WA resident for 80 years at 2400 H Street. Please contact Sharon Hyland at 360-694-3351 or e-mail to sharon@ballandholland.com.

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Please, just spell it right

by Lindsay Thompson

"Boys' names are so hard, because they're really overused like John or Michael, or they're grandpa names like Horace and Frank," she said. "We kind of like to walk the line of being slightly unique, but not too weird . . . . We thought, 'That's unique, and it's not too weird,' said Topping . . . "Now, it's too common."

— Parents Gretchen and Allen Topping of Edmonds, on the thought process behind naming their son Kaden, only to find 114 other babies got the same moniker in 2004

Actor Nicolas Cage's publicist has announced the actor and his wife have named their newborn son Kal-el, the birth name of comic book hero Superman.

— Press reports, October 2005

According to an October *Seattle Post-Intelligencer* story by Kristin Dizon, the art of naming babies is taking interesting turns. The Social Security Administration collects name data and each year publishes the favorite 100 birth names of the previous year, nationally and by state. You can look up the top 1,000 for every year back to 1880.

At the top, in Washington, it's pretty much what you'd expect: Jacob and Emma; Ethan and Emily; Andrew and Olivia. But mid-rank and below you see the churning foam of parental creativity. Besides Kaden, last year's variants included Aiden, Jayden, Hayden, and Braden. For girls, the rhymesters include Hailey, Kayley, and Bailey.

In 2000, Dizon reports, a religious country singer called Sonny Sandoval dubbed his new daughter Nevaeh — "Heaven" backwards. In 2001, 86 families followed suit, and last year, 3,134 girls joined the gathering throng: 99 in the Evergreen State.

Also, last year, 127 boys in Washington were named Ashton. Dude, what were my parents thinking?

Which is, of course, the question. At my college graduation, the dean announced he was about to read out the names of the graduates. "I am sure I will mispronounce some names," he anticipated. "I am doing my best. *You* gave them to your children." Writer Edmund Crispin, in a Gervase Fen mystery novel, featured a couple, Mr. and Mrs. Bust. Their kids were named Anna May and John Will. "They were not the sort of people for whom a joke quickly lost its first freshness," Fen remarked.

At the same time, the idea that anyone in America would name a child Semaj (James, doing the backwards thing again) brings a certain closure to my own long-standing nomenclatural ambivalence.

Traditionalists both, my parents named me after their fathers, Lindsay Wister Comer and Cicero Taylor Thompson. Talk about a gold-plated, $20 name for a kid in small-town North Carolina 50 years ago. And unique: I checked SSA's website and found the most popular year recorded for Lindsay was 1893 — the year my grandfather was born, when it ranked 397th in the top thousand. Since then it has languished between 600 and the mid 900s. There have been 63 years since 1880 that it didn't make the Top 1,000 at all

(and Cicero dropped off the list entirely in 1910). The Lindsay birth class of '55 was all of 614 in a nation of 165 million.

I'm not even sure my grandfathers liked their names very much. One signed his name "L.W. Comer" and went by Wister; the other was "C.T." in all seasons. Although my grandfather Thompson died in 1947, I feel a psychic link with him: the dread anticipation of having our names read out, in full, every year in grade school at roll call.

I've always suspected Grandfather Thompson was trying to push the pendulum back the other way when he named my father Tommy Jack: a perfectly normal small-town Texas sort of name. And it fit: my dad was effortlessly popular, handsome, a business and civic leader — you name it — his whole life. But in childhood I discovered he really disliked his name. *Too* informal, he said. He signed himself T.J. Thompson and went by Tommy, which most people used as a nickname in the way all Gibsons back then were Hoot and all Rhodeses were Dusty.

So along I come in 1955, and Margaret and Tommy apparently give the pendulum their own shove, with Lindsay Taylor Thompson.

I have found it a name to grow into, even as I find, year in and year out, a surprising number of folks can't tell whether it's coming or going and call me Mr. Lindsay. But at least I'll never be misplaced in the nursing home. I'll be out on the porch, snuffling chuckles, as the attendants try to sort out the serried ranks of Brandis, Brittanys, Angelinas and Ashtons, Kadens and Codys, Samaras, Trinitys, and Semajes.

Call me Yasdnil.

For personal correspondence, Lindsay Thompson can be reached at tradelaw@hotmail.com. E-mail letters to the editor to letterstotheeditor@wsba.org or mail to WSBA, Attn: Letters to the Editor, 2101 Fourth Ave., Ste. 400, Seattle, WA 98121-2330.

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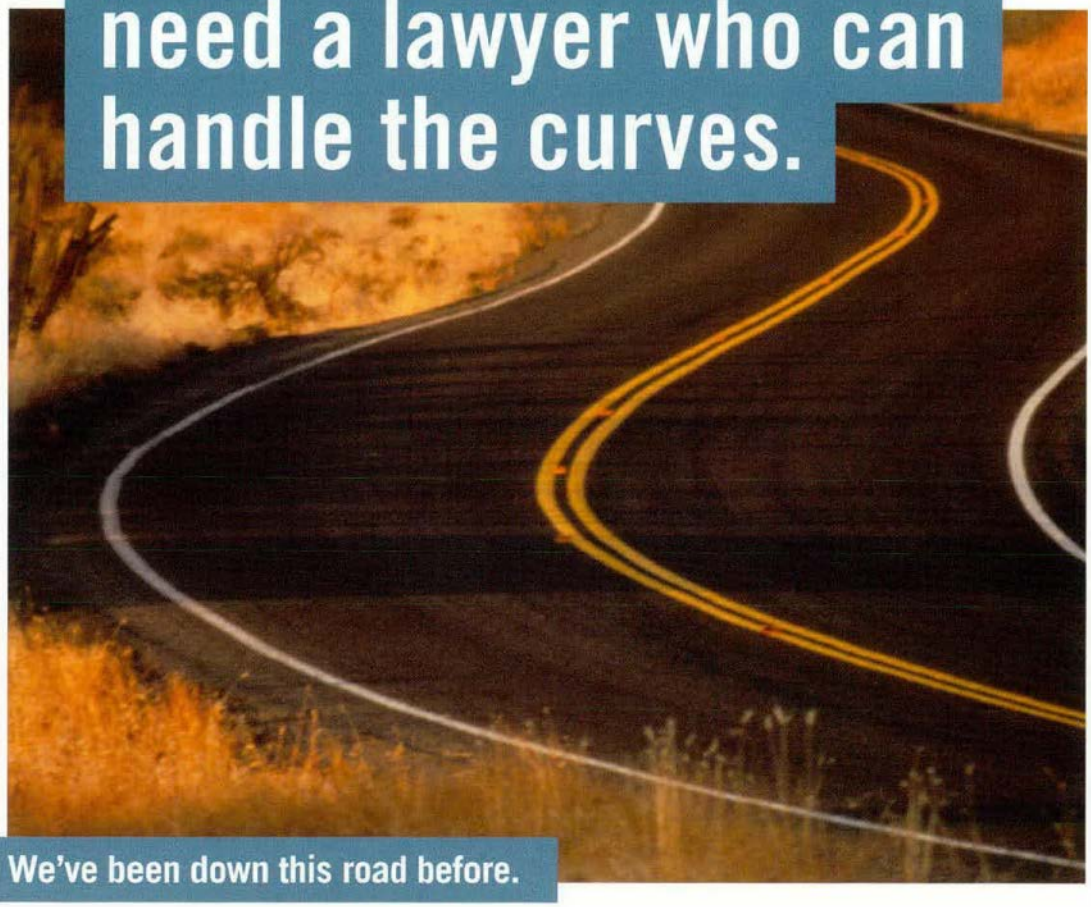

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