Volume 35, Number 3
March 1981

WASHINGTON STATE BAR NEWS

COURT CONGESTION AND DELAY

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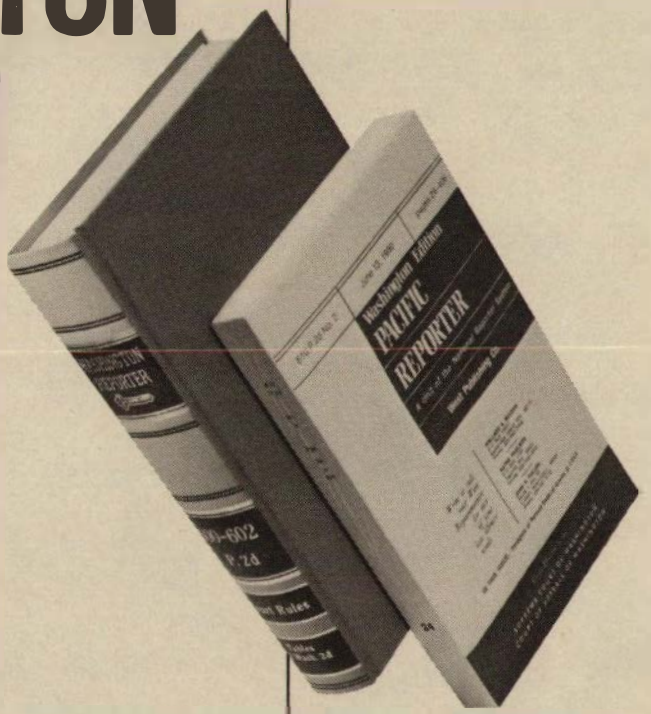

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WASHINGTON STATE BAR NEWS

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IN THE NEWS

DEPARTMENTS

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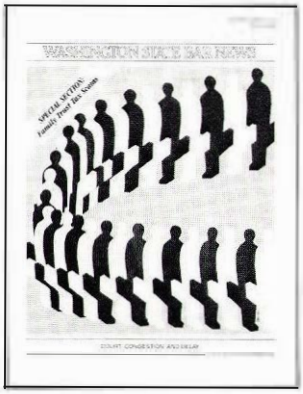

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In this issue we address the problem of court congestion and delay. Insidious and intractable, court congestion and delay is the bane of the court system and the public.

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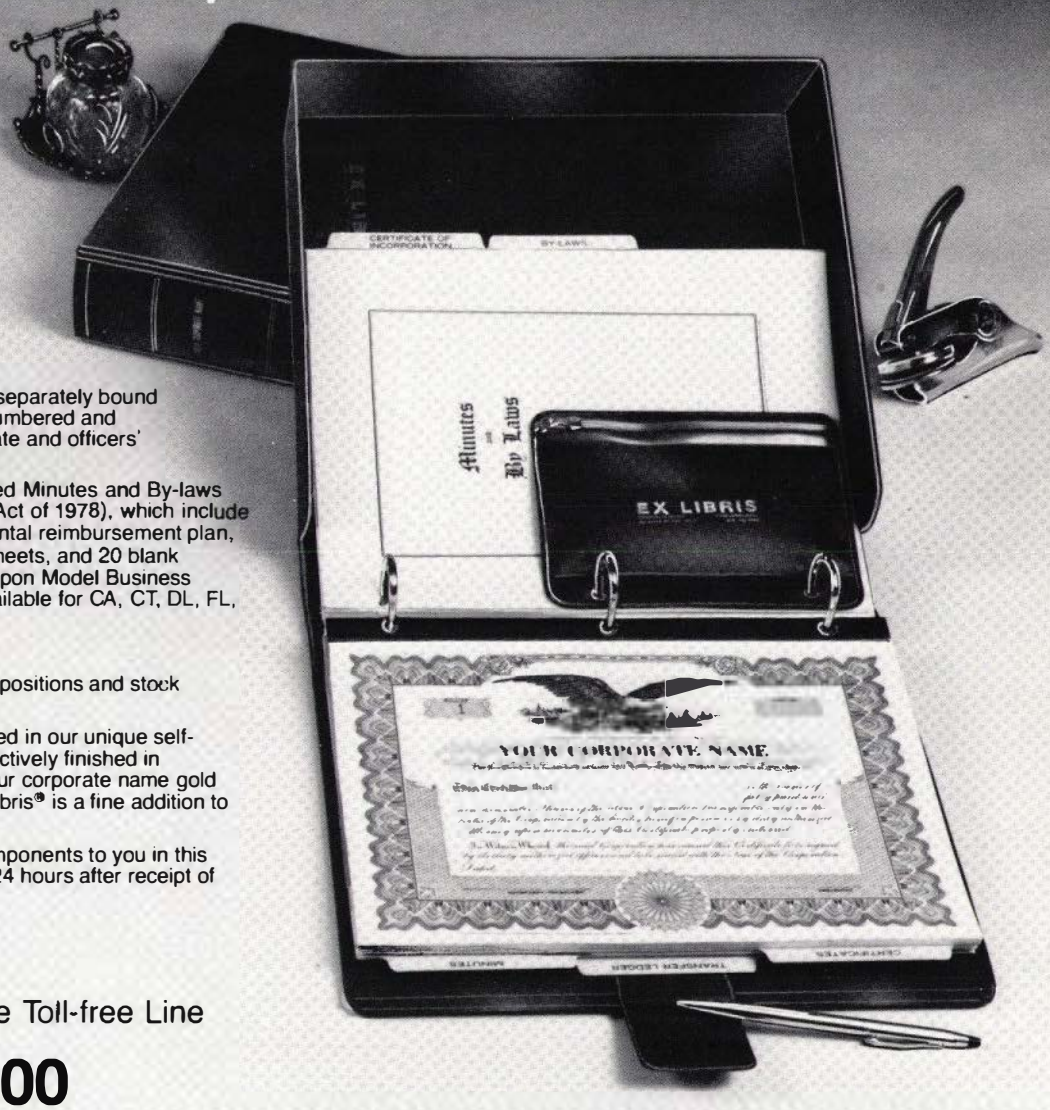

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So You've Got a Little Congestion . . . ?

My mother is a great lady, but she just doesn't understand the law.

"So you've got a little congestion?" she asked me on the telephone last week. "Why don't you drink a little chicken soup and turn on the vaporizer?"

"No, Mom," I explained to her, "it's not me that's congested; it's the whole courthouse."

"So many congested lawyers out there?" she asked amazedly. "You're going to need an awful lot of chicken soup!"

A lot of chicken soup, indeed. The problem of court congestion and delay is spotty, but spreading. Not all counties suffer from it. Those that do, do not all have it to the same degree. Those that don't, will probably be susceptible to the disease in the future.

I do not pretend to know what causes court congestion. I am not sure that I could even define it. I leave that task, and the more difficult job of solving the problem, to others. Some of the better legal minds in Washington have contributed articles to this special edition of the *Bar News*. Although their insights and proposals may not provide the ultimate solutions to the litigation-Angst currently experienced by many of our courts, their thoughts will certainly generate a better understanding of the problem.

We at the *Bar News* have heard from some lesser minds, too. For the pleasure of our racquet ball playing readers who enjoy off-the-wall things, we present a sampling of some curious and underwhelming remedies for the problems of court congestion.

A major complaint of litigators everywhere is that they waste too much time hanging around the Presiding Judge's courtroom waiting to be assigned out to trial. Television is the solution, one lawyer commented to me. The court administrator need only make arrangements to broadcast trial assignments on a UHF television frequency which lawyers in the community could easily monitor. The "program" would resemble those "arrival and departure" schedules which are broadcast on ceiling mounted television sets at the airport. Ideally, an office paralegal would monitor the television screen throughout the day. When a case from that office was assigned to a trial court, the paralegal would simply alert the affected attorneys. If the attorneys were already at the courthouse on other business, the paralegal would notify "traffic control" at the court administrator's office, which would then page the appropriate individuals. This televised calendaring system would not only relieve litigators of the burden of uselessly hanging about P.J., it would also give most law offices forewarning about particularly congested days when cases were "stacked" higher than arrivals at O'Hare International.

Of course, some wrinkles would have to be ironed out. That paging system, for example, might cause some problems. Imagine the trepidation of the lawyers waiting to argue their family law motions when they suddenly hear that saccharine, overmodulated voice from the ceiling announce: "Will the parties in the case of Mmmnmnmnamumnannum (cracklebuzzz) versus Nammnmnmnmnmmmnm (buzzsnapcrackle) please report to Judge Nammnmnmnmnmmbuzz's courtroom. Your trial is starting immediately!" Pandemonium! If our airport experiences give us a clue about what would happen, every lawyer in the building would think that his or her case had just been assigned out for trial; and no one would know where to go! Well, some innovations need a little fine tuning.

Around the time of the November elections, another lawyer (who chooses to remain anonymous) suggested one more television-inspired remedy for court congestion: computer enhanced trial predictions. Borrowing from the election coverage of the major networks, the trial judge would poll two jurors from the twelve person jury immediately after the lawyers had concluded their opening statements. Trying cases in this way would obviate the time-consuming practice of actually presenting evidence to the jury, thus drastically speeding up the judicial process. After all, if that's how we elect our leaders, that's how we should administer justice, too.

A misconception which many lawyers have is that controlling court congestion and delay is an expensive proposition. Not so. We can save tax dollars and get rid of many excess cases by halving the number of trial judges on the bench. This will be a tremendous incentive for the majority of cases to settle out of court. We can eliminate the right of appeal, thus freeing our appellate court judges for trial work. In order to cut down on the resource-consuming burden of criminal cases, we can implement MANDATORY PLEA-BARGAINING, unless the defendant could first prove he was not guilty and thus deserving of a trial.

Perhaps we should seek guidance from the Middle Ages in controlling our court congestion problems. Instead of lengthy trials encumbered with the rules of evidence, we could have trial by combat (and not just for domestic relations cases). Criminal defendants could be subjected to trial by ordeal. Some crime victims would swear that we already try cases that way.

Although these proposed remedies for court congestion are less than sensible, it is no more sensible to just ignore the problem. The credibility of our legal system derives from its ability to resolve disputes. Its effectiveness must be both real and perceived. The population in general must believe that it can get speedy justice in its courts. When that belief falters, all our fine words about justice and truth and fairness will ring hollow.

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The President's Corner

Unauthorized Practice — A Thorny Problem

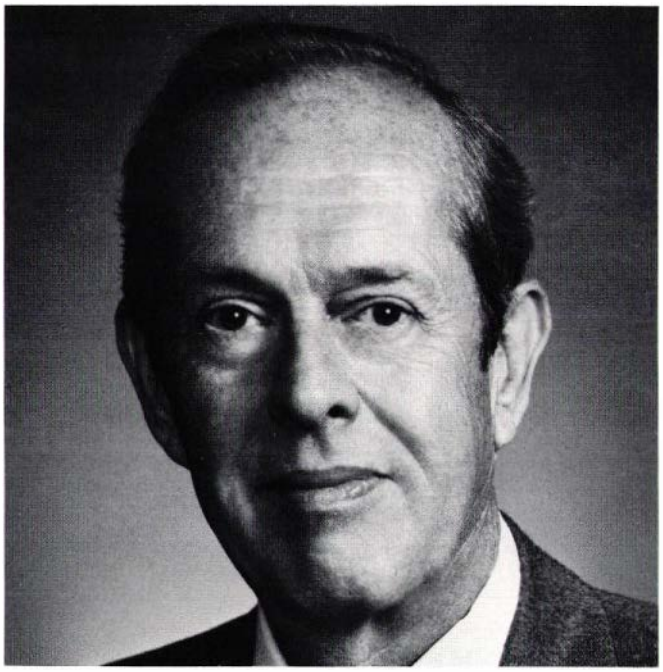
Depending on the definition of the "practice of law", many services that are at least arguably within such definition are performed by title insurance companies, banks and trust companies, accountants, pension planners, life insurance companies and others. Under RCW 2.48.180 unauthorized practice is provided to be a misdemeanor, but without definition of what constitutes the practice of law.

Our State Bar Association has a standing committee on Unauthorized Practice of Law, and under the Bylaws "This committee shall be concerned with the Unauthorized Practice of Law and recommend means for the prevention thereof for the protection of the general public." Over the years this has been an active committee, properly pursuing its charge. Currently its members are frustrated by the difficulty of stirring up meaningful action to control unauthorized practice. In some parts of the state the concern is over documenting and closing of real estate transactions; in others the concern is over sponsored self-service marital dissolutions or *pro se* probate.

Experience has been that county prosecutors do not accord priority to proceedings based on the misdemeanor statute and that consumer protection personnel, both local and state, devote their attention to matters of broader economic impact than to individual cases of unauthorized practice.

One suggestion has been to devote substantial Association resources to institution of injunction actions. This is colored by the experience in Arizona where successful bar-sponsored litigation over real estate practices resulted in an election adopting a state constitutional amendment specifically authorizing real estate services by non-lawyers. In Washington we have had a lesser version of this same result. At considerable burden and expense, the Bar Association sued Spokane lending institutions as to their handling of real estate closings and the matter was determined favorably in 1978 before the Supreme Court (*Bar Association v. Great Western et al.*, 91 Wn.2d 48, 586 P.2d 870).

As a result of that case, in April of 1979 the Legislature adopted Chapter 107, Laws of '79, 1st Ex. Sess. (RCW 19.62), permitting document preparation and closings by lending institutions and escrows. A Spokane Superior Court action has produced a decision that the statute is unconstitutional and that issue is scheduled to be argued before the Supreme Court. On a current reading, the substantial time and cost of the Great Western litigation has not been significantly helpful to controlling unauthorized practice, and may even have been counterproductive.



Such efforts as the *Great Western* case must also be considered in the light of antagonistic positions of federal regulatory agencies and the Department of Justice. Some of their expressions on the subject have been quoted in prior articles. As an example of their view, on December 9, 1980, the United States Attorney's offices in Alabama filed three Sherman Act cases against bar associations for asserted monopolization efforts. To say that the Justice Department regards with some suspicion bar efforts to control unauthorized practice is a substantial understatement.

Our Unauthorized Practice Committee (chairman John Hoglund) has developed a proposed court rule on the subject by which, if adopted, the Supreme Court would itself appoint the Unauthorized Practice of Law Committee, advisory opinions on complaints would be prepared for consideration by the Board of Governors, and subject to voluntary review by the Supreme Court or reference to Superior Court, with open hearings and publication of court results or advisory opinions, as the case may be. The proposed rule includes an undertaking to define what constitutes the practice of law. Such a rule moves in the direction of the "state action" exemption from antitrust exposure, but there appears to be a problem that to satisfy that test it would place an unwarranted burden on the court.

Our primary concern has been that actions to control unauthorized practice must be based not on protection of our profession, but rather on protection of the public. In this connection representatives of the Board have met with Attorney General Eikenberry and with Tom Boeder,

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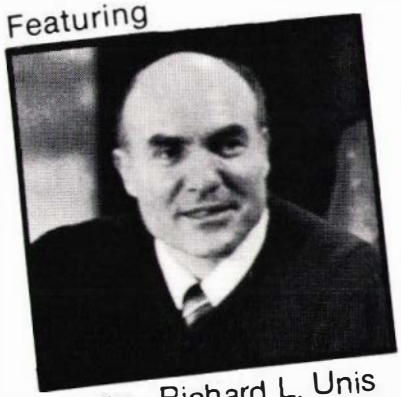

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head of the Consumer Protection Division of that office. Our understanding of their position is that they will welcome complaints having significant elements of consumer harm, but the degree of welcome is necessarily qualified by limitations of budget and staff.

The Board has twice considered the court rule proposed by the Committee, believes it involves exposure to actions by federal offices and would involve an inappropriate share of the resources of both the Association and the Court.

The hard fact is that there appears to be no perfect program for controlling unauthorized practice. As its best expression of a current view of the problem, the Board of Governors has adopted this four-point policy expression:

> The Board continues to decline to recommend or forward for consideration the proposed rule presented by the Unauthorized Practice of Law Committee.
>
> It is the Board's view that any action by the Bar Association in the field of Unauthorized Practice must be based on protection of the public and not on exclusionary principles to preserve fields of practice for lawyers.
>
> The Unauthorized Practice of Law Committee is requested to continue to receive and consider complaints about unauthorized practice from both lawyers and consumers, giving priority to consumer complaints.
>
> The Committee may consider and suggest to the Board revisions of its administrative guidelines on the foregoing basis and with appropriate other considerations such as interjection of unauthorized practice principles into the consumer protection statutes.

Of course this provides no significant answer to the problem, but we feel that, in today's political and social climate, it fairly expresses the committee charge quoted above and in the only available context of consumer protection. Any suggestions?

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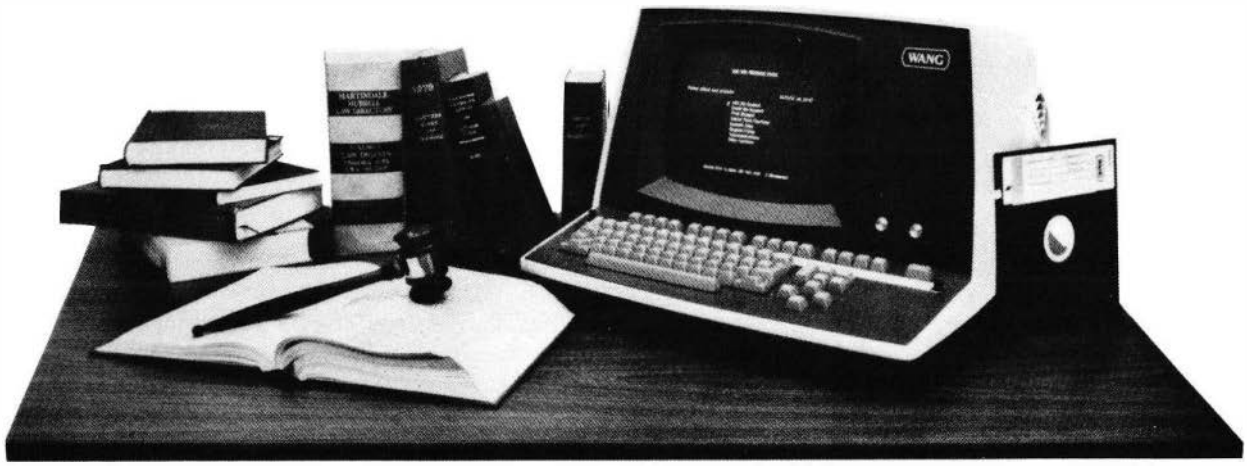

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Trial Court Congestion: Cause & Resolution

by **T. Patrick Corbett**

It may be that trial court congestion is like the weather. We speak of it but can do little to change it. I, for one, am unwilling to accept that conclusion. There is a great deal that can be attempted and the prompt resolution of dispute is abundant justification for the effort.

Please note, the reason for reducing trial delay is primarily better service for all litigants and not the convenience of a particular attorney or party. This may seem self-evident in the context of an academic article, but is overlooked in the everyday practice of law. In the course of representing a client, the attorney understandably seeks the best result. Often that result may conflict with the interest of others who are not present or privy to the proceeding. A continuance or case setting can cause a trailing calendar and trial delay for many other cases. When, as Presiding Judge for the King County Superior Court, I began to deny continuances unless good cause was shown, there was quite an angry reaction from attorneys who were apparently amazed that agreement of the parties *in that case* was not "good cause."

The point to be made is that administration of the courts as a public institution imposes a responsibility that transcends the convenience of lawyers in a particular case. Until judicial administration takes the bit in its teeth and faces down the petulant attorney who relies upon historical fraternal courtesy instead of diligence, the problems of court congestion cannot be solved. The number and complexity of lawsuits no longer permits administration by exception but requires firm rules that apply equally to all litigants.

This is not to say that a properly administered court cannot be convenient and accommodating. It must be so in the ordinary course of providing a public service. The disturbance arises from the lawyer's reaction to change (e.g., we still call them the new Rules of Civil Procedure even though they were adopted more than 25 years ago). Unfortunately, the need for a cautious and deliberative process has led to a blind reactionary response on the part of many lawyers confronted with needed change in the process. They do not allow the time necessary to perfect better procedures and stridently object when the process of change is initiated. This was true in my experience as Presiding Judge even though every effort was made to communicate the reason for change and solicit lawyer comment before it was initiated.

Because there are many innovative and promising procedures that can be implemented to reduce trial court congestion, this reluctance to change must be overcome to avoid revolution by the litigants. To the busy lawyer there is little difference between a delay of 2 years and a delay of 6 months. To the client, the delay is painful and not understandable. In the past, judicial administrators have interpreted this acceptance of delay as resistance to delay reduction; thus, the needed changes were postponed. Public clamor for speedy trial makes that no longer possible.

From 7 to 9 percent of civil and criminal case filings go to trial. This rate has been static for many years and is constant throughout the United States. Efforts to reduce this percentage have not had long-term success in any jurisdiction. There is, therefore, a direct correlation be-

Judge T. Patrick Corbett is a member of the Washington State Court of Appeals, First Division. Until recently, he was Presiding Judge for the King County Superior Court.

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tween case filings and trials. It requires judges to try cases; therefore, it follows that more trials require more judges. The addition of more judges is the first long step toward reduction of delay. Those who would argue that more judges are not a part of the solution confuse disposition rate with trial rate. The disposition rate (which is the number of cases that can be closed within a given time) also effects trial delay and can be improved in many ways. A judge can devote only a limited number of hours to trial. To avoid delay caused by a case being ready for trial without a trial judge available requires more judges.

To avoid delay caused by calendar congestion, the measure of which is disposition rate, requires administrative procedure and procedural change. Examples of this type of change are calendar control (i.e., continuance policy); arbitration in lieu of trial; pre-trial hearings such as mandatory settlement conferences, pre-trial orders and partial summary judgment; and internal streamlining by departmentalization and the adoption of modern management methods.

King County has enjoyed apparent success in the adoption of some of these administrative changes. The delay a year ago between note of issue and trial was in excess of 30 months. It is now less than 12 months and by mid-1982, should be 6 months. This projection is predicated upon additional judges being available in 1982.

Improvement requires capital investment. The addition of more judges means courtrooms and staff. Clerks, bailiffs, secretaries, and administrators are and will continue to be needed. When five new judges were authorized for King County in 1981, the County Council declined to fund courtrooms, a penurious response to the obvious. This undoubtedly was the result of an historical ignorance of an antagonism toward the judicial system. Less than 2 percent of the County budget is devoted to the Superior Court, indicating the priority given by the County Council to judicial services, a most basic government function. This legislative reaction is true nationwide. It will not be corrected until attorneys and their clients stand up to be counted as a constituency for the courts. Without adequate funding, the courts will be unable to maintain pace with the increasing and more complex caseload.

King County is the example of judicial fiscal restraint with which I am most familiar. Thirty-four judges have a total of two secretaries. Unlike many jurisdictions, the court reporters perform no secretarial service for a judge. In spite of this lack of support, the judges work hard and have the highest trial rate in the state: 107 trials per year per judge this past year. There was in excess of 100 percent utilization of courtrooms this past year. With use of pro-tem and visiting judges, there were often more than 34 trials in progress. Not infrequently, conference rooms and offices were used for nonjury trials. In the long run, this type of money-saving will result in a lessening of the dignity and decorum required for the respective judgments and the respect for law. As an emergency measure to clear court congestion, however, it has been remarkably successful at little cost.

Court congestion is not a problem that admits of an easy definition or solution. Philosophy, politics, management techniques and bench-bar relations are at once part of the problem and part of the solution. A careful, firm and innovative administration is required but will not be successful unless understood and supported by lawyers and litigants. □

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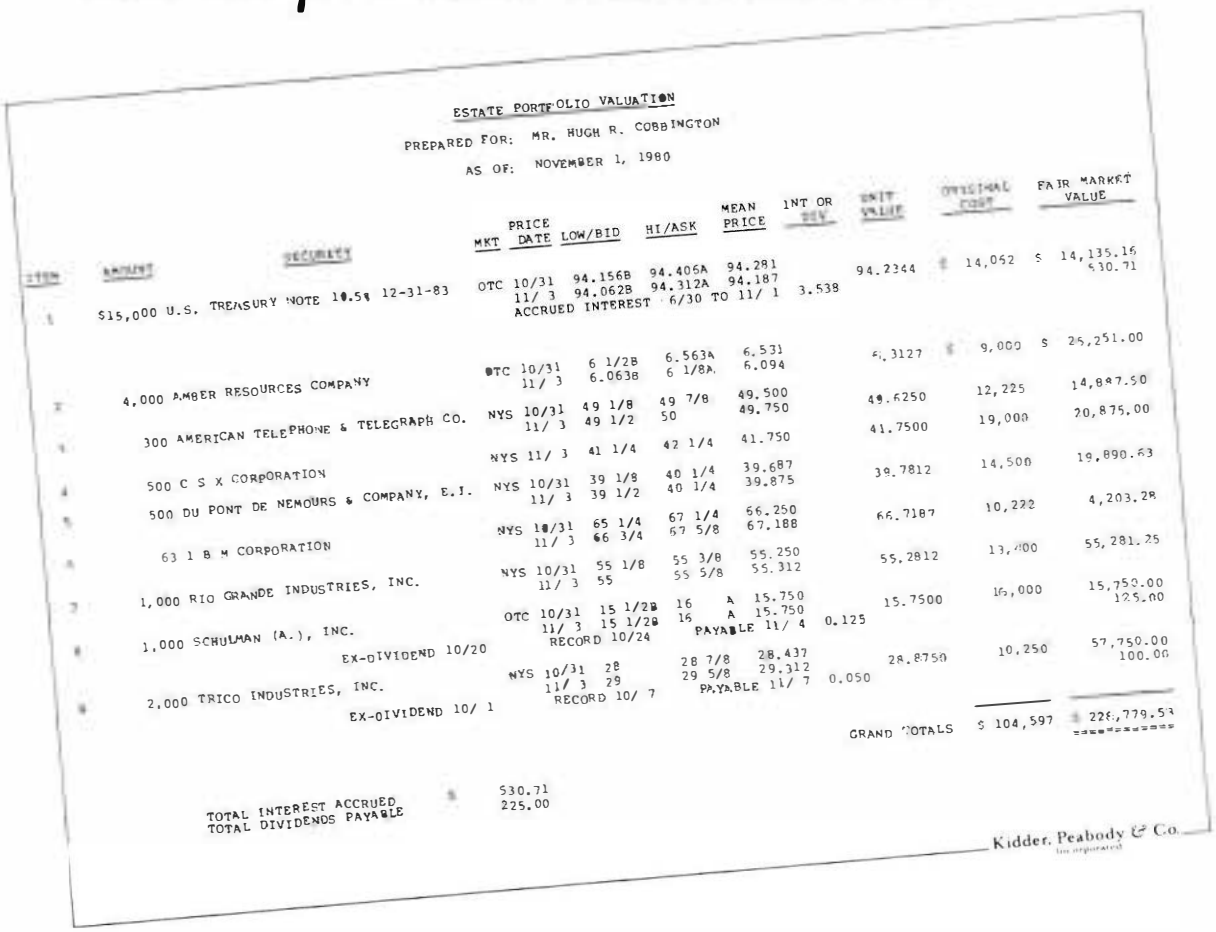

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ITEM	AMOUNT	SECURITY	MKT	PRICE DATE	LOW/BID	HI/ASK	MEAN PRICE	INT OR DIV	UNIT VALUE	ORIGINAL COST	FAIR MARKET VALUE
1	$15,000	U.S. TREASURY NOTE 10.5% 12-31-83	OTC	10/31	94.156B	94.406A	94.281		94.2344	$ 14,052	$ 14,135.16
				11/ 3	94.062B	94.312A	94.187				530.71
				ACCRUED INTEREST 6/30 TO 11/ 1				3.538			
2	4,000	AMBER RESOURCES COMPANY	OTC	10/31	6 1/2B	6.563A	6.531		6.3127	$ 9,000	$ 25,251.00
				11/ 3	6.063B	6 1/8A	6.094				
3	300	AMERICAN TELEPHONE & TELEGRAPH CO.	NYS	10/31	49 1/8	49 7/8	49.500		49.6250	12,225	14,887.50
				11/ 3	49 1/2	50	49.750				
4	500	C S X CORPORATION	NYS	11/ 3	41 1/4	42 1/4	41.750		41.7500	19,000	20,875.00
5	500	DU PONT DE NEMOURS & COMPANY, E.I.	NYS	10/31	39 1/8	40 1/4	39.687		39.7812	14,500	19,890.63
				11/ 3	39 1/2	40 1/4	39.875				
6	63	I B M CORPORATION	NYS	10/31	65 1/4	67 1/4	66.250		66.7187	10,222	4,203.28
				11/ 3	66 3/4	67 5/8	67.188				
7	1,000	RIO GRANDE INDUSTRIES, INC.	NYS	10/31	55 1/8	55 3/8	55.250		55.2812	13,400	55,281.25
				11/ 3	55	55 5/8	55.312				
8	1,000	SCHULMAN (A.), INC.	OTC	10/31	15 1/2B	16 A	15.750		15.7500	16,000	15,750.00
				11/ 3	15 1/2B	16 A	15.750				125.00
		EX-DIVIDEND 10/20		RECORD 10/24		PAYABLE 11/ 4		0.125			
9	2,000	TRICO INDUSTRIES, INC.	NYS	10/31	28	28 7/8	28.437		28.8750	10,250	57,750.00
				11/ 3	29	29 5/8	29.312				100.00
		EX-DIVIDEND 10/ 1		RECORD 10/ 7		PAYABLE 11/ 7		0.050			
									GRAND TOTALS	$ 104,597	$ 226,779.53

TOTAL INTEREST ACCRUED $ 530.71
TOTAL DIVIDENDS PAYABLE 225.00

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Federal District Congestion in Courts

by Jack E. Tanner

Because court congestion frustrates the effective administration of justice and threatens the judicial system as we know it, I believe solving the problem of overcrowded trial and motions dockets is the preeminent challenge facing the bar and the judiciary in the decade of the '80's. Although the burden of devising more efficient procedures for dealing with congestion and the delays it causes falls primarily upon the judiciary, court congestion is not a problem judicial innovation alone can solve. We need a strong commitment from members of the bar if judges are justly and efficiently to serve the public and attorneys are fairly and economically to serve their clients.

Attorneys must commit themselves to higher levels of professionalism and preparedness. Lawyer's abuse of the discovery process is one of the major factors contributing to overburdened motions dockets. This abuse results, in part, from the fact that an attorney's economic well-being varies directly with the length of the discovery phase of his or her case and the volume of discovery generated. Because I have a responsibility to exercise broader and more vigorous discretion to curb discovery abuses, I do not hesitate to impose Rule 37(b) sanctions upon an attorney personally if I find he or she is indulging in harassing and dilatory discovery tactics.

Attorney preparedness begins with a thorough understanding of procedure. Too many attorneys are not sufficiently familiar with the Federal Rules of Civil and Criminal Procedure and most apparently don't know that the Western District of Washington's Local Rules exist. Although Rule 16 does much to force attorneys to narrow the issues in the cases they try, thereby reducing trial time, the bar and the law schools it accredits must do more to teach, develop, and refine attorney's courtroom skills. Too much court time is wasted with the questioning of unnecessary, poorly prepared witnesses by attorneys who lack technical skills. Attorneys are constantly crying out about their client's right to be heard, but protecting a client in the exercise of his due process right is not a license for an inadequately prepared attorney needlessly to squander the court's time thereby depriving other attorneys' clients of their right to be heard. We have all heard that in Chief Justice Burger's opinion approximately twenty-five percent of all trial attorneys are incompetent. Based upon my experience in the two and one half years since I took the bench, I believe his assessment is charitable. Following the Devitt Committee's recommendation that each District Court should establish a performance review committee to review instances of inadequate trial performances, Judge James King's "Implementation Committee on Admissions of Attorneys to Federal Practice" has initiated, on a pilot basis, a program that includes a trial experience requirement for admission, an examination of federal practice subjects, and a peer review system. I was disappointed that the Western District of Washington was not chosen to be one of the fourteen pilot districts, but I intend to continue in my efforts to initiate such a program.

Local Rule 39.1, the Western District of Washington's mandatory mediation rule, is an excellent example of the results we can achieve when the bar takes an active role in the effort to ease court congestion. Recognizing that a serious backlog of civil cases had developed in this district, Bill Dwyer representing the Seattle King County Bar and Bill Ferguson, representing the Federal Bar, initiated an effort to reduce the severe delay civil litigants were experiencing in obtaining adjudications of their rights and responsibilities. Rule 39.1, the result of their effort and the efforts of others, has significantly increased the number of cases that reach settlement. Although the 39.1 procedure and other methods the bar will develop in the future are essential, the primary burden

Jack E. Tanner is a Federal District Court Judge, Western District of Washington.

of dealing with court congestion and delay, however, must fall upon the judiciary.

Judicial innovation is the cornerstone of the solution. Judges must be willing to experiment with new procedures and to substitute those that prove successful for outdated and inefficient methods. One of the very significant changes most Federal District Judges have made is to replace their bailiff with a second law clerk. Because dispositive pretrial motions resolve many of our cases, my law clerks are essential to my effort to remain even remotely current with my motions docket. Frankly, I don't see how Washington Superior Court Judges get by without them.

For the cases that do go to trial, we utilize a number of the trial shortening techniques Judge Gus Solomon initiated in Oregon. If it is a court case, I require each attorney to file written summaries of all witnesses' testimony. If, after reading a witness's summary, opposing counsel indicates he or she has no cross examination, the summary is introduced into evidence and that witness does not testify at trial. If counsel does wish to cross examine, the summary serves as the witness's direct testimony and he or she then testifies under cross, redirect, and recross examination. As an alternative to written summaries, we use purged depositions if the deposition is not lengthy. Whenever possible, we also make extensive use of stipulations to eliminate unnecessary testimony. Another technique involves bifurcation of civil cases on the issues of liability, damages, and third party issues. This method is helpful in two ways. First, bifurcation allows us to try a case in parts, thereby effectively utilizing the short periods of time between criminal trials or during jury deliberations. Secondly, very frequently the damages issue requires no trial. Once the court has resolved the liability issue, the attorneys are able to reach a settlement figure themselves.

Although attorneys complain about the uncertainty resulting from our civil trial setting procedures, I have found no equitable alternative. Because the Speedy Trial Act requires priority scheduling of criminal trials, civil cases must be tried in the limited court time that remains. Consequently we set four civil trials each Monday, giving attorneys four to six months notice of the trial setting. Approximately two and one-half of every four civil cases settle. The remaining cases must wait in line until we finish the criminal cases for the week. As soon as the jury in the last criminal case begins its deliberation, we start the first civil trial. I realize the procedure causes attorney and witness scheduling problems, but its the best we can do given Congress' mandate and the insufficient number of Federal District Judges.

Appointing more judges and building more courtrooms is one obvious solution to the problem of court congestion. Those decisions, however, rest with Congress. Unless and until Congress creates more judgeships, the only workable solution is to modify our procedures and to regulate attorneys. Attorneys don't like change, but changes will be made; either with the cooperation of lawyers, or in spite of them. □

A View From East of the Mountains

Court Congestion and Delay

by Dale M. Foreman

Our courts are congested and injustice results frequently from delay, yet the number of disputes grows each year. Many learned jurists and trial lawyers have studied the problem and suggested varied solutions.[1] Chief Justice Burger, in his annual address, suggested that more Federal judges are needed.[2] Neal Blacker spoke at our 1980 Bar Convention of the benefits of arbitration.[3] Judge Jack Etheridge of Atlanta writes of the success of the Atlanta Neighborhood Justice Center.[4] And President Bradley Jones' committee on Court Congestion and Delay has produced a detailed report with twelve specific recommendations to improve our system.[5]

Yet these worthy suggestions will not slow the rising tide of litigation in this country. The rights of individuals are ever broadened by the courts. The legislature created 77 new statutory bases for litigation in the last six years. Our citizens are ever more aware of their legal rights. Non-traditional forums, such as arbitration and mediation, may ease the burden; they cannot solve the problem. Every member of the bar should consider what individual steps are available to reduce congestion and delay. During the last few years I have tried cases in a dozen counties and am convinced that there are numerous techniques that will help an attorney marshall his case load and move it through the system.

I. Know the people who run the system. Compile the information on every county where you litigate. Local rules do change occasionally, frequently without any notice to nonresident attorneys. List the name and telephone number of the clerk of every county, a local prominent lawyer who can be called upon for counsel and the judge in charge of trial setting and administration. A separate folder should be maintained to update local rules and provide information on motion days and stock jury instructions.

II. Consider using District Court. I recently defended a personal injury action where, arguably, the plaintiff had suffered over $3,000.00 in damages. However, in order to obtain speedy justice, he limited his claim to $3,000.00 and filed the case in Grant County District Court. This case, filed in October, 1980, was given a six person jury setting on January 6, 1981. Many District Courts have little or no delay in trial setting. As the jurisdictional limit is increased, attorneys should consider this Court as a time saving alternative forum.

III. Arbitration is becoming more popular in our state, both through the Court system and, less frequently, in an extra-judicial setting. King County provides mandatory

[1]A bibliography can be obtained from the ABA Committee on Minor Dispute Resolution, 1800 M. Street N.W., Washington, D.C., 20036
[2]Wall Street Journal, December 30, 1980
[3]Regional Director, American Arbitration Association
[4]Harvard Law School Bulletin, Spring 1980
[5]Available Washington State Bar Association

Dale M. Foreman is a partner in the Wenatchee law firm of Jeffers, Danielson, Foreman, Sonn & Aylward, P.S.

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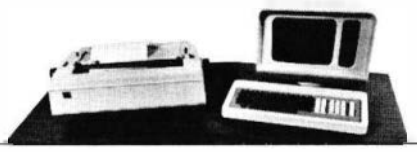

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arbitration when under $10,000.00 is in dispute. I have suggested arbitration to disputants with similar backgrounds. They had neither the inclination nor the resources, to use the civil justice system. As the decision was rendered by a respected third-party, they both accepted it and a bruised relationship was not taken to the breaking point. Creative arbitration has real possibilities. R.C.W. 4.48.010 allows a little used "referee" proceeding. Healing may occur in an arbitration, it is a more flexible forum. The non-adversary arena is, at times, preferable to litigation.

IV. In Skagit County I was once given a Third Setting, defending a personal injury case. I went to the courthouse and introduced myself to the clerk, trying to learn about the local system. As she leafed through the calendar I discovered, to my surprise and admiration, that plaintiff's counsel represented four plaintiffs in four cases, all of which were set to begin on the same day. He was in a comfortable posture playing four defense counsels off against each other, settling the case or cases to his client's best advantage, and knowing which case would actually be tried. This also had the salutory effect of moving his case load along quite rapidly. I don't know whether the "stacking" of cases was instituted by the court, the clerk or counsel. I do believe that it can be an excellent tactic and does speed up a busy court calendar.

V. Use a pre-trial conference to shorten the issues at your trial. I have been involved in a two-week long trial that could have been resolved in five or six days had the parties been forced to limit their issues in advance. Some inexperienced lawyers are unable to accurately gauge the length of time it will take to present their case. Talk with an experienced trial lawyer before you request more than three days for a trial. Make sure you need the time you request.

VI. Some counties assign a judge to a particular area of responsibility for up to a year. In Whatcom County the three superior court judges take turns doing the motion calendar. This not only provides expertise, but creates a predictability that should increase settlement and informal resolution of matters.

VII. Some judges are willing to work longer hours in order to get the job done. I've had some excellent judges call the attorneys to court at 8:00 in the morning and force, sometimes reluctant, counsel to work out procedural problems in advance. In one case we began arguing the jury instructions in chambers a good five days before the end of the trial. While counsel often object to this as requiring an advance disclosure of their tactics, it certainly does reduce trial time.

There are surely systemic changes that could improve justice in Washington State. There are also many minor adjustments available to both judge and advocate that will ease the burden on the Courts and hasten justice.□

Court Congestion in the United States District Court: A Cure

by **William H. Ferguson**

For some years prior to January 1979 the backlog of cases pending in the United States District Court for the Western District of Washington had been accumulating until it became almost impossible to bring a civil case to trial. To give some idea of the magnitude of the problem, Congress recognized the problem by giving the District an additional one and one-half judges in 1978, and even after that Congressional action the Judicial Conference of the United States recommended to Congress an additional two judges are needed in the District.

In the fall of 1977 a group of concerned lawyers met and organized the Federal Bar Association for the Western District of Washington. The purpose of this new association was to focus on the problems of the District, the most immediate of which was the congestion of the Courts of the District.

One of the first and most important acts of the association was the appointment of a Court Congestion Committee. This Committee included within its membership lawyers who had been considering the problem as members of a committee of the Seattle-King County Bar Association, and all of the Court Congestion Committee members were fully aware of the severity of the problem.

After months of study the Committee proposed and the Court adopted, with minor revisions, what has become known to all practitioners in the District as Rule 39.1 (Rules of U.S.D.C. for W.D. of W.: effective January 1, 1979). This rule provided for:

1. A register of volunteer attorneys to serve without pay;
2. The designation by the Courts of certain civil cases as being suitable for disposition under 39.1;
3. A settlement conference or conferences under the rule;
4. If a settlement is not achieved, then the parties would agree on a Mediator from the Register of attorneys;
5. The procedure to be followed by the Mediator and the attorneys;
6. Alternatives to be followed in the event of failure of mediation:
   a. The appointment of a Special Master and the procedure to be followed by the Special Master;
   b. The appointment of an Arbitrator and the procedure to be followed by the Arbitrator.

Immediately following the adoption of 39.1 the Federal Bar Association requested its members to volunteer their services as Mediators, Special Masters and Arbitrators. The response was almost one hundred percent affirmative, and as a result virtually all of the trial practitioners in Western Washington are available to carry out the duties of Mediator, Special Master and Arbitrator.

All of the Judges certified some of those cases they thought were suitable for processing under 39.1. The results by Court are as follows:

Chief Judge Walter T. McGovern
Certified: 40

Settled with Mediator	14
Settled without Mediator	11
Principal Claim Settled with Mediator	1
Decertified and settled	2
Decertified and tried	1
Decertified and settled during trial	2
Decertified	4
Pending under 39.1	5
One of which is proceeding with a Special Master and one other is proceeding under Arbitration	
	40

Judge McGovern has recently certified an additional 60 cases under the rule.

Judge Morell Sharp certified 52 cases, including the Alaska Pipe Line 7 cases, which for these purposes were

Wm. H. Ferguson, J.D., University of Washington 1932, is the senior partner in the Seattle law firm of Ferguson & Burdell, and is a Fellow of The American College of Trial Lawyers. He is Chairman of the Court Congestion Committee of the Federal Bar Association for the Western District of Washington and is a Trustee of the Association.

treated as one case. The results obtained were as follows:

Settled with Mediator	23
Settled with Special Master	1
Decertified	10
Adjudicated by Court Order	3
Adjudicated by Trial	6
Transferred	2
Pending under 39.1	7
	52

Judge Donald S. Voorhees certified 42 cases. The results obtained were as follows:

Settled with Mediator	7
Settled without Mediator	19
Tried	3
Pending under 39.1	13
	42

The information from Judge Jack E. Tanner's Court is not as current as the other reports, but as of October 7 the results were:

Certified: 27	
Settled with Mediator	14
Not settled with Mediator	6
Set for Arbitration	1
Tried	1
Pending under 39.1	5
	27

It is apparent from a quick study of these figures that with a minimum of Court time a substantial number of civil cases have been terminated. Substantially all of the cases have been through the first step: Mediation. It is too early to tell the results from Arbitration and Special Masters, but it is expected that they also will bear fruit, given time and opportunity.

Lawyers may question what they gain by offering free services under Rule 39.1. If the backlog of civil cases can be substantially reduced a lawyer with a case that requires trial has a chance of obtaining a trial. This will benefit his client. Likewise those cases that have been concluded under the rule have benefited the clients involved. While I do not subscribe to the theory that: "What is good for General Motors is good for the United States," I do believe that: "What is good for the clients is good for the lawyers."

I personally served as Mediator in three cases under 39.1. All of them settled with a minimum of time and effort on my part. □

Committee Report: Court Congestion

by **F. Lee Campbell**

Because of steadily increasing delay and congestion in the courts of this state, the Board of Governors of the Washington State Bar Association established a committee to study this problem in 1977. Bradley Jones, now serving as President of the Association and then a member of the Board, was designated as Chairperson. The committee included several trial and appellate judges and a number of practicing lawyers from various areas of the state. After months of research, study and discussion, recommendations relating to court congestion were submitted to the Board of Governors. These were then submitted to the legislature and virtually all were enacted into law during the 1979 and 1980 sessions.

Among the various proposals initiated by the committee and subsequently adopted by the legislature were those which (a) increased District Court jurisdictional levels, (b) increased Small Claims Court jurisdiction to $500.00, (c) expanded the authority of Court Commissioners on uncontested and ex parte matters, (d) provided for adoption of mandatory arbitration of civil matters by counties and (e) established District Courts as courts of record. Obviously, the objectives given to the committee by the Board of Governors were not only met but were substantially exceeded. Very few committees of the Washington State Bar Association have ever accomplished so much within such a brief period of time. Members of the committee were Bradley Jones, Michael Hemovich, Hon. Orris Hamilton, Hon. Jack Scholfield, Hon. James Andersen, Hon. Walter Stauffacher, Hon. Charles Wright (replaced Justice Hamilton), Hon. Donald Eide, Hon. James Strong, Craig Campbell, William Kinzel, Frederick Hayes, William Baker and Hon. Lloyd Bever (then Presiding Judge, King County Superior Court).

Although the principal objectives had been accomplished, the Board of Governors decided in 1979 that the committee should continue to function as a standing committee of the Association. A new member of the Board, I was appointed to replace Bradley Jones as Chairperson upon expiration of his term as a Board member. The committee was expanded by the addition of Howard Primer (Administrator for the Courts), John Champagne (Clerk of the Supreme Court), Hon. Keith Callow (Chief Judge, Division I of the Court of Appeals), Hon. T. Patrick Corbett (Presiding Judge, King County Superior Court), and Harold Vhugen (Chairman, Court Congestion Committee of the Seattle-King County Bar Association).

During the past year the committee has continued to

F. Lee Campbell is a partner in the Seattle firm of Karr, Tuttle, Koch, Campbell and Mawer. He is a member of the Board of Governors and Chairman of the Committee on Court Congestion.

explore various ways by which court congestion might be reduced. As a result, the 1981 legislature will consider a proposal to authorize a constitutional amendment election which would remove the limit of three Court Commissioners per county. It will also consider legislation relating to the establishment of a State Task Force for the study of court congestion, increases, in appellate court filing fees and increases in statutory attorneys' fees.

The committee has also considered several proposals submitted by judges of the Court of Appeals, directed toward the reduction of court congestion at that level. One proposal which would have eliminated written opinions in cases involving affirmation of trial court decisions where an opinion would be of no precedential value was rejected by the committee. Lawyer committee members felt strongly that it would be unfair to the parties involved if some form of opinion were not handed down in every case. Another proposal would allow an abbreviated appellate procedure in certain criminal cases. Because similar procedures have been quite effective in both Arizona and Colorado, the committee and the Board of Governors recommended to the Supreme Court that a study be conducted with the possible objective of enacting rules which would authorize such procedures in Washington. This has been referred to the Judicial Council for review and recommendation.

Another matter recently considered by the committee was the possible use of retired Superior Court judges on a pro tem basis through assignment by the Administrator of the Courts or the Presiding Judge of the county involved, without agreement of the parties. A constitutional amendment would be required to achieve this. The proposal has also been submitted to the Judicial Council with the recommendation that legislation be drafted which would allow an election on such an amendment.

The business of the committee continues. A close working relationship exists with the various courts of this state and also with the Court Congestion Committee of the Seattle-King County Bar Association. Members of the Washington State Bar Association should be aware of the fact that the Board of Governors, through this very concerned and hard-working committee, is doing everything possible to assist the courts in the never-ending struggle against court congestion and delay. □

Perspective on the 1981 Legislative Session

Phil Talmadge
Washington State Senator, 34th District

The 1981 session of the Washington State Legislature promises to be a session dominated in large part by issues of considerable significance to the Bar — product liability, funding of additional judicial positions, judicial qualifications commission enabling legislation, adult sentencing reform, juvenile code changes, the death penalty, and privacy legislation.

Of principal concern to practicing attorneys is the problem now experienced in King County and other large counties with court congestion in both the District and Superior Courts. This problem is not confined to the trial courts as both the various divisions of the Court of Appeals and the Supreme Court have experienced substantial caseload increases.

Both the House Committee on Law, Justice and Ethics and the Senate Judiciary Committee, which I chair, have recognized the need to confront the issue of court congestion reduction squarely. While the Senate Judiciary Committee will work on legislation adding new judges for many of the counties, we will also propose a package of court congestion reduction bills to the Legistature:

(1) *Omnibus Court Congestion Reduction Act* — this legislation would create a court congestion reduction task force at the state level to highlight court congestion solutions and to report to the Governor, the Supreme Court, and the Legislature by January 1, 1982. The bill would increase filing fees in the Court of Appeals to $100, would increase the civil jurisdiction in the District Courts to $15,000 by July 1, 1983, and would change certain procedural requirements in the courts.

(2) *Court Commissioner Constitutional Amendment* — this amendment to the State Constitution would lift the present restriction on the number of court commissioners in each county.

(3) *Prejudgement Interest Act* — to prevent prolongation of litigation, this bill would allow statutory interest back to the time of the commencement of the action.

(4) *Statutory Costs Act* — this bill would expand the costs of litigation available to the prevailing party at trial to include such items as expert witness fees and the prorata cost of depositions.

(5) *Attorney Fees Act* — this bill would allow a prevailing party to recover reasonable attorney fees. A prevailing party is defined as a plaintiff or defendant who makes an offer of settlement that is exceeded at the conclusion of the trial. A trial judge could excuse the award of fees where the interests of justice so dictate.

The measures outlined above constitute only the initial efforts to enhance the effectiveness and efficiency of the judicial system. The Senate Judiciary Committee will explore the funding of the judiciary and the possibility of a single level of trial courts in the period after the conclusion of the 1981 session. □

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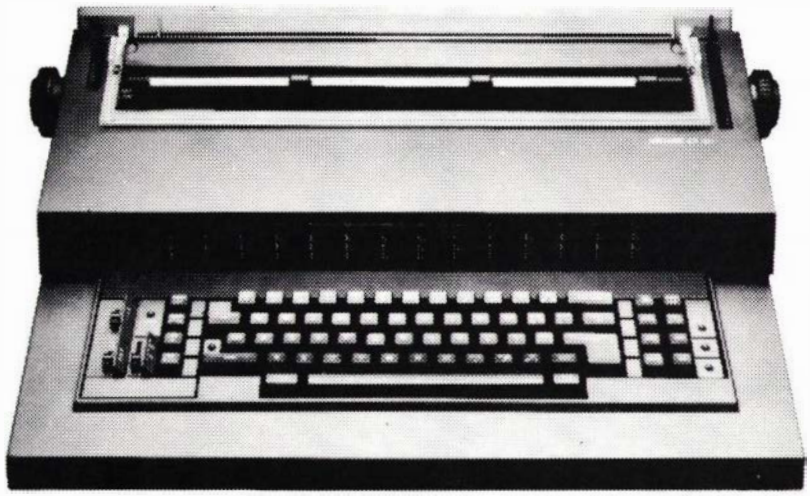

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WASHINGTON STATE BAR **NEWSLINE**

The Board's Work

by **Steven A. Reisler**

BOARD HEARS "THREE-WAY COMP" FEUD

TACOMA, February 13-14 — A dogfight is shaping up in Olympia between proponents and opponents of legislation which would permit private insurers to underwrite workmen's compensation. Business interests generally support changing the present state-funded workmen's compensation system; the Washington Trial Lawyers Association strongly supports the status quo - caught in the middle is the Washington State Bar Association.

Doug Bohlke, representing the Washington Association of Business, told the Board that this was an issue for the legislature, not the State Bar Association. Speaking in support of HB31, Bohlke told the Board that so-called "three-way comp" programs have worked well in other states and would work equally well in Washington. He stated that three-way comp would reduce program costs without causing a reduction of claims or benefits. Although the underwriting of workmen's compensation by insurance companies would mean that claimants probably would have to work with insurance adjustors, Bohlke contended that the adjustors would work with claimants, not against them. Bohlke maintained that the business community was simply "trying to provide an overall better system". Some Board members remained skeptical, however. Several inquired whether three-way comp would cause an increase in third-party litigation and at least one Board member puzzled over the business community's interest in creating a better system for workers.

Frank Stubbs, President of the Washington State Trial Lawyers Association voiced adamant opposition to HB31 and urged the Board of Governors to oppose it, too. According to Stubbs, studies show that payment benefits are substantially lower in those states where private profit-oriented insurance companies administer the workmen's compensation program. Stubbs also predicted that the advent of three-way comp would result in a significant increase in litigation which would eventually compound the problem of overcrowding in the courts. It is the average Washington worker, Stubbs asserted, who stands to lose the most if three-way comp is adopted in Washington.

After both sides had fired fusillages of studies, reports and forecasts, the Board voted to adopt the recommendation of the Legislative Committee and take no position on the pending legislation.

JIS FUNDING PROPOSAL ENDORSED

By an overwhelming margin, the Board of Governors threw its support behind plans to permanently fund the Judicial Information System. By the narrowest of margins, however, the Board approved a funding plan which would levy nearly $4 million in fees upon court users. JIS - which encompasses judicial information systems for the appellate courts (ACORDS), the superior courts (SCOMIS), the

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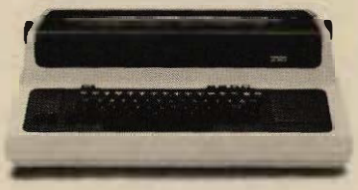

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juvenile court system (JUVIS), and the district courts (DISCIS) - is the child of a 1976 LEAA grant designed to increase court management efficiency. According to Howard Primer, the Administrator for the Courts, JIS has become an indispensible weapon in the war against court congestion. With respect to funding for JIS, however, Primer told the Board that the court system was "caught between a rock and a hard place." Realistically, no money could be expected to come from the state's General Fund; thus the courts were left with the unpleasant alternative of supporting JIS by imposing a supplemental fee schedule on court users. Under the proposed JIS baseline funding formula, for example, a $12 JIS fee would be imposed on every civil judgment entered in Superior Court. The bulk of the JIS funding, however, would come from a $5 fee imposed on all traffic infraction filings.

Although the Board of Governors found the proposed funding formula a bitter bill to swallow, it endorsed the formula because of the apparent lack of viable alternatives. The Board expressed the fear that failure to endorse the funding plan as constituted would signal the legislative death of the whole JIS package.

LAW SCHOOL CLINICS URGE RULE 9 REVISION

Fredric C. Tausend, Dean of the UPS Norton Clapp Law Center, and Alan Kirtley, Clinical Director at the UPS Law Center told the Governors that the continued survival of law school clinical programs in Washington requires the amendment of Rule 9(D)(4) of the Washington Admission to Practice Rules. Kirtley stated that under the present rule, clinical enrollment is restricted to twice the number of faculty supervisors. Washington ranks with West Virginia as having the nation's most restrictive clinical supervisory ratios.

The amendment proposed by Tausend and Kirtley would permit a clinician/supervisor ratio of 10:1. The proposed amendment would not affect the current requirement that supervisors be members of the Washington Bar with at least three years of practice in some state.

Although some Board members were concerned that expanded clinical programs might infringe on the domains of local bar association referral services, Kirtley pointed out that the clinical programs deal only with indigents who cannot otherwise procure legal services. The matter was referred to committee for study.

VANCOUVER CONVENTION CLE PROGRAM APPROVED

John J. Michalik, Director of Washington's Continuing Legal Education program, advised the Board of Governors of the tentative CLE agenda for the 1981 Bar Convention in Vancouver, B.C. Featured at the convention (if everything works out correctly) will be Prof. Irving Younger who will speak on the topic of trial practice. The Board also approved a tentative schedule of CLE offerings for the 1981-82 season, although at least one Board member expressed misgivings at the absence of any CLE programs which might appeal to small town law practitioners or lawyers who are in-house counsel for corporations.

On the subject of the Bar Convention generally, the Board voted to conduct a plebiscite to determine where Washington's lawyers would want to hold their annual conventions in the future. The issue of convention sites is debated by those who want

the convention held in exotic locations, such as Hawaii, and those who prefer that the convention remain on Washington soil.

BOARD BOWS OUT OF BAR EXAM MATCH-UPS

Reviving an issue which it dispatched at the December meeting, the Board of Governors reversed itself and voted to abstain from participating in procedures matching up bar exam scores with examinee names. In an effort to assure even the appearance of fairness, the Board voted 8-1 to delegate its monitoring duties to independent auditors.

OTHER BOARD ACTIONS:

- SUPPORT FOR LAW REVISION COMMITTEE - The Board voted to endorse a bill introduced by Representative Skeeter Ellis to study the concept of a Law Revision Committee. Hugh Spitzer, sponsor of the resolution, told Board members that a law revision committee would, among other functions, recommend statutory changes to achieve consistency and relevance in the law.

- LAW DAY PROJECT SUPPORTED - Reaching into its pocketbook, the Board of Governors voted to allocate $3,300 to keep the "Charters of Freedom" Law Day project alive until state grant funds could come to its rescue. The project will feature a televised debate between a nationally recognized liberal and conservative commentator.

- BOARD VOTES TO ALTER SERVICE OF PROCESS PROCEDURES - With one dissenting vote, the Board of Governors voted to support proposed legislation which would amend RCW 4.28.100 to eliminate the "not found" return of sheriff in service by publication.

- OPPOSITION TO "PRIVILEGED COMMUNICATIONS" EXTENSION - The Board of Governors voiced opposition to SB 3111 which would extend a communications privilege to registered nurses. WSTLA has also indicated its opposition to this bill.

- SPONSORSHIP OF TECHNICAL TAX AMENDMENTS - By unanimous decision the Board of Governors voted to sponsor the Technical Tax Amendments Act of 1981. The Act, according to spokesman Mike Young, would eliminate ambiguities in the tax law and provide uniformity to eliminate traps for the unwary tax practitioner.

- UPPER LIMIT ON GENERAL DAMAGES DISAPPROVED - The Board made quick work of SB 3201 which would establish an upper limit on the amount of damages awardable in a tort action. Board opposition to the bill was swift and unanimous.

- OPPOSITION TO HANDICAPPED REPRESENTATION BILL - A bill is pending which would amend RCW 2.48.190 to allow persons (non-lawyers) with special knowledge or training to represent handicapped students or their parents in administrative appeals. Although the Board was not opposed to the concept in principle, it was opposed to the proposed statutory amendment.

- SEVENTY-THIRD ANNUAL LINCOLN DAY BANQUET - Hundreds of attorneys attended the traditional Lincoln Day Banquet at the Tacoma Golf & Country Club. Guest speaker William Reece Smith, President of the American Bar Association, spoke to the assembled lawyers and "distinguished categories" about the lessons today's lawyers can learn from Lincoln. After working late into the evening, the Board of Governors (and entourage) drove to the banquet in a caravan of four automobiles. Guided by a fellow Board member and part-time sherpa, the caravan snaked and looped and zig-zagged its way through the Tacoma environs (much to the consternation of local traffic!) to arrive safely at the gala event. □

SPECIAL REPORT

The "Family Trust" Tax Scam

A Special Report
by the Taxation Section
of the Washington State Bar Association

SCAM: A method or instance of obtaining money fraudulently, or a swindle. "Insurance swindles, credit card rackets, practically every scam devised by man . . . . " Source of quotation unknown. *6,000 New Words, a Supplement to Webster's Third International.*

Overview

In the last few years, Washingtonians along with citizens of other states have been victimized by an explosion in the merchandising of purported estate planning techniques variously known as the "Family," "Constitutional," "Pure" or "Equity" Trust. These devices, while marketed in different forms, have universally been represented as the literal example of "having one's cake and eating it too." Property owners are advised that they may convey all of their property to themselves, their spouse or child as trustee, and retain all of the beneficial enjoyment from their property without paying a current gift tax or an estate tax upon their deaths. An alleged ancillary benefit of some of these trusts — which is undoubtedly of equal appeal to those of above-average income — is income tax savings represented to be available via integration of off-shore trusts and "educational", "charitable" or "community-related" subtrusts or organizations.

Despite current efforts of the Washington Attorney General to prevent further trust sales by one of the several groups now active in this field, citizens throughout the state continue to answer the call of these trust promoters. The wise and the lucky ones have declined to proceed after receiving the initial sales pitch because of genuine skepticism or as the result of following the advice of their lawyer or accountant. Others less fortunate remain indebted on their trust purchases and are either embarrassed into silence or intimidated by threats of litigation. Ultimately, those who will be successfully educated in their bad investment, *or their heirs*, will be forced to shoulder a substantial expense and inconvenience in *reversing* a useless and confining pattern of property ownership.

Publication in July, 1979 of an "Information Paper on 'Family Estate Trusts' and 'Foreign Trust Organizations'" by the Seattle District Office of the Internal Revenue Service, in which the IRS identifies and condemns several variations of these trusts designed to avoid or deflect federal income tax, has reached only a limited population. The reaction of the promoters has either been to ignore the Information Paper or, in at least one case, to concede defeat on the income-assignment issue but to continue aggressively with representations of death tax

elimination. Additionally, the lack of reported cases in the gift, estate and inheritance tax areas continues to frustrate efforts to debunk these techniques. In short, Washington still maintains its reputation as a fertile field for these merchandisers.

The Specialization/Publications Committee of the Taxation Section, Washington State Bar Association, has investigated the claims, promotional materials, sales techniques, and, in some cases, the actual trust documents offered by many of these groups. The Committee unanimously has concluded that the Family Trust to be described in this paper is worthless as a tax-saving device, that its use will most certainly subject its purchasers to substantial risk of tax audit and imposition of additional tax and penalties, and that the families of purchasers will likely suffer severe death tax and title problems in the coming years.

The Promotion: Or How to Ensnare the Client

It is easy to understand the appeal of a financial planning technique which not only purports to eliminate death taxes — at no gift tax cost — but also represents the capability either to split and deflect the client investment and earned income among several other family members, or to shelter it altogether either with a foreign trust or a domestic tax-exempt trust. Despite the wealth of authority — including the Internal Revenue Service pronouncements[1], court cases[2], and treatise comment[3] — condemning the income-tax savings claimed to be available through use of the Family Trust, its promotion by several groups, using diverse and sometimes sophisticated marketing techniques, appears to continue unabated.

The mechanics of the presentations are fairly standardized. Advertisements appear in local newspapers in the week preceding the event announcing "free seminars" at which "tax authorities" will reveal fool-proof methods to "eliminate income taxes," "eliminate death taxes" and "stop probate". The seminars are generally conducted at leased meeting rooms, hotels, or motels. The primary speaker is an out-of-state promoter, sometimes accompanied by a local "representative" or "franchisee". Frequent use of television and radio talk shows is also made to criticize the IRS, tax laws and lawyers, and otherwise to promote the seminars.

The seminars typically include an oral or audio-visual

[1]Revenue Ruling 75-257, 1975-2 CB 251; see also I.R.S. News Release No. 1878, Aug. 31, 1977; I.R.S. Information Paper of Seattle District Office, July 1979.

[2]*Irwin Trust*, 29 TC 846 (1958); *Wesenberg*, 69 TC 1005 (1978); *Vnuk*, TCM 1979-164 (1979); *Horvat*, 36 TCM 476 (1977); *Damm*, 36 TCM 973 (1977); *Morgan*, 37 TCM 1661 (1978); *Johnson*, 37 TCM 544 (1978).

[3]"Family Estate Trust: Tax Myths and Realities," 28 BYU Law Review 706 (1978); G.C. Randall, Professor of Taxation, Gonzaga University School of Law, "Family Trusts — Pure Trusts," 1978 (unpublished paper).

presentation of legitimate — albeit rudimentary — tax planning techniques, such as a real estate depreciation, income deflection through intra-family loans and Clifford trusts, installment sales, incorporation for fringe benefits, and the like. Having thus established a patina of credibility by discussing income-tax saving concepts about which the audience has a general familiarity of legitimacy, the promoters then proceed as if their credentials as tax experts have been established and launch into an almost hysterical indictment of the estate tax system, lawyers and the probate process. The promoter begins with exaggerated allegations about the time and expense of probate (with only the slightest awareness or recognition of community property, and absolutely none of statutory community property agreements, our nonintervention probate system, or the like) and concludes with the revelation that an irrevocable inter-vivos trust is the ultimate panacea. Ironically, recent media attention to 1976 federal and 1979 state legislation designed to decrease the death tax burden on the "medium" estate has only made the audiences more sensitive to death taxation; and the promoters understandably play on this sensitivity. Seldom, if ever, is it suggested that the new laws have probably resulted in estate non-taxability for the majority of the audience.

The Promoters

From this point, the promoters' techniques diverge. One (which this paper will refer to as "righteously wrathful") is that characterized by wrapping itself in the U.S. Constitution in attacking the income tax system, the Federal Reserve Bank, the Internal Revenue Service, attorneys, and accountants. The seminar audience assembled by the righteously wrathful is repeatedly reminded of its constitutionally protected rights to form economic associations of its choosing and counselled to invoke the privilege against self-incrimination by refusing to file tax returns or respond to audit investigations. With respect to the Family Trust, the implication is clear that, since no property is supposedly owned at death, there is no requirement to file a death tax return. The statistical improbability of an audit of filed tax returns is frequently cited, and it is suggested that the taxing authorities will be powerless when no death tax returns are even submitted.

The other principal sales approach (which this paper will refer to as "resplendently rational") adopts a far more serious appearance of respectability by presenting a relatively technical and legalistically oriented treatment of property ownership and taxation of trusts and estates. Not surprisingly, many of these groups incorporate in the package of their available services the preparation of their "clients" tax returns.

Whether the promoter uses the righteously wrathful or the resplendently rational approach in explaining the concept, operation and tax ramifications of the Family Trust, there generally occurs a convergence as the promoters conclude their formal presentations, usually with a reminder that the average family attorney is (a) too unsophisticated to appreciate the Family Trust's legality, (b) unable to resist negative IRS indoctrination, or (c) both. The audience is invited to sample free materials on display, occasionally including a favorable attorney's opinion letter[4]; to purchase available tape recordings and books; to seek membership in the promoter's trust "association" or to enlist as his "client", which frequently includes a promise of legal defense in the event of attack by the IRS; to attend a later seminar (for which the tuition can be several hundred dollars) or to welcome a *local* representative into his home for an in-depth analysis. Finally, a question-and-answer period provides the promoter the opportunity to identify potential customers and to denigrate the suspicious members of his audience.

These free, public seminars do not appear to be the primary marketplace for actual sales of the Trusts. While some promoters may respond to a check for as little as $1,500 with trust documents, certificates, instructions and the remainder of their package on a mail-order basis, the more sophisticated (i.e., expensive) promoters prefer to make a sale in the relative privacy of their tuition seminars or, ideally, during a visit to the prospect's home or office. Since the cost of the Family Trust is known to be negotiable — fees as high as $15,000 have been reported — it is understandable that the salesman would prefer to measure the market after seeing what make of automobile sits in the driveway. But wherever the sale occurs, and no matter whether only a "down payment" has been taken, the major damage has been done. With the "investment" made, it is only the most persuasive lawyer or accountant who, even if learning of the situation while remedial action is still possible, can deprogram his client and proceed with re-structuring an effective, more desirable, and certainly legal estate plan.

The Promoter's Representations

In order to respond intelligently to client's inquiries about the claims of the Family Trust salesmen, it is essential that members of the legal, accounting, bank trust, and insurance communities have some familiarity with the specifics of these representations. A thorough knowledge of income, gift and death tax will not, in most cases, be required to digest, analyze, and refute many of the promoters' contentions.

Avoidance of Income Tax on Earned Income

The client who is normally unsophisticated in federal tax law, is told that he may assign his income from current employment to a trust, thereby shifting the in-

[4]It is interesting — and heartening — to note that neither opinion letters nor trust documents, once received, are known to have come from the offices of Washington attorneys.

come tax liability as well. The client is further advised that by assigning all of his compensation for services to the trust, or by contracting with the trustees to perform his services only at their direction, he will be relieved of the responsibility of reporting such income on his individual tax return. The implication is that by virtue of the assignment of income or services to the trust, the client will successfully avoid the tax he would otherwise pay on his earned income. The possibility is, of course, an attractive one.

Avoidance of Income Tax on Other Assets and Investment Income

In a manner similar to the alleged taxability of earnings, the promoter advises the client to assign his assets and the income from such assets to the trust. It is explained that the assignment of assets will shift the income generated by such assets to the trust and, as a result, the client will be relieved of the responsibility of reporting such income on his individual income tax return.

Avoidance of Gift Tax Upon Transfers for the Benefit of the Family of the Transferor

The client is advised that because the transfer of his assets is made to the Family Trust in return for "certificates of beneficial interest" (termed Beneficial Interest Certificates or BICs), he has received property of comparable value and therefore has made no gift. Thus, he has no gift tax liability on this transfer. Furthermore, the client is advised that he has no responsibility for filing federal or state gift tax returns. However, upon transfer by the client of the BICs, federal and state gift tax liability will be incurred.

Elimination of All Estate and Inheritance Taxes Upon the Transferred Property

The promoter advises the client that, because the transfer is irrevocable, the client has parted with control over the assets and has no power to change the disposition of the assets. Or, the promoter advises the client that the BICs either are cancelled or have no value upon the client's death. As a result, the client has no taxable interest remaining in his estate; and all estate and inheritance taxes have therefore been eliminated.

Creation of Trust

There is no particular magic involved in creation of the Family Trust. Often with no more than preprinted forms provided by the promoter, the client need only complete a few blanks to have established the trust entity from which he fantasizes that his financial empire soon will develop. The client normally names himself, his spouse, his children and/or perhaps a third party as trustees of the Trust. The trustees are given virtually unlimited power to do anything an individual may do under local law, and may deal with the assets and conduct business as they see fit. The final step is the funding of the trust by transfer to it of

real and personal property and, in some cases, the exclusive right to remuneration from lifetime services (sometimes identified as the "leased employee" arrangement).

In exchange for the transfer of assets and services, the client will receive various units of "beneficial interest" in the trust. The trustees can make distributions of the assets to the holders of the BICs. The client is given the opportunity, and indeed is generally encouraged, to distribute the BICs among the members of his family, thereby creating the potential for redistribution of the ownership of the assets within the family upon distribution of assets to the holders of the BICs. The promoters appear to ignore the gift tax consequences of the redistribution of the BICs.

The client is advised that because he and members of his family serve as the trustees of the Trust, he continues to control the assets transferred to the Trust, even though he retains no control, power or interest as transferor which will result in a taxable interest in his estate.

Off-Shore Trust Variation

The Family Trust is not the only trust touted by the promoters. Another type is the off-shore trust, which is represented by the promoter as an alternative or complement to the Family Trust. Because of the complexity of foreign income tax laws and tax treatises, the unsophisticated tax-payer has even less chance of understanding the operation of the off-shore trust than he does the Family Trust. (Indeed, the rules applicable to off-shore trusts are often so complex that even highly competent tax professionals have difficulty winding their way through the maze of rules and inter-relationships.) Use of off-shore trusts is described as a technique widely used by taxpayers of other countries where income tax rates have become burdensome. The promoter thus suggests an "acceptance" of this type of tax planning or tax avoidance among "knowledgeable" investors, and that failure to join this group of "knowledgeable" investors certainly characterizes the group of investors the client chooses to join.

The objective of the off-shore trust is to place the assets into a trust beyond the reach of U.S. law. This is accomplished by causing a *series* of foreign trusts to be created by an anonymous foreign citizen who, for a fee, lends his name to the trust as "creator". As with the Family Trust, the client transfers his assets to the trust or trusts in exchange for "Certificates of Beneficial Interest". The client is named as the trustee of the primary foreign trust.

After the trusts are established, the client uses the trusts to enter into transactions which create deductions against his personal service income and which reduce his taxable income to a nominal amount. (See p. 19 for a more detailed description of the trust transactions.) In this regard the off-shore trust appears to differ from the Family Trust in that the off-shore trust is oriented only toward the transfer of assets rather than the assignment of all future income. The client continues to report personal service income to the United States, but his income is offset by the "new" deductions created by the payments made on his behalf by and to the off-shore trusts.

Other transactions derived from the foreign trust format include allegedly deductible payments for "management" or "investment services" to the trust, with the trust income wondrously siphoned back to the client in a non-taxable manner. The client is also promised that the trust will pay or reimburse him and members of his family for all expenses of travel, food and lodging in the conduct of "trust business".

Independent Advice Discouraged

Even though much of its allegedly legal tax avoidance seems startlingly incomprehensible, the promoters universally direct a remarkable effort to discouraging a client's resort to independent legal or other professional counsel.

When approached initially by the promoter, the client is cautioned against reviewing, with his professional advisors, the material that is about to be "shared" with him. The promoters represent that the advisors are "brainwashed" by the Internal Revenue Service and that the "system" is characterized as being clearly designed against the taxpayer. He is frequently asked how much "real tax planning" the advisor has done for the client to date; and, assuming a negative answer, the suggestion is that the same advisor cannot be expected to be any more positive about this tax savings plan than he has been about others in the past. The promoter then explains that there is a "conspiracy" against the client and other taxpayers in which the IRS, the courts, lawyers and accountants all participate.

Another tactic to discourage the client from visiting his lawyer is the promoter's prediction that the lawyer will, in any event, be unfamiliar with the "common-law trust" concept to be used, and therefore, the client can expect a large legal fee for "educating" the lawyer.

In extreme situations, the promoter may be willing to reveal the "tax-saving techniques" only if the client will sign an agreement *in advance* stating that he will not identify the promoter or disclose his techniques and documents. Provision is made in the document for liquidated damages of up to $25,000 for a violation of the "secrecy" agreement. The promoter explains the "secrecy" is necessary because the technique is such "a good thing" it must be kept confidential and not become public knowledge. The obvious implication again is that the client can expect the plan to be attacked by the "conspiracy" of the IRS, courts, lawyers and accountants if it becomes widely known and used. Why? Because they will be out of a job!

Now Which Expert Do You Want To Believe?

Faced by the "conspiracy" of the IRS, courts, lawyers, and accountants, the promoter reminds the client that he is surrounded by enemies. With the client's anxiety level raised now to a significant degree, the promoter insinuates himself into the client's confidence by assuring the client that he, the promoter, is knowledgeable and strong enough to counteract the "conspiracy".

The promoter continues by pointing out that lawyers and accountants are so involved in detail that they do not understand the fundamental principles of the "common law" or "constitutional" trust. However, the promoter and his highly touted staff have made an occupation of *intensive* study of the constitutional or common law trust, know more about the area than does anyone else. The underlying current is always that the client is most fortunate to have met the promoter because the promoter has great expertise, and because he sides with the client, he will share his years of study and intuition with the client.

To awe the client with his extensive learning, the promoter typically cites large numbers of tax cases, and in his printed materials, will quote long passages from many cases. More often than not, these long passages and citations are either totally unrelated to the subject which they are intended to buttress or are in fact only obliquely related and do not support the representations made for them by the promoters.

Another common method of displaying particular expertise in the tax area is the promoter's use of various references to the U.S. Constitution and rights guaranteed by the Constitution. The promoter points to the constitutional "sanctification" of contract rights, protection of property rights, and even the privilege against self-incrimination. He maintains that the trust is a contract which affects property rights. As such, it cannot honestly and in good faith be attacked by anyone because, by attacking the trust, the courts, lawyers, and the IRS deny the Constitution. Thus draped in the American flag (but without Motherhood on his right and Apple Pie on his left), he proceeds for pages in written form, or many minutes in oral form, reasoning circuitously and irrelevantly but with desired impact on the client: the words mesmerize the client; the client hears what he wants to hear; and the client ignores the convoluted and incomprehensible illogic.

Some promoters who are not in the mainstream of "respectability" point to the constitutional guarantee against self-incrimination. They claim that by filing blank tax returns, the client has satisfied his legal responsibility of filing his tax return and has exercised his constitutional right against self-incrimination. This of course is arrant nonsense. Even the more "sophisticated" promoters either refuse to discuss the privilege against self-incrimination or deny flatly that this constitutional privilege validly can be exercised by filing blank tax returns.

True Thrust of Promoter's Presentation

The promoter's chief appeal is to human greed. Presentations typically include materials showing enormous estate tax savings, gift tax savings, or income tax savings accomplished by famous people, e.g., Carnegies, Rockerfellers, etc.; and assert that those members of the audience intelligent enough to do the same can also save the same enormous quantities of tax dollars. No explanations are made that one must have those enormous dollars earned prior to the time that tax savings can increase wealth; rather, it is an assertion that great wealth is within the reach of any who are willing to use the promoter's tax technique. And use of the promoter's technique is the historically elusive alchemy of spinning straw into gold (without having to say "Rumpelstiltskin").

The promoter typically uses truths or half-truths as justifications for the client's purchase of the promoter's materials. For example, the promoter dwells upon the principle that a person has the right to avoid and minimize his tax burden within the limits of the law. This is a fundamental truth which no tax practitioner even marginally educated in the field of taxes would dispute.

The half-truths contain, among other assertions, great tax saving opportunities available to the client in the income, gift and estate tax aspects of the client's financial

life. For example, if the client hires himself out to his trust and his trust thereby is entitled to his earnings, there is no withholding on those earnings. Furthermore, he has effectively shifted the burden of taxable income from himself to the trust. As mentioned before, the more sophisticated promoters agree now — as a consequence of an unbroken line of defeats in the courts — that this assignment of income is ineffectual. Yet, this sales approach is still used. Moreover, the promoters maintain that estate taxes are reduced or eliminated because the client owns nothing taxable upon his death. But when pressed by knowledgeable tax practitioners, the promoter side-steps the tax laws requiring the inclusion in the client's taxable estate of all beneficial interests over which the client has incidents of ownership, the inclusion in the estate of ineffective transfers, the inclusion in the estate of retained life interests, etc. Instead, the promoter will argue that the practitioner, by asking such a question, clearly shows both his ignorance of the field and the significance and effectiveness of the trust technique. The promoter's tactic is readily understood: You do not answer questions truthfully that will destroy your entire sales pitch.

Throughout the entire presentation the promoter repeats that the lawyer, accountant and IRS are the "bad guys" and that only the promoter wears the "White Hat". Openly disparaging remarks are only one of the many approaches used by the promoter to convince the client not to seek independent advice. Subtle techniques are used such as exaggerating the expenses of probate costs and the tax erosion of estates of actual well-known people such as Bing Crosby or William Boeing. Look at what the lawyers did to them — go to a lawyer and he'll do the same to you!

In the sales pitch directed to a specific client, the promoter will prepare a projected estate tax bill for that client assuming that the client is not availing himself of the large tax "savings" of the Family Trust and then the promoter will compare that tax cost to the tax cost by use of the Family Trust. In those many instances of which the Bar Association is aware, the computation of estate tax before use of the Family Trust technique has distorted the true tax cost. Also, the true tax cost of dying with the family trust has been grossly understated because more often than not the Family Trust is a sham — a facade with no true substance behind.

A favorite method used by the promoter to disguise the true nature of his tax scam is to assure the client that (a) all of his transactions are genuine and that (b) the transactions do not give rise to the filing of income tax returns. Thus hiding of transactions becomes the modus operandi, and the deception lasts long enough for the promoter to get his fee and to disappear.

It is true that real transactions with valid economic consequences can create situations in which tax returns need not be filed. But it is also true that artifices — artificial creations with no economic substance independent of tax manipulation — do not create circumstances under which a person may legally refrain from filing a tax return. The foreign trust arrangement is typical of such an artifice.

In the typical foreign trust promotion, the client attends a two-day seminar where he is provided with lectures and instructional materials relating to the use of foreign "pure trust organizations" to avoid taxes. After this session, the client authorizes a representative of the promoter to travel to a selected Central American country and to pay a small fee to a Central American citizen for his signature on formal documents purporting to establish three foreign trusts.

The Central American citizen, who is described by the promoter as an individual having no information whatsoever about the documents which he has been asked to sign, is designated as the "creator" in documents labeled "Contract and Declaration of Trust". These documents allegedly create three valid foreign trust entities governed solely by the laws of the Central American country in which they are formed.

The client then signs additional documents stating that nominal sums of money have been transferred to two of the trusts in exchange for "Trust Certificates" or "Certificates of Beneficial Interest" which in turn are issued to

the client. The client also signs documents stating that his real and personal properties, including his business equipment, have been transferred to one of the foreign trusts in exchange for Trust Certificates. The client is named trustee of one of the foreign trusts and that trust (called "Trust No. 1") is in turn named the trustee of each of the other two foreign trusts (Trust No. 2 and Trust No. 3).

After these documents are signed, the client attempts to eliminate all or a substantial portion of his own taxable income. He does so by purporting to enter into transactions with one of the three trusts.

The Transactions

During the first year of the plan, the client signs documents stating that he has assigned all of his rights in the instructional materials which he received from the plan promoter to Trust 1 in exchange for trust certificates. Simultaneously, the client purports to negotiate with Trust 1 in his capacity as trustee of Trust 2 for Trust 2 to purchase the materials from Trust 1 for a stated sum of $50,000. The client then claims a $50,000 deduction with respect to this transaction on his own individual income tax return. (The statutory justification for this deduction is unquestionably obscure — it has eluded all of us who have considered it thus far!)

Trust No. 2, to which the $50,000 is paid by the client in order to "purchase" the instructional materials, files a non-resident alien tax return reporting the $50,000 from the client as income. However, the client also causes Trust No. 2 either to make a "distribution" to or enter into another transaction with one of his other foreign trusts (Trust No. 3). This "distribution" or transaction allegedly gives rise to a $50,000 deduction for the non-resident alien Trust No. 2 which it claims on its tax return. Thus, Trust No. 2 pays no tax and shows no taxable income.

Trust No. 3 which received the $50,000 allegedly paid or distributed and deducted by Trust No. 2 does not file a federal income tax return. Trust No. 3 claims that it conducts no business in the United States, is not subject to U.S. laws, and thus is not required to file a return.

Finally, as part of this overall plan, the client arranges to have the $50,000 which is now in Trust 3 either "loaned" or sent back by "gift" to himself. Whirl and spin — the straw is gold!

Controverting Materials — What to Tell Your Client

The IRS has adopted an aggressive stance toward the interdiction of schemes described above. Most recently, the Seattle District Director issued an information letter to tax practitioners describing the legal fallacies of the schemes, describing the subpoena powers and penalties that might be utilized and imposed in the event the

taxpayer follows the suggestions of the promoters, and providing an indication of the aggressiveness with which the Seattle District will pursue such plans.

In 1975, the Service issued four sequential Revenue Rulings dealing with this general subject. They are:

1. *Rev. Rul. 75-257, 1972-2 CB 251.* This Ruling treated the family estate trust, and held that the grantor, who had transferred his personal residence, rental property, and income producing securities to a so-called "family estate" trust in exchange for all the "units of beneficial interest" therein, with himself, his spouse and a third party as trustees, would be considered the owner of the trust under the Code. It further held that assignments of "lifetime services" to the trusts would be ineffective to shift the tax burden of that income to the trust. This ruling turns in large part on the question of whether there is a so-called "adverse party" who has the power over the enjoyment of the corpus or income of the trust. The creation of such an adverse party—one who is truly adverse — should be a point of substantial concern to any individual who contemplates transferring all of his assets and future income to such a trust.

2. *Rev. Rul. 75-258, 1975-2 CB 503.* This Revenue Ruling involved a so-called "family estate" trust to which the grantor transferred substantially all of his real and personal property, including his retail business, in exchange for freely transferable "units of beneficial interest", half of which he transferred to his wife and son. It was held that the trust was taxable as a corporation. Thus all of its income was taxed first to the trust and then to the individuals; a tax catastrophe!

3. *Rev. Rul. 75-259, 1972-2 CB 361.* This Ruling held that where the grantor continued to enjoy the transferred property until his death and, with the other trustees, held a power to amend or terminate the trust at his death, the assets in the trust would be included in the grantor's estate for estate tax purposes.

4. *Rev. Rul. 75-260, 1975-2 CB 376.* This Ruling held that the federal gift tax would not be applicable at the time of transfer of assets to the so-called "family estate" trust because the grantor continued to hold broad discretionary powers over the transferred property and therefore no gift had in fact been made.

5. *Rev. Rul. 80-74, I.R.B. 1980-11, 13.* This Ruling held that a foreign double trust arrangement, i.e., use of foreign Trust 1 and foreign Trust 2 in an arrangement described on pp. 19 and 20, is a sham and that all income will be taxed to the real creator of the trust — the U.S. citizen. Moreover, an excise tax at the rate of thirty-five percent (35%) is applicable pursuant to Section 1491.

These Rulings have not even been criticized in reported decisions. The promoters of these schemes are constantly improvising minor and inconsequential changes to their arrangements in order to demonstrate that they differ from the situations described in the Rulings. Changes of form of course will be of no avail.

The Internal Revenue Service in 1975 issued a manual supplement directed to its auditors to provide guidelines and procedures for the identification and examination of suspect "family estate" trusts. This supplement, found in the Internal Revenue Audit Manual, not only describes the general nature of these schemes and the techniques used to promote them (including some quotation of costs paid by prospective clients, which seem modest compared to what these promoters are charging today), but also sets out techniques for identifying the existence of such trusts. These detection methods are obviously being constantly revised so as to maximize the chances of identifying taxpayers who participate in such schemes. The examination procedure suggested by the manual is simply to identify the participants and then take the following positions:

(a) Any assignment of income attributable to personal services performed by the creator is to be treated as anticipatory assignment of income and taxable to the individual who performed the services.

(b) Any remaining income and deductions to the trust are to be included in computing taxable income of the creator of the trust under the grantor trust provisions of Section 671.

(c) In those cases where the trust qualifies for treatment as an association taxable as a corporation, all items of direct and indirect benefit derived by the creator from the trust-association are to be treated as constructive dividends, resulting in a tax at both the trust and the individual levels.

The Internal Revenue Service is also periodically issuing press releases describing the general nature of these schemes and warning citizens that they are without legitimate tax foundation and their participation will lead to the imposition of not only the taxes that would otherwise be owing but also penalties. The aggressive litigating position of the Service is well demonstrated by the growing number of reported cases. One of the latest, *Wesenberg v. Commissioner*, 69 TC 1005 (1978), involved a typical transfer to one of these trusts by a member of the faculty of the University of Colorado Medical School. It had most of the usual innovations,

including three trustees: the taxpayer, his wife, and a third party. The Medical School even paid his income directly to the trust. The Tax Court simply struck down the whole scheme, including the anticipatory assignment of income, and imposed a tax on the taxpayers with respect to compensation for services irrespective of their contractual obligations concerning the subsequent disposition of such earnings. A negligence penalty was also imposed.

Your client's chances of success in litigating these issues are virtually zero. So far, the Service has won them all.

Tell your client:

1. Your client's contractual assignment of his income to one of these trusts will be completely ignored by the Internal Revenue Service and by the courts. Not only has the Internal Revenue Service issued a Ruling expressly holding that such assignments are ineffective (75-257), but also the courts have unanimously upheld that position. A recent example of such a case is *Wallace J. Vnuk and Frances R. Vnuk v. Commissioner*, 38 TCM 710 (1979), in which a medical doctor's transfer of his income to a Family Trust was held to lack substance because it was an anticipatory assignment of income. When all else failed, the petitioners had argued that it was their inalienable right under the Constitution of the United States to transfer the tax burden on income derived from their personal services. The court seemed unimpressed. Compounding the taxpayer's problem, the court imposed a negligence penalty, stating: "the burden of proof again rests on the petitioner (i.e., taxpayer) to rebut respondent's (i.e., IRS) determination . . . In this case, petitioner has presented no evidence contrary to respondent's determination. In fact, considering petitioner's education and position, we find it difficult to believe that he envisioned the Trust as anything other than a flagrant tax avoidance scheme. We sustain the additions to the tax imposed here."

2. Your client's trust might very well be taxed as if it were a corporation, in which case his taxes will be multiplied — not reduced! In 1975, the Internal Revenue Service issued a Ruling expressly on this point (Rev. Rule 75-258). It held that one of these family trusts created an organization taxable as a corporation. Thus everything that the beneficiaries — that's your client — received was taxable as a dividend from the so-called corporation. Therefore, a tax on that money was payable both by the corporation and by the individual receiving the benefit of that money. The client would certainly be devastated with that outcome! Whether or not your client's trust will be taxed as a corporation is virtually impossible to predict because it will depend on the facts not only as to how the trust is set up, but also as to how it operates. Inevitably, it will be a close case and subject your client to substantial risks.

3. If the promoter starts talking to your client about foreign trusts, the client should be particularly concerned. Not only does he now have to make disclosures of such things on his tax returns (or commit a crime), but also under a 1976 tax law adopted by Congress, if he creates a foreign trust, he has to pay a tax on the income of that portion of the trust that has a U.S. citizen as its beneficiary. Thus, if he is going to avoid tax on it, he would have to name a foreign citizen as the sole beneficiary of the trust. The promoters may suggest that this tax is not payable where he has made a *bona fide* sale at fair market value to the trust. To that extent they are right, but if he is going to make a *bona fide* sale, it means the trust is going to have to pay the fair market value of the assets he transfers and he is going to be taxed on the gain. Further, some substantial portion or all of that gain might be taxed as ordinary income. And after he has gone through all of this, the whole scheme will fail because he retains the ultimate control over the assets; and, the Service and the courts will treat it the same way they treat similar schemes with U.S. trust — ignoring the whole thing (assuming he is lucky enough not to have the trust treated as a corporation, in which case he will wish he never heard of the scheme).

4. You should mention, too, that if he does not transfer

the assets to the trust for fair market value, he may be liable for a gift tax (unless, of course, the whole thing does not work).

5. The reason that all of these schemes fall of their own weight is that your client gives nothing up. He is usually assured that he will keep control over all of his assets. In such case, the law, the Internal Revenue Service, the courts, and any clear-thinking person would ignore completely all of the fancy paperwork and conclude that, in truth, nothing at all had changed.

You might assure your client that he can avoid most of these problems by simply transferring all of his assets to a third person who owes him no allegiance and will dole out money to him as that third person thinks best. It cannot be a member of his family or his lawyer. And even that will fail with respect to the assignment of the income he earns. You might also want to suggest that you would never recommend and would not participate in the preparation of any papers pursuant to which he would transfer all of his assets to some third party and be at the mercy of that party. Yet that is the only way he can make these schemes work.

7. With respect to the savings of estate taxes, there has not been a great deal of litigation because not enough people have yet died with the problem. However, by the time such a problem arises, the promoters are long gone, having taken their fees and vanished. Then when a death occurs, there is substantial uncertainty as to who is entitled to the assets or what to do with them. We envision that titles to real estate will be substantially clouded. It will be expensive to unwind or straighten out those titles so as to satisfy a title company and enable a sale of the property. Your client's spouse or heirs may suffer substantially in the interim simply due to the inability to dispose of property.

However, again, the federal tax law (I.R.C. Sections 2036, 2037, 2038, 2041, etc.) and the judicial decisions clearly deny any exemption from estate taxes where there has been a transfer to a trust — even if irrevocable — and the transferor has directly or indirectly maintained control over the assets. Your client's objective is exactly that. His plan for tax savings will fail. Fortunately he won't know about it. It will be the burden of his heirs and their attorneys.

Death Is Not a Purgative

But is the problem really closed with the client's death insofar as his heirs and their attorneys are concerned? No. There is no Statute of Limitations on tax assessments for situations in which tax returns are not filed or when fraud exists. How many fiduciaries will be willing to make final distribution from an estate without satisfying themselves that all tax liabilities have been paid or provided for? Perhaps only heaven and the insurance companies will know the complete answer to that question.

Tax liability, however, is not the only exposure the fiduciary has. If fraud is present, the civil fraud penalty of 50% of the total tax deficiency will be payable. Assuming, however, that the fraud penalty is not imposed, a negligence penalty of 5% of the total underpayment can be imposed. In addition, there is a penalty of 25% maximum of the total amount of tax due in the event that a taxpayer fails to file a required income tax return. This late filing addition runs until the date the IRS actually receives the late tax return. Another civil penalty adding up to 25% of the total amount of tax due is the penalty for failure to pay tax within 10 days after written demand is made for that payment. And in those instances in which criminal fraud or other crimes have been committed, the criminal penalties are imposed *in addition to the civil penalties*. Because of the highly aggressive posture of the IRS in the area of Family Trusts, it is reasonable to suppose that all penalties available will be applied to taxpayers using the Family Trust scams.

It is also reasonable to assume that, as time passes and more of the Family Trust arrangements are declared artifices by courts, the IRS will be successful in imposing criminal fraud penalties on creators of the Family Trust scam. Logic suggests that as the trust's infamy and notoriety become more widely recognized, penalties for taxpayers using the scams will become more and more severe. It is not inconceivable that conspiracies to defraud will be alleged, at the least, if not actually capable

of proof. And instead of a legacy of wealth, a Family Trust creator will leave a legacy of litigation, confusion, and distress to his heirs. (If lawyers are as mercenary as the promoters suggest, perhaps we should *encourage* the sale of Family Trusts!)

The tax community has not been alone in its protection of the client's wealth. Suits by attorneys' general in several different states to restrain promoters' activities have been successful. These suits generally involve either the issue of the unauthorized practice of law by the promoter and his selling representative or the violations resulting under consumer protection acts. For instance, suits have occurred in Kansas, Colorado, and Washington. The Washington litigation is representative of the genre.

Our Attorney General sued R. Bruce Ripley and Karl L. Dahlstrom in Spokane requesting injunctive and other relief under the Consumer Protection Act (see Civil Cause No. 238555, Spokane County). But court actions even by the Attorney General are protective measures *after the harm has been done* by the promoter. The promoters' typical reaction to such an injunctive action is to create different legal entities in which the same merchandising is carried out. Thus the importance of educating your clients becomes paramount because only you can truly protect your client from this type of confidence game.

Conclusion: What To Do

One of the appealing aspects of the sales pitches for Family Trusts and foreign trust combinations is the availability of comparable but dissimilar situations which the promoters can point to as examples of tax savings. Unquestionably, the amount of taxes which may otherwise be payable on some kinds of taxable income in some unique circumstances may be reduced by the use of trusts. What is not made clear to a potential purchaser of one of these tax schemes whose circumstances are not unique are: (1) what the probable tax consequences are; and, (2) what the cost of tax savings may be, such as loss of control over assets and income. The concepts and law in this area are sufficiently complex and such fine lines of distinction are drawn that even for persons with legal and trust training and experience, it is difficult to analyze and understand in depth the proposals or to give specific advice to others about them.

Hopefully, seminars, articles in publications read by attorneys, accountants, and trust officers, and articles in publications like the *Wall Street Journal* which are read by the consumer public will make us all more aware that problems exist. If taxpayers can be alerted that there are substantial problems and disastrous consequences associated with the Family Trust and the foreign trust combinations, it is more likely that he will consult a tax

practitioner who can advise him on the tax and economic consequences of the tax haven proposed for him.

Now Unwind Your Client

A major problem area for taxpayers and practitioners in connection with the trust scams, particularly the Family Trust, will be the unravelling of them. On August 29, 1979 in response to the information paper published by the Internal Revenue Service, the American Law Association mailed to a number of Washington "practitioners" a reply prepared by Karl L. Dahlstrom and circulated by R. Bruce Ripley. The reply is a value in that it concedes that the foundation of "Family Estate Trusts" — the assignment of lifetime services — "cannot be practically effectuated under existing law as appropriately interpreted by the Courts." We anticipate that this concesssion, the predictable results of future litigation, and adequate counseling, will prompt a number of people who have adopted trusts now to seek to rescind or terminate them.

Once it has been determined that a client has imprudently entered into one of these scams and funded a trust, the question is how do you undo it?

Obviously, the trust or trusts will not be terminable because of a reservation of power to revoke since the trusts are formed as irrevocable trusts for the purpose of obtaining certain tax advantages.

Each factual situation will raise different problems. We may have trusts where the creator, trustee, and beneficiary are all alive and will consent to termination. We may have situations where the consent of the creator, a trustee, or beneficiary cannot be obtained. We may have situations involving active trusts as opposed to asset-less trusts. Superimposed upon all of this, we may have situations in the area of foreign trust combinations where the client is neither the creator, trustee, nor beneficiary of certain key trusts, and those trusts are governed by laws other than those with which we are familiar in the United States. However, in most instances, a way probably can be found to terminate the trust and return the parties and property to their positions before trust creation.

If we are dealing with a situation where the creator and beneficiaries are all alive and consent to a termination of the trust, termination can be done by agreement. See *Restatement of Trusts 2d.*, §338 and *Fowler v. Lanpher*, 193 Wn. 308 (1938). However, if the creator is deceased, the problem can be more difficult. *Fowler v. Lanpher* teaches that the beneficiaries may not terminate a trust even by agreement if the creator is deceased and the trust is an active trust, as opposed to an asset-less dry one. In *Fowler*, a primary purpose of the trust was to pay $400 a month to one of the beneficiaries. Presumably in the situations we may be interested in, the trust will not be asset-less.

Where no consideration is paid for the creation of the trust, a creator can terminate a trust created by him if he was induced to create the trust because of a mistake such as being incorrectly advised as to the tax consequences and as to the operation of the trust (*Restatement of Trusts 2d.*, §333). Similarly, a trust may be terminated where it becomes impossible to accomplish the purpose of the trust, which we presume was to avoid the payment of taxes (*Restatement of Trusts 2d.*, §335).

In those situations where a trust is to be terminated by agreement of the beneficiaries, it becomes important to consider the rights, if any, of contingent beneficiaries such as unborn children. In many jurisdictions, including Washington, the possibility of unborn beneficiaries should not be insurmountable. The doctrine of "virtual representation" permits living persons (present beneficiaries) with ascertained interests in property to represent the interest of unborn beneficiaries in that same property. See *Restatement of Property*, §§180-186 and *Cotton v. Bank of California*, 145 Wn. 503 (1927).

All of the above presupposes that the trusts are governed by principles similar to those set forth in the Restatement of Trusts. Substantially different rules may be applicable to trusts which are governed by foreign (i.e., non-U.S.) laws. Perhaps some comfort may be placed in the basic conflict of laws principle that a trust is to be construed according to the laws of the jurisdiction which the creator intended.

The very practical question will be raised as to who has standing to object to an attempted or purported termination or rescission of the trust. We assume that the creator desires to terminate the trust because he has determined that he was ill-advised in funding the trust. Objection should be anticipated from beneficiaries, title insurance companies, transfer agents and potential purchasers of assets held by the trust. We have informally discussed this matter with three title insurance companies doing business in the State of Washington. Generally speaking, in the absence of a power of revocation in the trust instrument, the title insurers are inclined to list the potential rights of the trust in the property to be issued as an exception to their coverage, unless all of the parties, including the creator, trustee, and each beneficiary, execute a quit claim deed to real property which the trust was attempting to reconvey to its prior owner. If such a solution is not possible or is unacceptable to the title insurer, it appears that the only other recourse is to seek a court order revoking or rescinding the trust on one of the grounds previously discussed.

Summary

Protect your client. Do your best to prevent him from using the Family Trust, foreign trust, or a similar insidious tax scam. And, if he has been ensnared, do your best to rescue him from this trap as expeditiously as possible.[5] □

[5]If a tax-shelter prospectus arouses doubts, the IRS invites you to send it to: Assistant IRS Commissioner-Technical, Att: Tax Shelter Coordinating Committee, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

About the time we were putting together the March Bar News, *snow flakes were falling in Seattle, ice froze the streets in Everett, and winter's cold hand had a firm grip on Eastern Washington. Would summer ever come? Thus, as an exercise in climatic escapism we have brought you more scenes of palm trees, suntans and bathing suits from the . . .*

Photo credit: Camera Hawaii. Honolulu, Hawaii.

HAWAII CONVENTION

Mid-Year Section Meetings

Joel G. Green
Assistant Director of
Continuing Legal Education

This May offers two mid-year meetings. The Corporation, Business & Banking Section hosts its meeting at the Hanford House in Richland from May 15-17. The Real Property, Probate & Trust Section will host its meeting at the Yakima Convention Center from May 29-31.

The C, B, & B meeting is co-sponsored by the Taxation Section. The meeting gets off to a lively start on Friday afternoon with a program on Trends and Developments in Business Financing. Topical selections include a review of the usury revolution, modern financing techniques and attorney opinion letters to lenders. The session ends with the Taxation Section's Business Meeting. This is followed by the ever popular wine-tasting party.

Saturday morning begins with the C, B, & B Annual Meeting. It is followed by a program on Tax Aspects of Financing. After lunch, a program on Statutory Developments will be of particular interest. Members of the C, B, & B Section are monitoring the works at the Olympia Legislature and will report on actions taken on the Uniform Limited Partnership Act 1981 Amendments and the proposed amendments to U.C.C. Article 9. Past and future amendments to the Business Corporation Act will also be discussed. This is followed by ample time for R & R under the desert basin sun and a no-host cocktail party.

The fare for Sunday morning has five specialty programs, one more than past meetings. The Taxation Section presents one of the specialty programs. The following C, B, & B Subsections sponsor the remaining specialty programs: Corporate Counsel, Banking, Securities, and Agricultural law. The specialty programs will run simultaneously. The advertising brochure, which will appear in April, should be consulted to determine which of the specialty programs will interest you the most. While the executive board meets at noon, the remaining registrants can make a quick escape to avoid being inundated by the planned Mount St. Helens Anniversary Special.

The Real Property, Probate & Trust Section Mid-Year Meeting and Seminars will be held on May 29, 30, & 31 at the Yakima Convention Center. Program Chairman John E. Shaw and Section Chairman Judd Kirk have put together a program involving 22 speakers, covering both real property, estate planning, probate, and environmental law concerns. The seminar sessions begin on Friday, May 29 at 1:00 p.m. with the Probate and Trust portion of the program. Saturday morning, May 30, the Real Property program is presented, followed Saturday afternoon by concurrent sessions in both real estate, and probate and trust areas. The Sunday morning concurrent sessions include Estate Planning matters and the Environmental and Land Use Law Section will join the program to present a number of topics of interest in that field.

The Probate and Trust program has been developed under the leadership of Chairman Alan Kane, and the Real Property program under the direction of Timothy Clifford. Sufficient time has been provided in the busy seminar schedule to allow registrants to enjoy Yakima and its (usually) warm and sunny environs.

Each program registrant will receive two separate volumes of written material. Enrollment in the Real Property, Probate and Trust Section Mid-Year Meeting is limited due to space available at the Convention Center. Accordingly, those interested in attending should promptly complete the registration form in the brochure which will be mailed in April.

Approved Continuing Legal Education Activities

COURSES APPROVED

GONZAGA UNIVERSITY SCHOOL OF LAW

Corporate Taxation Workshop
April 25-26, 1981: Coeur d'Alene ID 14.00

UNIVERSITY OF WASHINGTON SCHOOL OF LAW

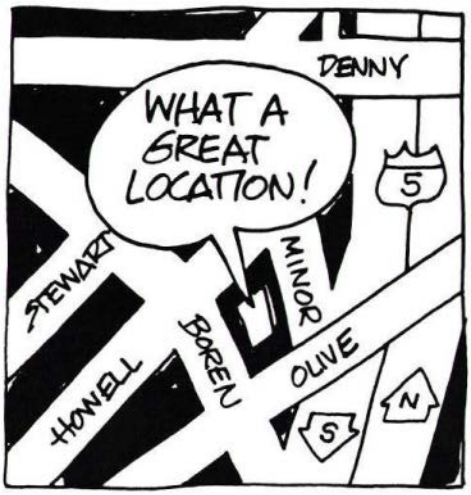
Seller Financing of Real Estate Sales
April 4, 1981: Tacoma 5.00

Pacific Coast Labor Law Conference
April 9-10, 1981: Seattle 12.50

WASHINGTON STATE BAR ASSOCIATION

Municipal Corporations/Local Government Law
March 6, 1981: Everett 5.00
March 13, 1981: Spokane 5.00
March 20, 1981: Seattle 5.00
March 27, 1981: Yakima 5.00

CHICAGO TITLE HAS MOVED.



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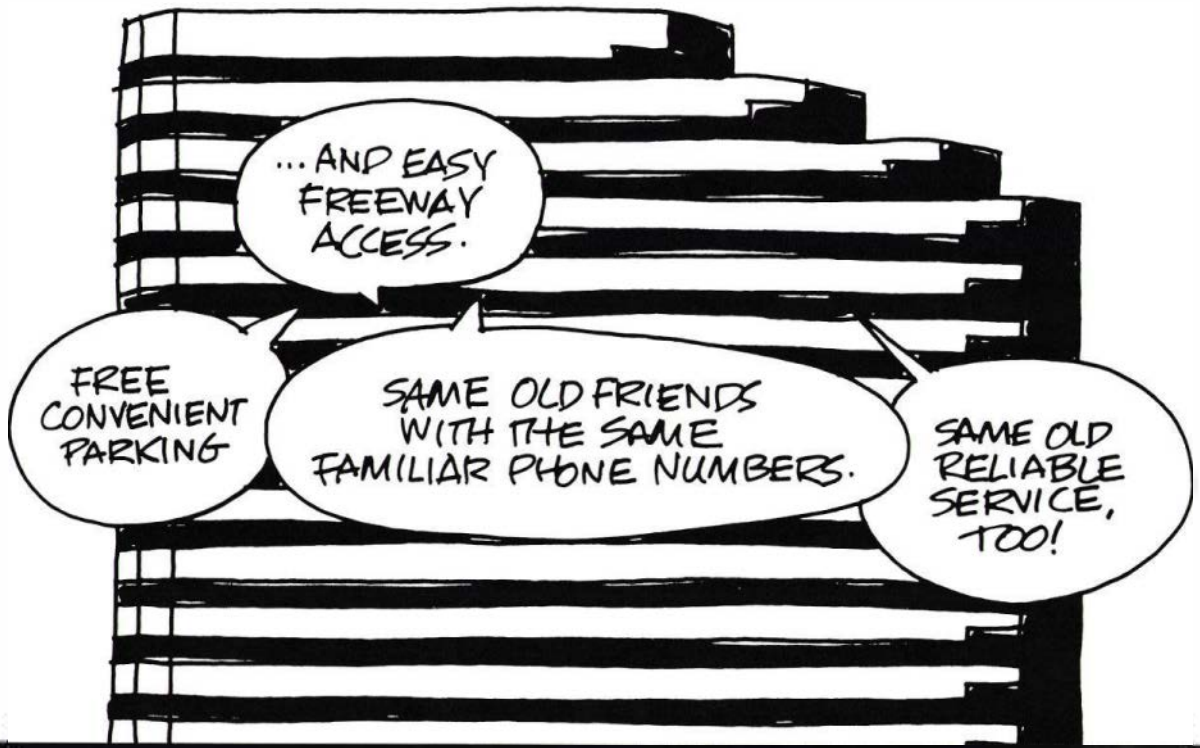

COURT OF APPEALS

by **Mark H. Adams**
Commissioner, Court of Appeals, Div. 2

Superior Court Authority to Modify a Judgment on Appeal

The trial court retains jurisdiction for certain purposes despite the filing of an appeal after judgment. Rule of Appellate Procedure 7.2 outlines the situations in which the trial court can act. This article will discuss RAP 7.2(e), which describes the trial court's authority to hear post-judgment motions to modify the decision on appeal.

RAP 7.2(e) states as follows:

> The trial court has authority to hear and determine (1) post-judgment motions authorized by the civil rules, the criminal rules, or statutes, and (2) actions to change or modify a decision that is subject to modification by the court that initially made the decision. If the trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the entry of the trial court decision. A party should seek the required permission by motion. The decision granting or denying a post-judgement motion may be subject to review. A party may only obtain review of the decision on the post-judgment motion by initiating a separte review in the manner and within the time provided by these rules. If review of a post-judgment motion is accepted while the appellate court is reviewing another decision in the same case, the appellate court may on its own initiative or on motion of a party consolidate the separate reviews as provided in Rule 3.3(b).

Under this rule, a party who has appealed need not obtain a remand, or even permission, from the appellate court in order to make a motion in superior court for relief such as a new trial (CR 59; CrR 7.6) or vacation of judgment (CR 60). The rule changes former practice in this regard. Formerly, a party who wanted to make such a motion in a case on appeal had to obtain permission of the appellate court even to file the motion. *Doss v. Schuller*, 47 Wn. 2d 520, 288 P.2d 475 (1955). The party had to show the appellate court that the proposed motion had sufficient merit for the trial court to be authorized to hear it. *Palmer v. Cozza*, 2 Wn. App. 900, 471 P.2d 102 (1970). Given the necessary permission, the trial court could hear and decide the motion.

Some attorneys who became accustomed to the old procedure have been surprised to learn that the process has been reversed under RAP 7.2(e). A party now goes directly to superior court to file any post-judgment motion authorized by court rule or statute or any action to modify a decision subject to modification. The latter category would include provision of a decree of dissolution. RCW 26.09.170, .260. The trial court is free to deny the motion without any involvement of the appellate court. Permission of the appellate court is necessary only if the trial court, after hearing the motion, expresses an intention to grant it and change the decision on appeal. At that point, a party files a motion in the appeallate court to obtain permission for the trial court to alter the judgment in the proposed manner. This procedure conforms to suggested practice in the federal courts. *See Ryan v. United States Lines Co.*, 303 F.2d 430 (2nd Cir. 1962); *6A Moore's Federal Practice* ¶59.09[5], at 59-227 (2nd ed. 1979).

The trial court's ruling on the motion is reviewable as described in RAP 7.2(e). If the ruling essentially reverses the decision on appeal, the existing appeal may be subject to dismissal on grounds of mootness. □

Around the State

COWLITZ-WAHKIAKUM REPORT

by C.C. Bridgewater

There were a few notable events that happened to the members of the Cowlitz-Wahkiakum Bar Association in 1980:

Bill Studley, Wayne Purcell and **Dave Spencer** lost their smiles when they lost their **Guinn** (sp); but **Vern** took **Lindsey Cotterell** to be a trying partner. For those who thought **Henry R. Dunn** was out of the public eye — he rose to become involved in the two major suicide cases of 1980 — he was campaign chairman for Dixie and Mike Redmond in Cowlitz County. Dixie left her mark by two judicial appointments — **William L. Dowell** and **Don McCulloch**. **Dave Hallin** disputed the Governor and then ran against Dowell as the "people's choice"; but the people were fickle and Dowell prevailed. New members in the county are: **Dennis Hunter** with **Willard Walker; Bert Paul, Dan Dolan** and (establishing a record for "shortgevity") **Dwayne Crandall,** all with Henry R. Dunn. Crandall was courted by Henry and lost to **Wayne Roethler** after only six weeks. **Lee Borders** and **Judd Klingberg** aided in generally raising fees when the amount of their fees were published in a case involving the open meetings act. Following publication, all counsel definitely wanted to represent the news media in any future cases. **John Barlow** and **Odine Husemoen** made history by getting an almost million dollar verdict which eclipsed **Jim Warme's** $600,000 verdict. **Steve Wozney** accounts for **Gerry Reitsch's** new addition; **Jean Pope** blessed **Jerry Heller's** practice; and **Dennis Maher** didn't mar the Cross that **Reed Hadley** bears. **Bob Huffhines** established a new mark of legal research by using three libraries at once and becoming known as "brief king"; **Harry Calbom** was named as "boss of the year"; the newspaper reported that fact along with his upcoming 40th wedding anniversary — we all wonder who is really the "boss."

We all put our differences aside for our annual Christmas party. Our party was nontraditional. Our usual repartee was gone and in its place was less rancorous entertainment. The MGM Grand provided us with 20 dazzling performers (**Dick Norman** reputedly won them in a card game); and do not believe any rumors that **Joe Daggy** (who has connections with EQUITY) brought **Bo Derek.** Finally, all of the steelhead eaten at the party was supplied by **Tom Noble** and the entire amiable affair was concluded by a duet of **Milt Cox** and **Cliff Kuhn** singing Christmas carols and a prayer by **Barry Dahl** for a rosy new year.

LEWIS REPORT

by Joseph M. Mano, Jr.

We all mourn the passing of the senior member of the Lewis County Bar, **J. Dorman Searle,** who continued in active practice until just before his death. He was 77.

We welcome our new Superior Court Judge, **David Draper,** and wish the best to our retiring Judge, **D.J. Cunningham,** who plans to continue to serve as a Pro-Tem from time to time.

Mike O'Connell is leaving the firm of Buzzard and O'Connell to toil for the Republican caucus in Olympia. **Mike Roewe** is leaving Hall and Roewe and establishing his own practice in Chehalis.

After marrying the girl of his dreams last July, **John McKerricher** became the brother-in-law to partner **Rich Paroutaud** when Rich wedded her sister in November.

Rookie attorney **Paul Dugaw** recently signed with Enbody and Halsan. In addition to taking a new wife,

he claims to be close to a scratch golfer. We'll see.

Jack Cunningham's son, **Grady,** was recently admitted to the Bar and was sworn in by his uncle, **Judge D.J. Cunningham.**

Jeremy Randolph, Lewis County's nominee for Sonics fan of the year, spends more time on I-5 than a long-haul trucker. Yes, he does have tickets available.

In local sports, Lewis County attorneys' basketball team, after a slow (read 0-4) start, finally jelled and claimed a third place trophy in the annual Adna Invitational Classic when they were narrowly defeated by the second place team despite an incredible comeback. **Paul Cane,** a free agent acquired this year, was voted MVP.

PIERCE REPORT

By ROBERT L. ROVAI

Pierce County has recently been blessed with another tax specialist, **Suzanne W. Daielle.** She has recently established her new offices at 1501 Pacific Avenue, Tacoma, Washington, and as a CPA and an attorney she is a specialist in tax fraud and tax audits.

Congratulations to **Gary Branfeld** who has just been named a partner of the firm of Van Buskirk and Haas.

Since accolades are being passed out I think **George Christnacht** should get an award for his ability to tap the resources of the Pierce County Bar Association enabling him to obtain impressive products liability awards.

Tom Dinwiddie has firmly established himself as the "super-narc" prosecutor of the 80's. Look out all the bad guys.

Has anyone noticed that **George Dixon** has been putting on a little weight. Maybe he and fearless **Fred Enslow** should visit the fat farm and maybe people who live in glass houses shouldn't throw stones.

Congratulations are also in order for **Don Kelley** and **George Kelley,** the brother act here in Pierce County, who recently successfully took on the special prosecutor **Smith** and were successful in having the State dismiss its case after a 6-week trial.

The old admiral, **Murray J. Anderson,** has recently left the old firm and formed a new firm of Anderson, Anderson & Ledgewood commencing a new practice with his son, **Mark Anderson,** who was recently admitted to the Washington State Bar Association.

Tom Larkin will do anything to get his picture in the paper. Can you imagine the "boys" playing basketball at the YWCA and supposedly all during the noon hour.

In the "believe it or not" category **Gene Quinn** was seen at the courthouse on two successive days. I never realized he even knew where the courthouse was located.

Noel Shillito has been working out regularly at the YMCA. Now the only thing he has to do is buy the muscles.

Gregory Abel was recently voted the Boss of the Year of the Pierce County Bar Association. Congratulations Greg! You have overcome insurmountable odds in that your association with **Peter** and **Mike Sterbick** must have been a tremendous handicap.

Don McGavick has recently moved his firm's office to the "●ld City Hall" building. That must be closer to the "old watering hole".

Larry Ross and **Bill Boyle** have rejoined forces by associating in the practice again after a 12 year lapse of time.

William Grey Adams and **James A. Degel** announce the formation of a partnership to be known as Adams & Degel located at Wm. Blackwell Mansion, 401 Broadway, Tacoma, Washington, (206) 627-3886.

Briefly Noted

International Transfers of Industrial Property Seminar Planned

The International and Comparative Law Section of the Seattle-King County Bar Association and the Intellectual Property Section of the Washington State Bar Association are planning a one-day seminar on "International Transfers of Industrial Property" for Friday, April 10, 1981. The seminar will be held at the Hilton Hotel in Seattle and is being held with the cooperation of the International Trade Administration of the United States Department of Commerce.

The seminar will cover legal and practical issues involved in international transfers of industrial property, including the negotiation of a licensing agreement and the antitrust and tax implications of international licensing. Registration information for the seminar can be obtained from the Seattle-King County Bar Association, 320 Central Building, Seattle, Washington 98104, or from one of the Co-Chairpersons of the Planning Committee, Edward Bulchis, 1001 Bank of California Center, Seattle, Washington 98164, or Harry McLachlin, 4200 Seattle-First National Bank Building, Seattle, Washington 98154.

Board Elections Due

Lawyers residing in the Third and Sixth Congressional Districts and in King County, please note:

Members of the Board of Governors of the State Bar to represent those districts are due to be elected this year. Expiring in September are the three-year Board terms of Edward G. Holm, Third District, Quinby R. Bingham, Sixth District and, William Wesselhoeft, King County at Large representative.

The State Bar Association By-Laws (Article II) provide that any active member in good standing may be nominated for the office of Governor from the district in which the member resides upon petition signed by at least twenty but not more than thirty active members also residing in the district.

Nominating petitions may be obtained from the Bar Office, 505 Madison Street, Seattle, WA 98104.

The petition must be filed in the Bar Office by 5 p.m., May 31, 1981.

Rule DR 2-103 (D) (4)

This notice is to advise you of the correct rule governing group and

pre-paid plans. The rule became effective on January 1, 1979. The change in the rule occurred along with the changes in the advertising rules.

The rule provides for filing of annual reports to the Bar Association. If you run such a plan, please submit the report as required in (D) (4) (g) at your earliest convenience. If you are an attorney participating in one plan, please ask the person or group running the plan to submit a report.

A sample report and a copy of DR 2-103 may be obtained by contacting Caroline Davis of the WSBA Legal Department, (206) 622-6026.

Conference on Law of the World to be Held in Brazil

The World Peace Through Law Section announces the 10th Conference on the Law of the World in Sao Paulo, Brazil, to be held on August 16-21, 1981.

Applications for reservations can be obtained from Serni Reeves ((206) 622-6054) at the State Bar office or from Earl A. Phillips, National Chairman for the United States ((206) 622-1919).

The travel agent designated by the World Peace Through Law Center is Marsans International, 500 Fifth Avenue, New York, New York, 10110.

NALS Announces Schedule of 1981 Regional Seminars

Portland, OR, Greensboro, NC, Lansing, MI, and Dallas, TX have been selected as the sites for the National Association of Legal Secretaries (NALS) 1981 regional seminars. The dates of the seminars are: Portland — February 14, 1981, Greensboro — March 20, 1981, Lansing — September 19, 1981, and Dallas — October 3, 1981.

Each all day seminar will consist of three sessions: *Decision Making from Behind the Legal Secretary's Desk, Body Language in the Legal Profession* and *Let's Compare Forms.*

Seminar registration fees are $45 for NALS members: $55 for nonmembers. For more information contact: NALS Headquarters, 3005 East Skelly Drive, Suite 120, Tulsa, Oklahoma 74105.

In Memoriam

Thomas Marshall, 87, of Seattle, died January 8. He was admitted to the Bar in 1923.

Mark David Pearlman, 36, of Cazadero, California, died January 3. He was admitted to the Bar in 1974.

"What do you mean this is Defendant's FIRST set of interrogatories . . . ?!"

"Bob, Jr. might want to be a lawyer! To avoid delay, I've set a Court date for him in the year 2007."

New WSBA Direct Line Phone Numbers

To receive service faster you may now dial *directly* to the following WSBA departments.

Membership records **624-9084**

Bar Exam-Admissions **622-6853**

Continuing Legal Education **622-6021**

Discipline and Complaints **622-6026**

Legal Department **622-6026**

All Other Departments **622-6054**

The University of Washington School of Law
and the
Washington Law School Foundation
present

SELLER FINANCING OF REAL ESTATE SALES: TAX AND WASHINGTON LAW IMPLICATIONS

Seminar topics include Washington law problems related to installment sales; tax treatment of installment sales, including analysis of The Installment Sales Revision Act of 1980; additional tax problems of seller financing; sales to land developers; and usury.

SATURDAY, APRIL 4, 1981—TACOMA, SHERWOOD INN

REGISTRATION FEE: for any program: $100 includes lunch and materials ($90 if postmarked 30 days before program date)

For further information: Ann Magee, 336 Condon Hall, JB-20 University of Washington School of Law, Seattle, WA 98105 (206) 543-0059.

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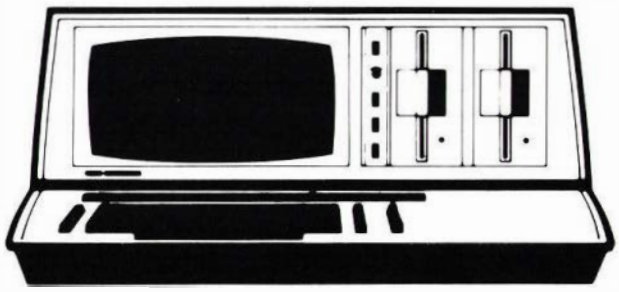

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Latest booklet and information about U.S. Immigration Laws sent upon request without charge.

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Scott W. Wyatt announces his availability for association in the preparation and presentation of trials, both jury and non-jury.

Scott W. Wyatt, Esq.
406 Market Street
Kirkland, Washington 98033
Telephone (206) 827-0686

W. Ben Blackett announces his availability for consultation on personal injury or other medical-legal litigation, exclusive of medical malpractice actions within Washington State.

W. Ben Blackett, M.D., J.D.
4366 North Lexington
Tacoma, Washington 98407
Telephone (206) 752-3970
or (206) 383-5056

James H. Hopkins of the Washington Bar announces his availability for consultations and/or referrals in discrimination, labor, OSHA, WISHA, wage and hour matters at the State and Federal levels.

James H. Hopkins, Esq.
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11820 NE 142 Pl
Kirkland, WA 98033
Telephone (206) 821-2809

Jack E. Wetherall announces his availability for consultations and referrals in matters before the Court of Appeals of Washington, the Supreme Court of Washington and before the United States Court of Appeals for the Ninth Circuit.

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For Sale: Due to health, must retire. Law office with excellent library on 100 × 100 corner lot. Property includes 2-operator beauty shop and 3 newly-decorated bachelor apartments. In Columbia Basin. (509) 246-1841.

For Sale: "Federal Income, Gift & Estate Taxation" Rabkin & Johnson, 19 Vols., current updates. AmJur "Legal Forms", 14 Vols., not current, but good basic form set. Make offer. Stephen T. Carmick, P.O. Box 670, Chehalis, WA 98532, (206) 748-0226.

For Sale: RCWA — $900.00; Wn Reports — 1st — $2,500.00; Wn 2nd — $1,700.00; Wn App. — $350.00; or Wn Report; Wn 2nd & Wn App. together $4,000.00; Wn Digest $650.00. Call (206) 426-5524 for information.

Seeking will of Lilly C. Sheets. Please contact Bruce Moen (206) 622-6614.

Seeking Will: Anyone having information regarding preparation of a will for Jack Keith Henry please contact Lenell Nussbaum, 14th Floor, Norton Building, Seattle, (206) 624-0900.

Wanted: National prepaid legal program seeking Seattle law firm with General/Family practice emphasis to become statewide Consulting Attorney for volume family/small business clientele. Strong belief in alternative legal delivery systems a MUST! Inquire: Legal Service Consultants (800) 235-6943.

Wanted: Used IBM Executary Dictaphone machine, good condition. SCHNEIDER, SMYTHE, VAN SICLEN & REYNOLDS. Contact Lyle Schneider at (206) 833-1660/839-2660.

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Little Whale Cove: Depoe Bay, new condo, 3 story, 3 bedroom, 2 bath. Indoor tennis, pool. Coast community. (503) 926-8432, Albany. Black Butte Ranch: Fully furnished two bedroom, 2 loft, 2 bath cabin. $65/night $400/week (503) 926-8432, Albany.

Space available for one or two nonsmoking attorneys in United Airlines Building. Full law firm facilities. Rent negotiable. (206) 682-5200

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Office Space Available: View space with full services for one established lawyer in four-lawyer congenial office. Maynard Building, Pioneer Square. (206) 682-6644.

Downtown Bellevue Office Space: 1550 square feet with four large offices, library, kitchen, reception, and staff area available for sublease. Call Geoff Revelle at (206) 455-2565.

Established Spokane firm seeks attorneys with strong academic credentials with one to three years' experience in banking, commercial or real estate. Opportunities are excellent with immediate openings. Send resume and salary requirements to Box 39, WSBA.

Associate position available for expanding one person firm in Bellevue. Business and/or legal experience required; emphasis in commercial, corporate and real property law. Reply to Box 29, WSBA.

Large Seattle law firm is seeking an attorney with four or more years of actual insurance defense experience to join firm's Alaska office. Salary commensurate with experience and background. Please send resume to Box 25, WSBA. All inquiries will be kept confidential.

Position Available: Established, three lawyer, Central Washington firm seeking associate with interest or experience in estate and business tax planning in addition to interest in broad, general practice. All inquiries will be strictly confidential. Contact Frederick, Beckley & Cooper, 701 N. Pine, P.O. Box 858, Ellensburg, WA 98926.

Weiss, Derr & DesCamp: Growing Portland law firm specializing in tax, corporate and land use law. Excellent opportunity for lawyer with 1-3 years experience in estate planning and tax who is ready for a high level of client contact and responsibility; good academic credentials required. All replies confidential. Send resume to John B. DesCamp, Norton House, 33 N.W. First Avenue, Portland, Oregon 97209.

Opportunity Available: Southwest Washington law firm is looking for a litigation lawyer — minimum of three years experience — great opportunity for lawyer whose natural habitat is the Courtroom. Write with full resume and experience details to Box 17, WSBA.

Position Wanted: D.C. corporate attorney, 28, three years experience, seeks to expand field of practice with Seattle firm or corporation. Top law school. Respond to Box 26, WSBA.

Position Wanted: Attorney, age 35, eight years litigation experience, including complex, federal litigation; excellent academic and professional credentials; available June 1, 1981, prefer association with smaller or medium-size firm. Please reply to Box 2, WSBA.

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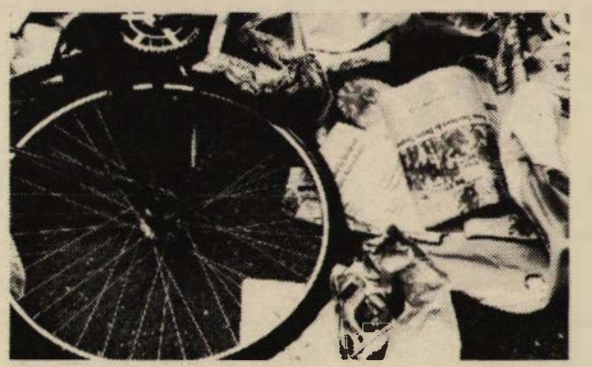

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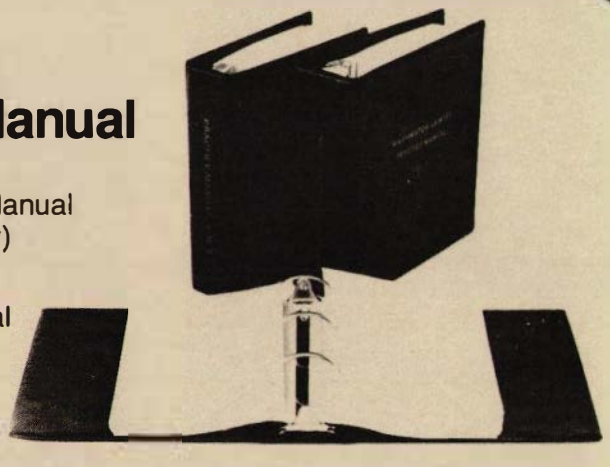

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