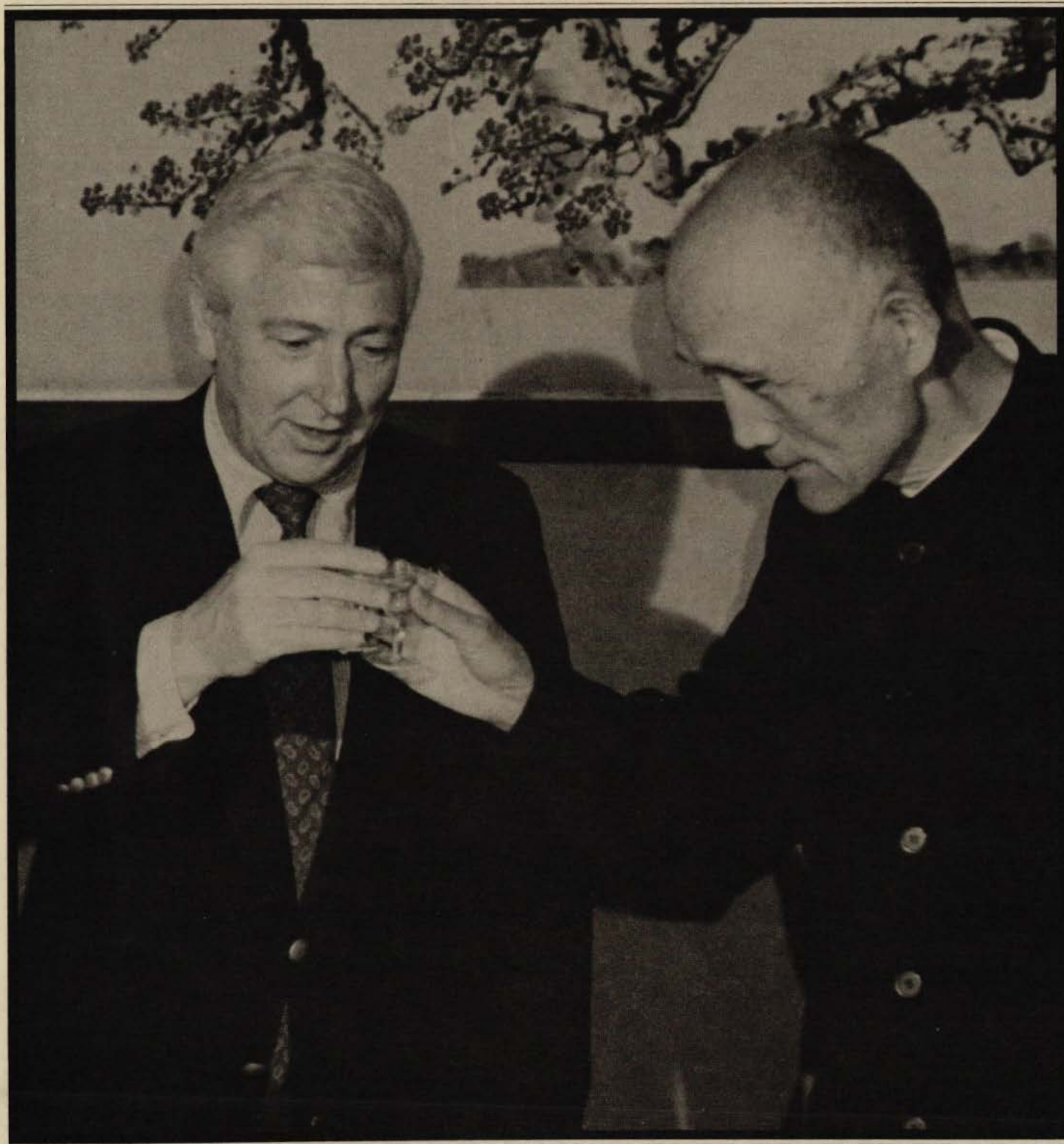
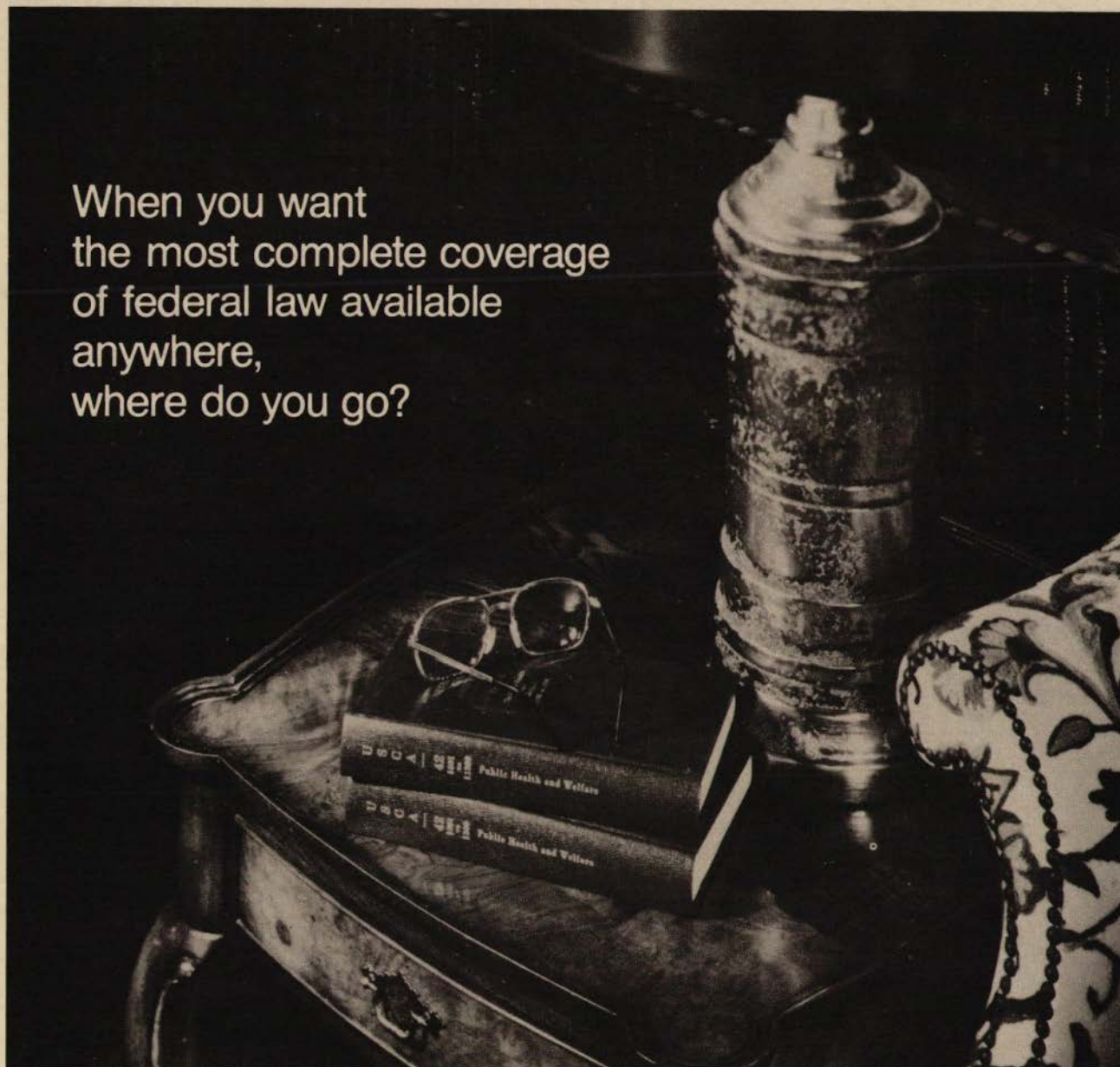


Washington State **Bar**
News Volume 37, No. 5, May 1983



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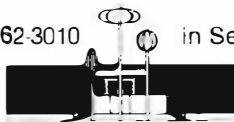
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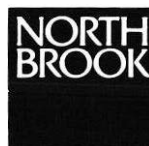
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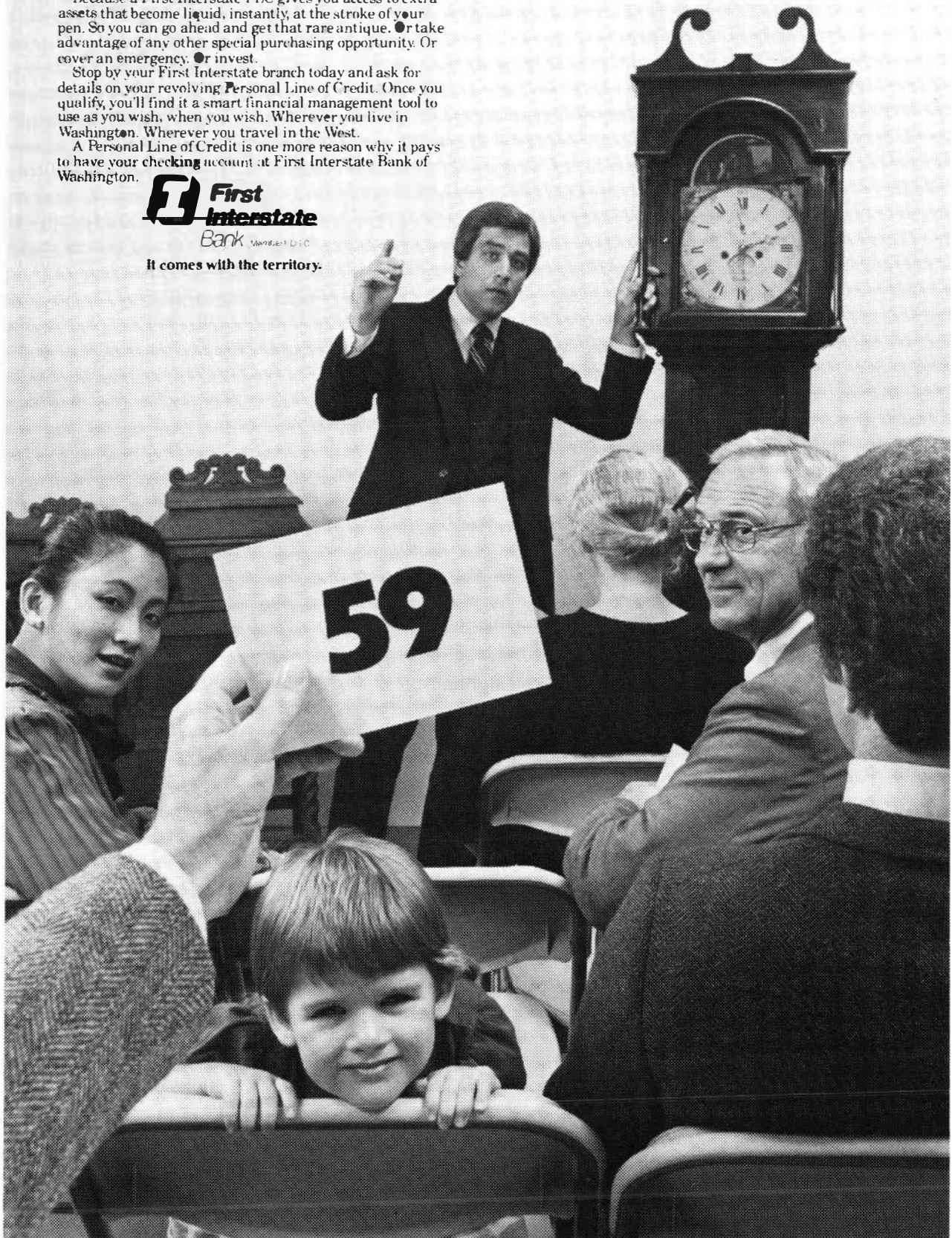
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Washington State Bar News

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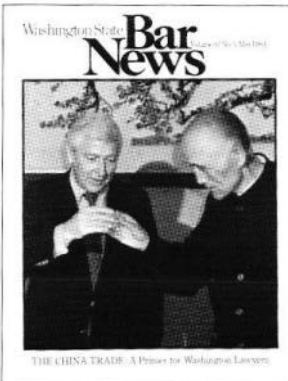
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Our Cover



A toast! Washington Governor John Spellman and Sichuan Province Governor Lu Dadong in Chengdu in October, 1982.

The State of Washington is well-positioned to participate in trade development between the United States and the People's Republic of China. In this issue, Tom Roach presents a Washington/China trade primer for lawyers.

Cover photograph courtesy of Washington State/China Relations Council.

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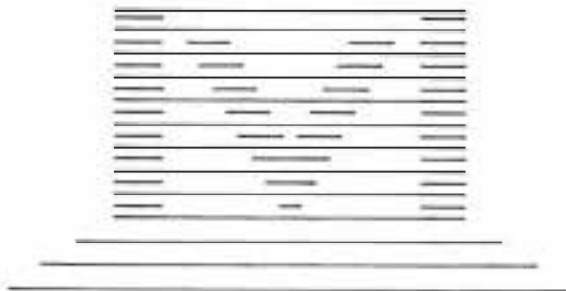
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Letters to the Editor of reasonable length are invited. Such letters should be typed and signed. The Editor reserves the right to select communications or excerpts therefrom for publication, and to edit any letter as may be appropriate.

Chicken Little Was Right

Editor:

It is with great pleasure that I read Hugh Spitzer's article concerning the Judicial Council, and your editorial about the problems caused by recent Supreme Court decisions regarding jury trials at the municipal and district court levels [*Bar News* 37:1:7,10].

After having spent over two years talking to legislators, judges and attorneys about the problems inherent in the advent of electronic equipment, and after having been accused of being "Chicken Little waiting for the sky to fall," it is with great satisfaction that I stand back and say, "I told you so."

Perhaps in the future someone will occasionally take the time to listen to this "Chicken Little"

GORDON L. GODFREY

Aberdeen

Custody Confidentiality

Editor:

I read the article on the confidentiality of child custody mediation by Teresa Pottmeyer [*Bar News* 37:2:12] and was left with the impression that Family Law mediators may have a paper-thin shield, if any at all.

While it is true that no statute or court rule presently addresses the confidentiality of mediation negotiations, there are a number of sources of authority that the practitioner may wish to use in protecting confidentiality according to the specific facts of each case.

Evidence Rule 408 expressly protects the confidential nature of offers of compromise, and a note thereto indicates that this is a departure from previous federal and state law. Civil Rule 16 governs the issuance of pre-trial orders and may be applicable in counties where there are man-

datory settlement conferences. RCW 26.12.080 provides for confidentiality upon request in Family Law proceedings, although some counties grant confidentiality under this statute as a matter of course.

Of course, one can also argue the privilege statute alluded to in the article (RCW 5.60.060), as well as that which may relate to the particular discipline of the mediator involved (physician/patient or psychologist/client). Many mediators use rules or agreements which prohibit publication of information outside the mediation forum so that principles of contract law would be applicable in those cases.

Of further interest, a bill has been submitted to the legislature which would provide that child custody or visitation conflicts being initiated or prosecuted under RCW 26.09 be subject to mandatory mediation across the state. Yet the second to the last paragraph of that bill provides, "The mediator shall assess the needs of the child or children and may, in accordance with the local rules, make a recommendation regarding custody or visitation..."

This section, if adopted, would do much to undermine the confidentiality of mediation, since whenever a recommendation is made, due process rights require the opportunity to examine and cross examine the evaluator and the record upon which the evaluation was made.

I appreciate your publication of an article dealing with this contemporary issue.

STEPHEN M. GADDIS

Court Commissioner

Seattle

Startled!

Editor:

In reviewing our continual commitment to the improvement of the practice of law, I have had a startling revelation.

Rules on interrogatories in Superior Court require three copies to be served on the opposing party with the original filed in Superior Court.

My secretary has finally confronted me with the fact that we have a copy machine

and that carbon paper has been passe for a number of years. I suggest (in accordance with my secretary's beliefs) that we suggest to the Board of Governors and the rule-making committee that we no longer be required to waste our secretaries' time and our paper by serving three copies of interrogatories on the opposing party—one copy is sufficient.

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Editor:

Exception is taken to the Pierce County report in the March issue where it was reported by George Kelley that our firm was too cheap to throw a party for our new associate, Patricia Rourke. The writer should realize that there is a difference between being "too cheap to throw a party" and being circumspect in whom one invites.

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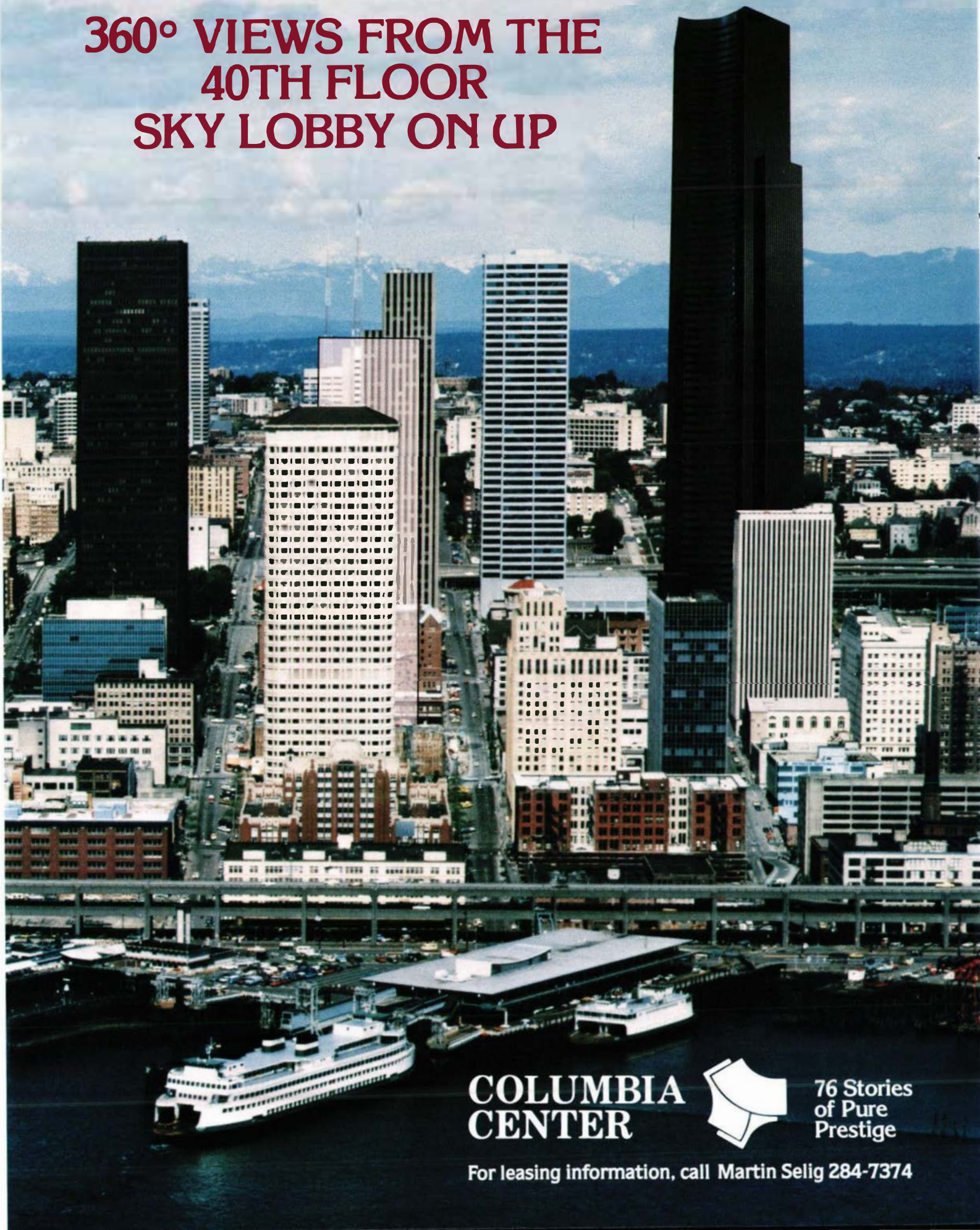
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The Verdict

"Ladies and gentlemen of the jury, you may now retire and consider your verdict...."

The bailiff leads the twelve men and women away to the jury room and the judge recesses court. **It is 4 p.m.**

The trial of *Maulwurf V. Misthaufen* has lasted two unspectacular days. "How come we didn't call any surprise witnesses?" my client wants to know when the last juror has filed out. He has seen too many television and Hollywood lawyer-movies and is obviously disappointed that nothing earth-shattering occurred at his trial.

I curse silently and explain that I am neither Paul Newman nor Perry Mason, and that there are major differences between a Hollywood production and a real trial. My client says he understands, but I know he would still rather be represented by Paul Newman in a Hollywood script than by me in the county courthouse.

5 p.m. — My client and I sit alone in the empty courtroom. He reads the newspaper and I read the advance sheets. Occasional muted laughter rolls out from behind the closed doors of the jury room. Otherwise nothing. Opposing counsel has gone home for the evening.

I begin to reenact the trial subconsciously:

Why hadn't I objected to the admission of exhibit six?

Why didn't I think of some clever repartee when on cross examination their expert suddenly pointed out that my fly was down?

Couldn't I have done a better job drafting my instructions (e.g., "Defendant is absolutely liable no matter what the facts or the evidence")?

Was the other side right after all?

How could I have forgotten to ask their witness the sixty-four-thousand-dollar question I had planned so long to ask him?

Could Paul Newman really have done a better job?

6 p.m. — The jury sends out a note. It's hungry. The bailiff takes the jurors out

for steak and lobster; my client and I dine at McDonald's.

"What are they doing?" my client wants to know. "What's taking them so long? Are we going to hit the jackpot?" He lapses back into his Hollywood fantasies as dollar signs dance like sugar-plum fairies before his eyes.

I tell him I do not know what the jury is doing. They could be discussing liability or they could be discussing damages, I explain. And we are definitely not going to hit the "jackpot."

"They had better be discussing damages or you won't get paid," my client jokes and joshingly slaps me on the back. I smile wanly at him. He offers to buy me a burger, but I have lost my appetite. As my stomach groans, I remember that my car has been illegally parked since this morning and has probably been towed.

7 p.m. — The jury returns and continues deliberations. A couple of jurors send out notes to notify their spouses that they may not be home for a long time. The bailiff tells us that at dinner the jurors discussed the possibility of returning a verdict against the individual attorneys. The bailiff thinks it would be a good joke. I am not amused.

8 p.m. — A note from the jury! Our hearts flutter, but it is only a false alarm. They want to know who is winning the Mariners baseball game. "Reread your instructions," the judge advises them.

9 p.m. — Nothing. There is no more laughter now. Cigarette smoke curls from underneath the closed jury room door. The jurors have requested more coffee, a pocket calculator, one large coin (suitable for flipping), popcorn, four chocolate milkshakes, two martinis, a transistor radio (so they can listen to the Mariners game) and some aspirin. The bailiff brings them coffee and aspirin.

My mental videotape of the case replays incessantly. I recollect with mortification how on day one of trial I spilled a glass of water all over my trousers. I cringe as I recall how my main witness suddenly developed lock jaw on the second day of trial and how I practically had to drag testimony out of him like a dentist pulling teeth. I blush as I remember being

chewed out by the judge for making a "dumb" objection.

My client rouses me from my reverie. "How're we doing, Counselor?" he asks me. I shrug. I can tell he would still rather be represented by Paul Newman.

10 p.m. — Another note from the jury. They are deadlocked...they are unable to choose a foreman! The judge gives the jury a modified "dynamite" instruction: *Get the lead out of your pants or you may never see your loved ones again* (or something to that effect).

11 p.m. — Nothing.

I ruminate about how jury selection went. I tried to voir dire my jury "scientifically." I rejected every juror who had the wrong social profile, the wrong profession, the wrong hair style, the wrong politics and who saw the wrong movies. That obviously included everyone who had seen Paul Newman's latest movie *The Verdict*. Unfortunately, they *all* had the wrong social profile, profession, hair style, politics and taste, and every one of them had seen *The Verdict*. I ended up with twelve jurors who love Paul Newman, hate me and who bear a strong physical resemblance to opposing counsel.

12 midnight — A buzzer awakens the bailiff from his slumber. "They're ready," he tells us after a short visit to the jury-room.

The judge returns to the courthouse again. He had gone home to sleep. He slips his judicial robe over his pajamas. My heart begins pounding. The jurors come in. They look tired and disheveled. I search their faces for clues. Two jurors scowl at me.

"How does it look, counselor?" my client asks. He sees the two jurors. "It's a positive sign," I answer. "We need ten jurors to win and only two scowled at us."

"Have you reached a verdict?" the judge inquires.

The jury foreman stands. It is one of the two who scowled. "We have reached a verdict, your Honor...."

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No Justice In Justice Court

by Charles A. Schaaf

As detailed in the January issue of the *Bar News* (37:1:7, 10-15 — Hugh Spitzer's "Rules Blues" and the Editor's Page), we have a mess in the justice courts.

Before the abolition of *de novo* appeals from the justice courts, defendants and other litigants had access to cheap and speedy justice in those courts for cases in which relatively little was at stake — misdemeanors and low-value civil cases. Lawyers rarely advised clients to demand their right to jury trial.

Litigants were usually satisfied with the results of the justice court proceeding — especially when told what the fees would be for a jury trial *de novo*. Only a small percentage of cases were actually retried in the Superior Court.

The new system almost *requires* long jury trials in the justice court for most moderately serious cases. The lawyer who does not advise the client to demand a jury practically commits malpractice. The new system also tends to encourage appeals. The attorney fees for an appeal are now, very often, less than for the trial.

The old system should be brought back. The new system uses far more District Court judge time, to save only a small amount of Superior Court time. It increases the cost to litigants, and, at least where I practice, it is strongly disliked by judges and attorneys in general.

The State Constitution clearly states that justice courts cannot be made into courts of record. This restriction was added into the proposed language of the Constitution after at least one delegate complained that the justice court should be abolished "because there is no justice there." See *Journal of the Washington State Constitutional Convention: 1889*, B. Rosenow Ed. 1962 at P. 616.

Blackstone's Commentaries states as follows regarding courts of record and courts not of record:

A court of record is that where the acts and judicial proceedings are enrolled in parchment for a perpetual memory and testimony: which rolls are called the

records of the court, and are of such high and supereminent authority that their truth is not to be called into question. For it is a settled rule and maxim that nothings shall be averred against a record, nor shall any plea, or even proof be admitted to the contrary.... A court not of record is the court of a private man.... Such are the courts-baron incident to every manor, and other inferior jurisdiction: where the proceedings are not enrolled or recorded; but as well their existence as *the truth of the matters therein contained shall, if disputed, be tried and determined by the jury.*

3 *Blackstone's Commentaries* 24-25

The difference between courts of record and courts not of record was not in the presence of a jury, for juries were available to both. It was, rather, in what could be proved when the judgement of the court was attacked when some writ brought the case up for review in a higher court. If the court was of record, the facts stated were not subject to further testimony, and review was by writ of error. If the court was not of record, review was by writ of false judgment, under which the appellant claimed that the court had ruled falsely on the facts, and testimony as to the facts of the case was again heard in the appellate court, (*id.* at 34-35). In other words, the phrase "court not of record" has, as its primary meaning, "court which can be reviewed by *de novo* trial."

In *Seattle v. Filson*, _____ Wash 2d _____, 653 P. 2d 608 (1982), the Court noted that according to *Black's Law Dictionary*, a court can be a court of record for some purposes and a court not of record for other purposes. To me, this implies that the meaning of the terms is so well understood that it is possible to precisely define when a particular court acts as a court of record, and when it acts as a court not of record. The Supreme Court, however, decided that this means that "the expression 'court of record' is not one of fixed meaning" (*id.* at _____, 653 P.2d at 610). The Court continues, "The question whether a decision by a court of limited jurisdiction rendered pursuant to the RALJ is subject to attack in collateral proceedings... [is] not before us in this action." The Court affirmed that

the records of the justice court are still subject to collateral attack. (*id.* at footnote 3).

At that point, one could heave a sigh of relief. Collateral proceedings (which have normally been understood to include attacks on the factual findings of the court) are still possible. The Court continues, "Despite the fact that an appeal from a court of limited jurisdiction *may* be taken on the record, it is not a 'court of record'..." This is a correct ruling; the justice court does not become a court of record unless an appeal can *only* be taken on the record. There is nothing in our Constitution which precludes the Supreme Court from making an appeal on the record *possible*, provided it does *not* take away the option of an appeal *de novo*.

The Supreme Court, however, then made another jump. In *Seattle v. Hesler*, _____ Wash. 2d _____, 653 P. 2d 631 (1982), regarding a defendant charged with a misdemeanor, the Court said, "He had no constitutional right to a trial *de novo* on appeal." *Seattle v. Filson*, _____ Wash. 2d _____, 653 P. 2d 608 (1982) (*id.* at 653, p.2d at 636).

This constitutional prohibition applies only to the courts of the Justices of the Peace, not to all courts of limited jurisdiction (see Art. IV, Sec. 11 of the Wash. Constitution). The Seattle Municipal Court is *not* the Justice of the Peace Court. The Justice of the Peace Courts are now, in most counties, the District Courts, which may have municipal departments under R.C.W. 3.46 or 3.50. It is permissible for the Legislature, or the Supreme Court, to make the municipal courts, and probably the municipal departments, into courts of record, but the remainder of the justice courts' jurisdiction *must* be exercised as a court not of record, with a right of *de novo* trial, if requested, on review.

I continue to hope that the Supreme Court will recognize the constitutional right of *de novo* appeal from all decisions of the justices of the peace, but that hope is growing dim.

Charles A. Schaaf practices law in Forks, Washington.

THE CHINA TRADE



A Primer for Washington Lawyers

by Tom Roach

In 1899, President Theodore Roosevelt declared the "Open Door Policy," by which the American government pledged its support for the proposition that all trading nations should have equal and open access to both the markets and resources of a territorially united China.



Tom Roach practices law with the firm of Dahl & McQuiston in Seattle. He received his B.A. from Seattle University in 1971, his J.D. from the University of San Francisco in 1975, and recently completed the Master's Program in international law and politics at Columbia University.

Almost three-quarters of a century later, in February of 1972, President Richard M. Nixon travelled to China on a journey which marked the dramatic reopening of China's doors to the Western world after they had been tightly closed to most outsiders for several decades. Ten full years have passed since that historic presidential trip, and the true possibilities and many limitations of the alluring China trade have finally emerged into clear view.

The purpose of this paper is to sketch an outline of the evolving China trade from an attorney's point of view. By looking closely at the historical antecedents, the present legal developments, and the likely future prospects, the Washington attorney who is interested in the China trade will be equipped with a more complete and realistic picture of the multifaceted considerations that affect trade with China.

THE HISTORICAL CONTEXT

Before 1972

From an historical point of view, China's experience with the West has not been a particularly happy one. For the most part, it has consisted of great abuse and attempts to impose

Western laws and ways upon the Chinese through superior force. This legacy of insensitivity to Chinese culture has left a lingering suspicion of the West in most Chinese minds which may only now be in the process of breaking down.

The early events which established the tenor of China's relationship with the West were the so-called Opium Wars, the first of which began in 1839. As a result of that Opium War, the British demanded and received control of Hong Kong, indemnities amounting to millions of dollars, the right to sell opium in China, and the privilege to trade in five Chinese ports.¹ Because the Chinese lacked a strong central government, they were, in many ways, at the mercy of more highly developed and militarily equipped Western powers which chose to travel there. For this reason, the sad plight of the Chinese at the mid-nineteenth century was destined to worsen in the years ahead.

By the turn of the century, France, Germany, Russia and Japan had joined the British in a scramble to develop "spheres of influence" within China, over which each nation hoped to assert rights of near total control. It was at this point that the United States announced the policy of the "Open Door," by which to prevent its exclusion from the competition in China by asserting the equal right to all nations to trade throughout China.

After a period of Japanese domination before and during the Second World War, it was the West, and specifically the United States, which returned as China's greatest vexation, first in Korea and later in Vietnam. By this time, Mao Tse-tung and the Communists had come to power, and the long-sought ideal of a unified Chinese nation had finally become a reality. In the view of Chinese leadership, American military involvement in Korea in the 1950s and in Vietnam in the 1960s and early 1970s posed a direct military threat to Chinese national security, which served to further heighten their disdain and distrust of the West.

Exploitation, suspicion and mutual misunderstanding were the hallmarks of China's "Western experience" in the years before 1972. Although China is now widely regarded as a full and sovereign member of the international community, the Chinese people are still "highly sensitive to past humiliations imposed by the West."²

1972 and After

It was a watershed year for China's relations with the West in general and the United States in particular. In 1972, Mao Tse-tung was the undisputed helmsman of a unified China, and the policy of self-reliance had molded the Chinese into a people accustomed to relying on their indigenous potential and to spurning outside help.³ Mao's confidence in his ability to pre-

CHRONOLOGY OF CHINESE/WESTERN TRADE EVENTS

1839-1842	First OPIUM WAR
1899-1900	The "OPEN DOOR POLICY"
1949	MAO TSE-TUNG Comes to Power
1950-1953	The KOREAN WAR
1964-1973	The VIETNAM WAR
1972 Feb.	PRESIDENT NIXON to CHINA Shanghai Communique
1976 Sep.	MAO TSE-TUNG Dies
1977	DENG XIAOPING Rehabilitated
1978 Mar.	FOUR MODERNIZATIONS PLAN Formally Announced
1979 Jan.	US-PRC Establish FULL DIPLOMATIC RELATIONS
Feb.	DENG XIAOPING VISITS U.S. and SEATTLE
early	RETRENCHMENT Begins
Jul.	US-PRC TRADE AGREEMENT Signed
Jul.	JOINT VENTURE LAW
1980 Aug.	SPECIAL ECONOMIC ZONES Authorized
Sep.	JOINT VENTURE TAX LAW INDIVIDUAL INCOME TAX LAW
1982 Jan.	FOREIGN ENTERPRISES TAX LAW
Jul.	LAW on ECONOMIC CONTRACTS
Aug.	Shanghai II Communique
Sep.	12th COMMUNIST PARTY CONGRESS of PRC
Oct.	GOVERNOR SPELLMAN VISITS BEIJING and SICHUAN PROVINCE

vent a reemergence of unregulated Western influence in China (like that which had taken place in the pre-War era), along with his concern over expansionist Soviet military ambitions on the Sino-Soviet border, led him to pursue a policy of detente with the United States in 1972.

In February of that year, President Nixon visited Beijing, and the Shanghai Communique was jointly promulgated, by which the United States and China began their formal processes of diplomatic recognition. Due to the political sensitivity of the Taiwan issue, and the fact that for many years the Americans had regarded the government of Taiwan as the sole representative of the mainland Chinese, the recognition process required several years to complete.

In late 1976, with the death of Chairman Mao, the pace of events quickened substantially. With the subsequent rehabilitation of Deng Xiaoping (who had been thrice purged as a "capitalist roader"⁴), support for rapid modernization rose within

¹Treaty of Nanking, as reported by Robert H. Knight and Lisa Sloan, "Strangers Across The Table: An Overview Of The Influence Of The Developing Chinese Legal System On Commercial Relations Between the People's Republic Of China And The United States," 1 *China-International Business* 1981, p. 563.

²Marc Palay, "Legal Aspects of China's Foreign Trade Practices And Procedures," 12 *Journal of International Law and Economics* 1977, p. 106.

³Stanley B. Lubman, "Trade Between the United States and the People's

Republic of China: Practice, Policy and Law," 8 *Law and Policy in International Business* 1976, p. 9.

⁴"Deng: Cleaning Up Mao's Feudal Mistakes, *The Washington Post*, August 31, 1980, p. D5.

the party. In March of 1978, the Four Modernizations program was proclaimed, calling for advancements in agricultural science, industrial automation, transport and communications service, and labor productivity. Chinese leadership realized that any serious attempt to complete modernization would require an incredible degree of national commitment—and could not be accomplished without assistance from the West.

With the completion of full recognition of the Beijing government on January 1, 1979⁵, and the signing of an American-Chinese Trade Agreement six months later⁶, the American government took the first necessary steps in clearing the way for American business to take full advantage of new Chinese trade and investment opportunities. While the instrument of diplomatic recognition was primarily a political document, the Trade Agreement provides the general legal foundation upon which commercial intercourse between the two nations is based.

Since the adoption of the Trade Act, the People's Republic of China has enacted numerous other laws which address various aspects of the evolving legal framework of their foreign trade. The laws deal with areas as diverse as foreign exchange control and labor-management relations, joint venture tax-

tion, and how lawyers should behave.⁷ Those of greatest overall significance to the attorney attempting to familiarize himself with the China trade in a broad sense will be discussed in the following section.

Despite some encouraging commercial statistics, the China trade has not been without difficulties. The concern of greatest note has been China's retrenchment from the furious pace of importation, trade and development initially envisioned as a result of mammoth ambitions. First announced in 1979, the retrenchment policy has resulted in many of China's bold 1978 proposals being scaled back to more realistic levels⁸. Excessively ambitious development goals on the part of the Chinese and overly-optimistic assessments of trade opportunities by American businessmen collided head-on with reality, resulting in a new view, on both sides, of what is possible in what time-frame. The readjustments have far from signalled an end to possibilities for trade with the People's Republic of China; they have, however, recast expectations on both sides in a more realistic—and more economically stable—light.

⁵Joint Communiqué on the Establishment of Diplomatic Relations Between the United States of America and the People's Republic of China (1979).

⁶Agreement on Trade Relations Between the United States of America and the People's Republic of China (1979).

⁷Provisional Regulations for Exchange Control of the People's Republic of China (1981); Regulations on Labor Management in Joint Ventures Using Chinese and Foreign Investment (1980); Income Tax Law of the People's Republic of China Concerning Joint Ventures with Chinese and Foreign Investment (1980); Provisional Regulations of the People's Republic of China Regarding Lawyers (1980).

⁸Fredrick S. Davidson, "U.S./China Business Relations: The Carter Record and the Reagan Agenda," *China-International Business* 1981, p. 359.

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In September, 1982, the Chinese Communist party held its party congress. Deng Xiaoping's modernization program and open door policy with the West were formally endorsed.

THE LEGAL FRAMEWORK

The Chinese conception of law differs greatly from that of the nations of the West. Whereas the Western mind has long been accustomed to exhaustive compilations of rules, regulations and codes by which every kind of behavior is defined and regulated, the Chinese tradition of behavior regulation is based upon more subtle notions like social pressure, friendship, understanding and flexibility.⁹ The Chinese have generally shunned strict behavioral codes. In addition to this cultural aversion to the promulgation of precise rules, Chinese experience with Western law at the hands of the British during the Opium Wars, and with other Westerners on other occasions, left them with the impression that law was nothing more than "a tool of the ruling class"¹⁰ and that lawyers were little more than "litigation tricksters".¹¹

Despite what a lawyer trained in Western legal tradition would consider to be serious inadequacies in the developing Chinese legal system, those laws which have been promulgated so far are, nonetheless, a quantum leap beyond what existed (or more accurately, what did not exist) just 5 years ago. The numerous enactments which have recently emerged certainly represent a significant step in a positive direction. Of all the recent enactments, four areas are of special importance to the American attorney, since they constitute the very heart of the nascent Chinese commercial legal structure. They are the US-China Trade Agreement of 1979, the Joint Venture Law, several Income Tax Laws, and the Regulations Relating to the Special Economic Zones.

The US/China Trade Agreement of 1979

The US/China Trade Agreement¹² stands as the legal framework which bridges the gap between Chinese socialism and American capitalism. As a general guide for the conduct of trade between the two nations, its provisions are intended to address basic issues of mutual concern in an effort to enable and promote long-term bilateral trade.

Some of the more prominent sections deal with the reciprocal extension of Most Favored Nation status (Art. 2), the protection of patents, copyrights and trademarks (Art. 6), and procedures for the settlement of commercial disputes (Art. 8). The according of MFN status ensures that tariff duties on trade items from both countries will be set at more favorable rates. The inclusion of protection for intellectual property in the agreement is considered significant because Communist theory

⁹"Trade: New Opportunities in Liberalised Beijing," *Asian Business*, January, 1981, p. 55.

¹⁰See *Supra*, note 1, p. 563.

¹¹Henry T. King, Jr., "Mission to China of the Section of International Law of the American Bar Association," 11 *Case Western Reserve Journal of International Law* 1979, p. 239.

¹²Agreement on Trade Relations Between the United States of America and the People's Republic of China (1979).



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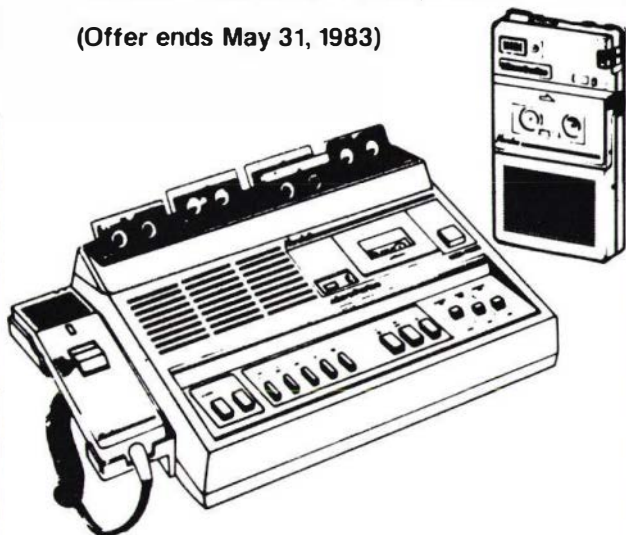
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generally reserves to the state the ownership of all such property rights.¹³ The dispute settlement provisions allow for arbitration proceedings for private firms in the event that conciliation between the parties proves unsuccessful.

Other sections deal with safeguards against market disruption, establishment of Chinese eligibility for U.S. Ex-Im Bank credits, and the authorization for reciprocal placement of banks and business representatives in both countries.

The Joint Venture Law

China's Joint Venture Law¹⁴ was enacted as a direct result of China's awareness that a more explicit legal framework is absolutely essential if its hope to encourage investment and trade from the West is to become a reality.¹⁵ Intended primarily as an enabling act, the law establishes a legal basis and general guidelines for the establishment and operation of joint ventures between foreign enterprises and Chinese entities. As such, the law is very general and quite vague; actual joint venture agreements require comprehensive and detailed provisions to adequately address the many contingencies that doing business in the People's Republic entails.

'The Chinese trade has not been without difficulties'

The law's simple purpose is "to permit foreign companies to incorporate themselves within the territory of the People's Republic of China . . . on the principle of equality and mutual benefit" (Art. 1). Such ventures will take the form of limited liability companies in which the foreign participant is required to contribute a minimum of 25% of the registered capital (Art. 4). That capital can consist of cash, capital goods, industrial property rights or other assets (Art. 5). The most common contributions from the Chinese partners to date have been land, factories, labor and raw materials, while the foreign partners have generally contributed technology, machinery, and some raw materials.¹⁶

¹³See "Doing Business with China," 19, U.S. Department of Commerce, Industry and Trade Administration, (1979).

¹⁴The Law of the People's Republic of China on Joint Ventures Using Chinese and Foreign Investment (1979).

¹⁵H. Holtzman and W. Surrey, eds., *A New Look At Legal Aspects of Doing Business With China: Developments A Year After Recognition*, (1979) p. 117-19.

¹⁶Walter Sterling Surrey, "Trade and Economic Relations With the People's Republic of China: Recent Developments," 14 *International Lawyer* 1980, p. 17.

Profits and losses are to be divided proportionate to the capital contribution of each party (Art. 4), and any technology invested by the foreign party must be "truly advanced and appropriate to China's needs." In instances where this standard is not met through "intentional deception, . . . compensation shall be paid for the losses" (Art. 5).

Joint ventures are required to have a board of directors, which is to be composed of individuals chosen by each party and headed by a chairman appointed by the Chinese with one or two vice-chairmen chosen by the foreign participant. The board possesses authority to act on all issues concerning the venture. Foreign managers may be selected, and their powers include the hiring and firing of employees (Art. 6).

The gross income of the venture is subject to the joint venture income tax, after deductions for worker bonus and welfare, expansion, and reserve funds. Tax holidays are available for joint ventures equipped with "up-to-date technology by world standards" for the first two or three profit-making years. Tax incentives are also available for those who reinvest profits within China (Art. 7).

Article 9 allows a joint venture the opportunity to distribute its product "on the Chinese market." That same Article and the two which follow it deal with remission abroad of wages, profits and "other legitimate income." However, such remittances are subject to the foreign exchange regulations which

reduce the simple attractiveness of the bland remittance language¹⁷ (Arts. 9, 10, 11).

The contract period of a joint venture may be extended upon expiration through agreement between the parties (Art. 12), and, in cases of heavy loss, the contract period of the venture can be shortened (Art. 13). Settlement of disputes can be submitted to conciliation or arbitration, but only after consultations have failed. If no arbitral body is designated by the parties, China's arbitration board is employed (Art. 14). It is, therefore, recommended that a clause designating an arbitral body in a third country be included.¹⁸

In the final analysis, at least in the opinion of one of China's Vice Premiers, the Joint Venture Law seems to be largely what the joint venture partners agree, contractually, to make it.¹⁹

The Income Tax Laws

Not unlike tax laws in the United States, the recently published series of tax laws in China²⁰ is probably the most difficult part of China's new legal system. This synopsis will sketch the

¹⁷Martin F. Klingenberg and Joseph E. Pattison, "Joint Ventures in the People's Republic of China: The New Legal Environment," 19 *Virginia Journal of International Law* 1979, p. 822.

¹⁸Timothy Haosen Wan, "A Comparative Study of Investment Laws in Taiwan and China," 11 *California Western International Law Journal* 1981, p. 278.

¹⁹David E. Birenbaum and William P. Alford, "China's Law on Joint Ventures—The First Year in Review," *National Law Journal*, July 21, 1980, p. 26.

²⁰This compilation and summary of China's primary tax laws does not address itself to possible federal and Washington State tax liabilities which might be



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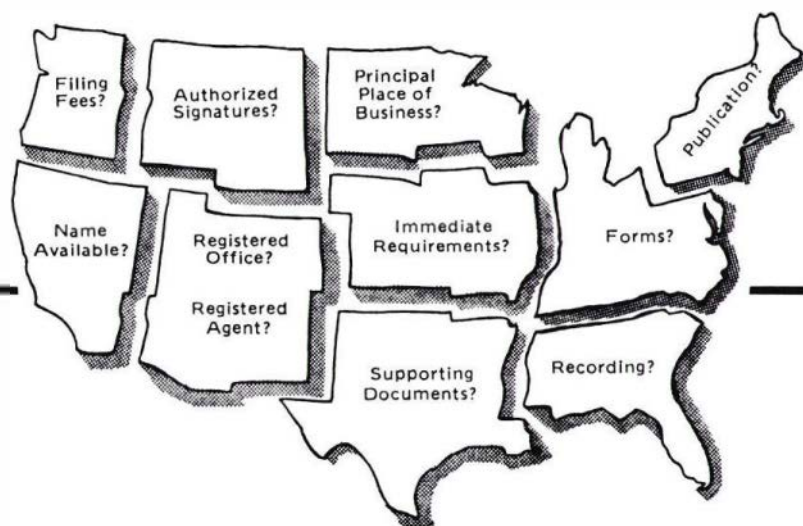
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'This legacy of insensitivity to Chinese culture has left a lingering suspicion of the West in most Chinese minds'

four income tax laws of greatest importance to the foreign business operating in China.

Pre-1978 Tax Laws

Enacted in 1950, the Industrial and Commercial Income Tax (ICITA) applies varying rates of taxation to the incomes of permanent commercial enterprises, temporary commercial enterprises, and street peddlers. It is levied on taxable income arrived at after deducting costs of production, administrative expenses, all other necessary expenses, and the amount of any Consolidated Industrial and Commercial Tax (CITCA) paid.²¹ Depreciation is an allowable deduction. The tax is progressive, with the lowest rate 5.75% and the highest 34.5%. In addition, a surtax is imposed that can vary between 10% and 100% of the income tax due. According to some American experts on Chinese tax law, "the extent to which the ICITA will be applied to foreign businesses remains unclear."²²

The Consolidated Tax (CITCA) dates back to 1958, and is a gross receipts or sales tax which is imposed on goods and services at each successive stage of production or fabrication when they are transformed from one entity to another. The tax rates vary from 1.5% to 69% of gross value and are levied even at the retail level. This tax has long accounted for the largest single source of revenue for the PRC.²³

The Joint Venture Income Tax Law

The Joint Venture Income Tax Law²⁴ consists of eighteen broadly worded articles. It applies to the net income of joint ventures derived from "production, business and other sources" on a worldwide basis after deduction of costs, expenses and losses (Art. 1). The basic rate of taxation is 30%, but the effective rate is 33%, since a 10% local government tax must also be included (Art. 3). In addition, a 10% tax on remitted funds is also levied (Art. 4).

A joint venture scheduled to operate for more than 10 years is eligible for a tax holiday of 100% for its first profit-making year and 50% for the second and third years. Such ventures involved in farming, forestry or in "remote, economically underdeveloped outlying areas" are eligible for a 15-30% tax reduction for an additional 10 years (Art. 5).

incurred as a result of doing business in the PRC. To determine such liabilities, domestic tax law must be consulted.

²¹Price Waterhouse Publication, *Doing Business In The People's Republic of China* (July, 1979) p. 17.

²²Richard D. Pomp, Timothy A. Gelatt and Stanley S. Surrey "The Evolving Tax System of the People's Republic of China," 16 *Texas International Law Journal* 1981, p. 39.

²³A. Donnithorne, *China's Economic System* (1967) p. 372.

²⁴Income Tax Law of the People's Republic of China Concerning Joint Ventures with Chinese and Foreign Investment (1980).

Upon reinvestment of its share of the profit, a foreign investor may obtain a refund of 40% of the income tax paid on the reinvested amount (Art. 6). Losses incurred in one taxable year may be carried forward to the next year and subtracted dollar for dollar from the second year tax liability. If, however, the losses carried forward exceed the tax liability in the second year, further deductions against income over a period not exceeding 5 years are permissible (Art. 7).

Tax authorities reserve the right to investigate joint venture accounts (Art. 12), and a surcharge of 1 1/2 % of the tax liability must be paid on overdue tax payments (Art. 13). Article 14 imposes penalties for tax evasion. In order to challenge one's tax liability, the amount in dispute must be paid in first. If the decision of the tax authority on the matter remains unacceptable, the issue may be appealed to the local people's court (Art. 15). A credit is available for income taxes paid by the joint venture or by its branch in another country (Art. 16).

The Individual Income Tax Law

The Individual Income Tax Law²⁵ consists of fifteen articles, several of which are similar to articles of the Joint Venture Income Tax Law. Individual Income Tax is levied on incomes gained within or outside of China by any person residing for one year or more in China. For individuals living in China for less than one year but 90 days or more, taxes are levied only on "income gained within China" (Art. 1).

Since it is reported that only 20 Chinese citizens earn enough income to be liable for the Individual Income Tax, the primary purpose of the new law would seem to be to generate revenue from foreign businesspersons residing in the People's Republic.²⁶

The Foreign Enterprise Income Tax Law

The nineteen-article Foreign Enterprise Income Tax Law²⁷ became effective on January 1, 1982. As a follow-up to the Joint Venture and Individual Income Tax Laws, its purpose is to establish a tax structure for categories of business arrangements other than joint ventures which have proliferated in China over the past few years. Specifically, the new tax is levied on income derived from "production, business and other sources" by any foreign enterprises which have "establishments" in the PRC (Art. 1). Income is taxed after the costs, expenses and losses have been deducted (Art. 2).

²⁵Individual Income Tax Law of the People's Republic of China (1980).

²⁶"The Income Tax Comes to China But It Aims Mainly At Foreigners," *New York Times*, September 3, 1980, p. A1.

²⁷Income Tax Law of the People's Republic of China Concerning Foreign Enterprises (1981).

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The tax is progressive, and the rates vary from 20% to 40% (Art. 3). In addition, a local income tax of 10% is levied, but an application for reduction or elimination of the local tax can be made if the business enterprise is "small-scaled" or "low-profit" (Art. 4). Like the Joint Venture Tax Law, the Foreign Enterprise Tax Law makes available special tax holidays for enterprises scheduled to operate for 10 years or more, but only if they are engaged in farming, forestry, animal-husbandry or "other low-profit occupations" (Art. 5). The 5-year carry-forward of unused losses is also allowed (Art. 6).

A second category of taxpayers, foreign enterprises that do not set up "establishments" in China but have China-source income, is also taxed by the law. These entities are taxed at a rate of 20% on their income from "dividends, interest, rentals, royalties and other sources" (Art. 11). This article seems to be aimed specifically at the activities of "foreign banks, foreign companies licensing technology to China, and foreign firms holding shares in Chinese corporations."²⁸

'Law was a tool of the ruling class, and lawyers were litigation tricksters'

The Special Economic Zones

Special Economic Zones (SEZ)²⁹ exist in China's Guangdong and Fujian Provinces. The SEZ offer multiple investment incentives in an effort to entice "citizens of foreign countries . . . and their companies and enterprises . . . to set up plants, enterprises, or other businesses undertaken with their own investment" (Art. 1, Guangdong SEZ Regs.). The purpose of the SEZ is to promote foreign trade and attract foreign investment, technology and managerial skill. To accomplish this, foreign investors are encouraged to establish joint ventures, and in some cases are even allowed to establish wholly-owned enterprises.

Some of the attractive features of the SEZ are:

- items needed by the enterprises for production can be imported duty free;

²⁸"Commentary. What Does China's New Tax Law Mean?" *Asian Wall Street Journal*, January 4, 1982, p. 10.

²⁹On August 26, 1980, the Standing Committee of the National People's Congress passed "Regulations on Special Economic Zones in Guangdong Province" which allowed that Province to create Special Economic Zones. That marked the inauguration of the SEZ concept in China.

- the enterprises are free to hire foreign employees for technical and managerial work, while labor contracts for the Chinese work force are an issue to be decided by negotiation;
- the rate of tax on profits is 15%, as opposed to between 30% and 50% in other parts of China;
- rents and utilities are provided at bargain rates; and
- remission of profits overseas is more freely allowed, while reinvestment of profits results in tax reductions or savings.

Other Noteworthy Legal Developments

Three other legal developments deserve mention: the creation of the Economic Courts, the passage of the Lawyer's Law, and the enactment of the Law on Economic Contracts.

The Economic Courts were created in 1979, as one of the three branches of the People's Court system, in the hope of expediting the dispute settlement process in commercial cases in China. Their structure is more in the nature of a fact-finding body than of an adversarial proceeding, since attorneys are directed not to represent their clients but to "seek the truth from facts." Thus far, the Economic Courts have been used very little in the settlement of Western business disagreements.³⁰

The Lawyer's Law was adopted in 1980, and is important because it formally authorizes the existence of the legal profes-

sion in China, after nearly thirty years of dormancy. The law sets forth the qualifications, duties and procedures for admission to the practice of law, and marks a resurgence of respect for the rule of law and its practitioners in China.³¹

The Law on Economic Contracts became effective July 1, 1982. As a rather detailed compilation of rules and governing many aspects of the creation and dissolution of contracts, the law stands as a major step forward in elucidating many principles of Chinese commercial law with which Western businessmen have been concerned.

REALISTIC PROSPECTS

Now that China's legal framework is rapidly taking shape, what are the non-legal factors of which an attorney should be aware in advising a client who is about to involve himself in the China trade? What are the possibilities and the pitfalls of doing business in the People's Republic? And, in the ultimate analysis, are the uncertainties which the China trade involves outweighed by the potential benefits?

For the present leadership, ideology and political pureness are not the values of utmost importance. Its interest is economic development and how to achieve it in the most rapid and efficient manner. As Deng Xiaoping is reportedly fond of saying,

³⁰"China Law: Economic Courts," *China Business Review*, November-December, 1981, p. 44-48.

³¹Tao-tai Hsia and Charlotte Hambley, "The Lawyer's Law: An Introduction," *China Law Reporter* 1981, p. 213-16.

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"It doesn't matter whether a cat is black or white so long as it catches mice."³²

Some Real Problems

Some serious hurdles exist. The first is a Chinese domestic problem. It involves the Deng Pragmatists v. the Mao Radicals. The Chinese Communist Party still contains numerous die-hard Maoists who are less than enthusiastic about the new modernization plan, and are in positions to either delay or possibly even sabotage it. Of its 39 million members, the overwhelming majority of the party's membership entered during the Mao era.³³ So far, the Deng forces seem to have outflanked them and are slowly gaining greater control. But if the modernization plan begins to falter, and the consumer expectations which the population is developing are seriously disappointed, the Maoists could mount a successful resurgence.

'Are the uncertainties outweighed by the benefits?'

A second problem involves money. Although the Chinese have an awesome development agenda, theirs is a country with very little capital to purchase the infrastructure, equipment and technology they want and need. Their mineral reserves and oil potential are considered significant, but not yet at the point where the Chinese can profitably extract and market them.³⁴ With the world economy in recession, the textiles and other items previously exported by the Chinese face import barriers which are diminishing that source of foreign exchange.

The retrenchment policy and its psychological effects have also created problems for China. Although many American businessmen have never understood much about China, its Communist system of government, and how one might do business in such an alien environment, they did understand the ramifications of the cancellation of the huge capital construction plans in which they, and many of their colleagues, were seriously considering getting involved. As a result, a note of greater caution has been injected into the China business environment, and the formation of joint ventures and other

³²"Given A Choice, Chinese Prefer Cabbage to Ideology," *New York Times*, September 20, 1982, p. A2.

³³"Party Needs A Credibility Revolution," *New York Times*, September 5, 1982, p. E3.

³⁴"China's Energy Outlook Takes A Sharp Turn for the Worse," *Asian Business*, April, 1981, p. 71.

business arrangements has been slower than most Chinese had hoped.³⁵

Encouraging Signs

The wariness of American investors since the retrenchment policy was announced has not been helpful to Chinese development goals, but a period of caution after such an announcement should certainly have been expected. Many China watchers saw the retrenchment as a serious setback to Chinese hopes of attracting Western business, but others viewed it as a blessing in disguise, believing that an attempt to maintain the uncoordinated breakneck pace at which the Chinese were originally moving would have inevitably ended in complete economic chaos.

Although the number of joint ventures begun so far has lagged behind Chinese expectations, many other business arrangements have become very popular.

Compensation trade—a contractual arrangement in which the foreign party supplies technology and equipment while the Chinese provide the land, labor, managers and the finished goods—has steadily increased.³⁶

Cooperative production agreements—in which the foreign partner participates in agricultural, mining or commercial property ventures and pays to the Chinese a land rent and a share of the profits—are gaining in popularity.³⁷

Countertrade—by which a foreign party exporting to China agrees to import an equivalent value of items from China—is becoming widespread.³⁸

Sichuan

For people from the State of Washington, there is the added bonus of the developing ties between Washington and Sichuan Province. Sichuan has a population of nearly 100 million, and was the first province to experiment with the new market mechanisms that can now be found throughout the People's Republic. In 1979, Zhao Ziyang, a long-time associate of Deng Xiaoping, was Governor of Sichuan Province and the individual responsible for implementing the new techniques. These techniques were very successful, which helped to secure Zhao's promotion to the position of Prime Minister, a post which he continues to hold.³⁹

Deng, himself, is a native of Sichuan Province, and he visited Seattle on his trip to the United States in early 1979. A reciprocal visit by Governor Spellman last year included meetings in Beijing and a tour of Sichuan. A formal agreement of friendship resulted from the visit which can only mean that Washington businessmen visiting China, and especially Sichuan, should be lent a more attentive ear for their commercial proposals.⁴⁰ Since

Sichuan, like Washington, is a major center for agriculture, forest products and aircraft, in addition to possessing enormous untapped hydroelectric potential,⁴¹ the relationship between the two holds great promise for future collaboration in areas of common interest.

CONCLUSION

Future trade prospects with the People's Republic of China appear bright, especially in the medium to long term.

For now, and probably for some time to come, terms of the agreements negotiated between the Chinese and their foreign business partners will have to serve as the most important sources of law for Americans doing business there. This fact, and the reality of a rapidly evolving corpus of commercial law in China, places great responsibility upon the attorney involved in the China trade. At the same time it also offers him great opportunity.

The concomitant development of the China trade and of the commercial law which is intended to guide it has placed the American attorney in a pivotal position. As the modernization scheme continues, and additional commercial law appears, members of the legal profession—especially those from Washington State—stand in a unique position to play a central role in the future of Chinese/American trade. □

⁴¹"Washington State Cultivating Closer Ties With Sichuan," *Asian Wall Street Journal*, August 23, 1982, p. 7.

³⁵"Joint Ventures," *China Business Review*, Mar-April, 1982, p. 35.

³⁶See *Supra*, note 28.

³⁷"Foreign Investors Are Encouraged Despite the Labor Problems," *China Business Review*, September-October, 1981, p. 43.

³⁸"Countertrade, Inc.," *China Business Review*, January-February, 1982, p. 48.

³⁹"Sichuan Province," *China Business Review*, January-February, 1981, p. 31.

⁴⁰Press Release #82-169, Office of the Governor, State of Washington, August 7, 1982.



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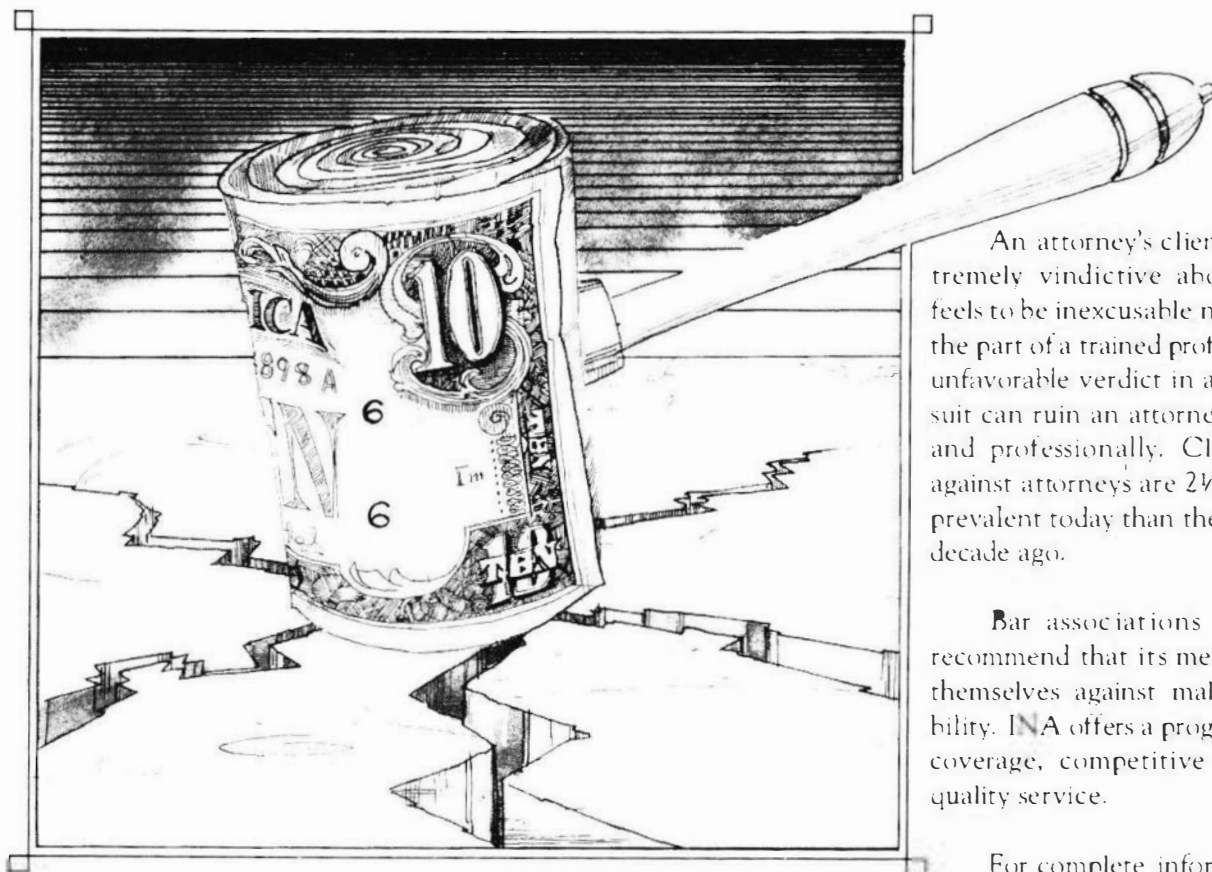
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WASHINGTON STATE BAR NEWSLINE

The Board's Work



by Steven A. Reisler

OREGON GOES IOLTA

JANTZEN BEACH, Ore., April 15-16 — As the Washington State Bar Association wrestles with the concept of creating Interest on Lawyer Trust Accounts (IOLTA), it can look south to Oregon, where that state's bar association has recently adopted its own IOLTA program. John Haugh, President of the Oregon State Bar, says the IOLTA debate was "bitter, decisive and exciting." And now that it's here, he strongly favors the program.

Haugh and Robert Elfers, the Oregon State Bar's Executive Director, met with the WSBA Board of Governors to share their recent experiences with IOLTA. Although they have not yet received an IRS ruling on the ticklish "assignment of income" problem, Haugh said he sees no difficulties on the horizon.

Oregon's plan is wholly voluntary. Law firms choosing to participate in IOLTA maintain two separate trust accounts: one for clients' long-term or significant amounts of money, and one for short-term or nominal amounts of money. The interest earned is distributed by the independent Oregon Bar Foundation for charitable purposes. If a client objects to participating in the program, and the amount of money at issue is short-term or nominal, then the client's wishes are simply overruled.

As in Washington's proposed IOLTA rule, Oregon does not define what is a "nominal" amount of money. The decision rests upon the sound judgement of each lawyer, within the boundaries of reasonable guidelines.

One of the major IOLTA issues in Washington is whether the program should be administered with or without notice to the client. In Oregon, specific notice to individual clients is not required; but Oregon lawyers have a "professional responsibility" to advise clients generally about the use of IOLTA-type accounts.

Elfers told the Board that Oregon would be pleased with 25% lawyer participation. Eventually, though, he anticipates the creation of national, mandatory IOLTA programs.

Haugh said Oregon's new IOLTA program has spurred interest among savings and loan institutions eager to compete with traditional banks for lawyers' trust accounts. He acknowledged, however, that some firms choose not to participate in IOLTA because they have "gentlemen's agreements" with their own banks—or because they disagree philosophically with the IOLTA concept.

Haugh and Elfers told of significant differences between the Oregon State Bar and the Washington State Bar Association.

The Oregon Bar is a creature of both the judiciary and the legislature. Its governing board consists of fifteen members, including three lay-members selected by the Board itself. Lay-members participate fully in Bar governance, except that they may not become officers of the association.

The Oregon Bar also practices a "town hall meeting" system of open voting on significant issues. At the open meeting held to decide the IOLTA issue, for example, 1,000 of the state's 7,000 lawyers attended and voted.

Oregon, like Washington, is feeling the pinch of lawyer underemployment. Haugh estimated that 10-15% of Oregon's bar is either unemployed or underemployed. "A lot of lawyers wait tables," he said. Haugh said he thinks the excess of new law school graduates has led many inexperienced lawyers to set up practice on their own, often at the expense of the public. Oregon is experiencing a rash of disciplinary problems involving younger lawyers. Haugh said he sees limited options to solve the problems created by too many lawyers:

- 1) flunk more law students;
- 2) close some law schools (an idea currently contemplated by the Oregon legislature); or
- 3) instate a mandatory internship program for lawyers.

PRESIDENT STEERE ADDRESSES CLARK COUNTY BAR

At a luncheon meeting with the Clark County Bar Association in Vancouver, President Paul Steere said, "The local bar associations, when they function, are the real muscle of our profession."

Steere told the assembled lawyers that judicial salaries in Washington are disgustingly low. Judicial compensation is well below the national median, Steere said, and when adjusted on a per capita income basis, our judges' salaries rank dead last nationally. President Steere created an ad hoc committee to report to the Board of Governors about what the WSBA can do to increase judges' salaries.

Seattle hosts the annual meeting of Washington's local bar presidents in May.

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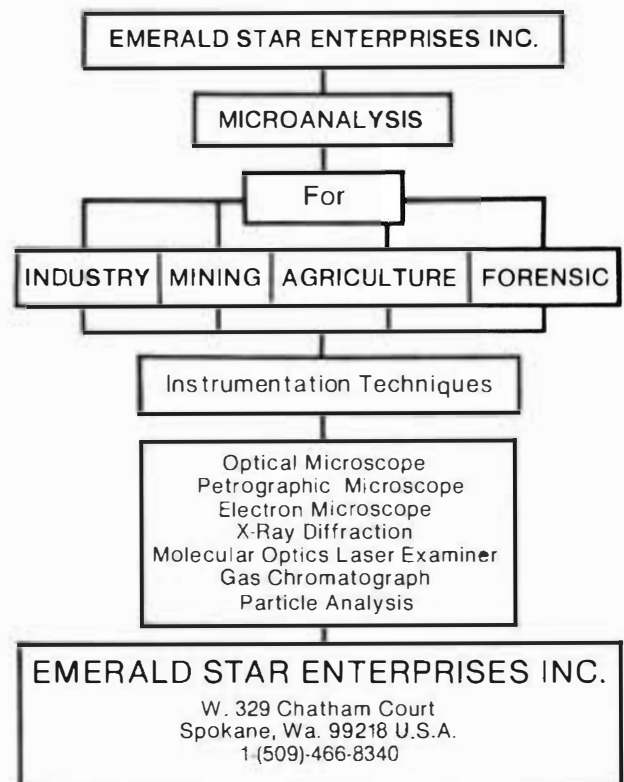
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OTHER BOARD ACTIONS

- **ADMINISTRATIVE LAW** — Dean Little of the Task Force on Administrative Law appeared before the Board to explain that his group has worked out a pragmatic draft for a new Administrative Procedures Act (APA). Little said that there are some things in the package which will "raise the hair on the backs of some heads," but that the package is a good compromise effort.
- **LIMITED PRACTICE BOARD** -- By a 7-1 vote (Vander Stoep abstaining, Delay voting nay), the Board decided to grant start-up costs for the newly created Limited Practice Board. After initial expenditures, the new board is expected to become entirely self-supporting.
- **NEW BAR PRESIDENT** -- The Board's Presidential Search Committee unanimously recommended that Yakima attorney Robert Redman be chosen WSBA President for 1983-84. The Board unanimously endorsed the committee's recommendation.
- **PUBLIC AFFAIRS** -- WSBA Public Affairs Director Wayne Wilson recommended to the Board that it make a yearly effort to publicize bar services available to members of the WSBA. The first-ever directory of membership services appeared as a pull-out section in the March Bar News. Wilson also told the Board that at the present time the cost of the Bar News is approximately \$3.75 per annum per lawyer, including direct and indirect expenses.

THE NEXT MEETING OF THE BOARD OF GOVERNORS WILL BE IN WENATCHEE ON MAY 20 & 21.

BOARD ELECTIONS DUE

Members of the Board of Governors of the State Bar to represent the Second, Fourth and Seventh Congressional Districts are due to be elected this year. Expiring in September, 1983, are the three-year Board terms of Julian C. Dewell (Second District), Dale W. Read (Fourth District), and Robert R. Beezer (Seventh District). Article III of the Association By-Laws provides that any active member in good standing, except a member previously elected to the Board of Governors, 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 petitions must be filed in the Bar Office by 5:00 p.m. on Tuesday, May 31.

IMPORTANT NOTE: A three-judge Federal Court has directed that the State Legislature adopt a constitutional redistricting plan within ninety (90) days after the start of the 1983 regular legislative session. The Board of Governors has determined that 1983 elections to the Board will be conducted using such new Congressional boundaries. Filings for these positions are, accordingly, open, pursuant to the By-Laws, to any active member who believes he or she will reside within the affected district under such new redistricting plan. After the adoption of such legislation, all persons having filed otherwise valid nominating petitions will be advised of their status and eligibility. Further information on the procedures to be applied in these elections will be sent to potential candidates requesting nominating petitions.

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Judicial Candidates Are Bound by Code of Judicial Conduct

The Preamble of the Code of Judicial Conduct states, "Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of the Code."

It further states that all judges should comply with the Code, except as provided below, and sets forth the exceptions for part-time judges and judges pro tempore.

The Judicial Qualifications Commission pursuant to Article IV, Section 31 of the State Constitution and RCW 2.64 is:

... authorized to recommend to the Supreme Court, after notice and hearing, the censure, suspension or removal of a judge or justice for violating a rule of judicial conduct, or the retirement of a judge or justice for disability which is permanent, or likely to become permanent, and which seriously interferes with the performance of judicial duties. For purposes of this Chapter, the term 'judge or justice' includes justices of the Supreme Court, judges of the Court of Appeals, judges of the Superior Courts, judges of any court organized under Titles 3, 35 or 35A RCW, and judges pro tempore. This Chapter shall apply to any judge or justice, regardless of whether the judge or justice serves full-time or part-time, and regardless of whether the judge or justice is admitted to practice law in this state.

Under this definition, the Commission has determined it has no authority over court commissioners, and thus refers any complaints against lawyer court commissioners to the Bar Association for review and/or to the presiding judge of the court for which the commissioner may work.

Under DR 8-103, lawyer candidates for judicial office must comply with the provisions of Canon 7 of the Code of Judicial Conduct. Any complaints made to the Commission with reference to campaign conduct against non-judge candidates are referred to the State Bar Association. Disciplinary procedures are generally time-consuming, however, and the Judicial Qualifications Commission was recently faced with the question of who is responsible to proceed with the review of allegations against a lawyer non-judge candidate who is elected and takes office before the Bar Association is able to act.

The Commission requested an opinion from the Attorney General with the following question:

Does the Judicial Qualifications Commission have jurisdiction over conduct of a judge which occurred prior to his becoming a judge, and which conduct may be related? For example, campaign conduct in violation of Canon 7 of the Code of Judicial Conduct by a judicial candidate who is subsequently elected.

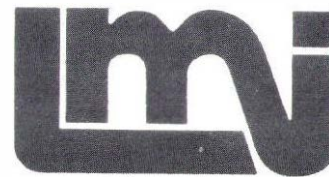
Attorney General Letter Opinion 1982 No. 27 was issued in response:

An individual, upon becoming a judge or justice within the state judicial system by reason of his or her election to such office, should be deemed to be subject to the jurisdiction of the Judicial Qualifications Commission and to possible disciplinary action by the Supreme Court under Article IV, Section 31 (Amendment 71) of the state constitution for a violation of Canon 7 of the Code of Judicial Conduct occurring during the election campaign and prior to the individual becoming a judge.

As a result of AGLO 1982 No. 27, the Judicial Qualifications Commission has adopted the following Policy:

Where a person is elected to judicial office, the Commission will apply the entire Code of Judicial Conduct to complaints of election activities prior to the individual's assumption of office.

Any specific questions regarding Commission procedures and policies may be directed to the Judicial Qualifications Commission at 12th & Jefferson Building, Olympia, WA 98504, telephone (206) 753-4585. □



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*Edited by Professor William B. Stoebuck
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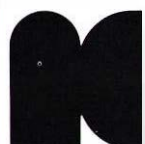
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ADMINISTRATIVE LAW. (1) Employee was dismissed under rule creating presumption of resignation for unauthorized absences, and employer denied petition for reinstatement. Held, on review Higher Education Personnel Board may consider evidence not made available to employer. *University of Wash. v. Manson*, 98 Wn.2d 552, 656 P.2d 1050 (1983). (2) Appearance of fairness doctrine does not apply in public hearings by board of county commissioners prior to its recommendations to Department of Transportation regarding freeway interchange placement or to board's adoption of six-year road plan. The doctrine generally does not apply to legislative hearings. *Harris v. Hornbaker*, 98 Wn.3d 650 (1983). (3) Superior court has inherent power to hear sheriff's appeal from Civil Service Commission's decision reinstating terminated deputy. *Pierce County Sheriff v. Civil Service Comm'n*, 98 Wn.2d 690 (1983). (4) Denial of initial application for liquor license is not reviewable as contested case under Administrative Procedures Act, RCW 34.04. But it is reviewable upon properly pled allegations that an agency acted contrary to its rules and regulations. *Prestige Stations, v. Liquor Bd.*, 33 Wn. app. 669 (1983).

—J. M. Vache

CRIMINAL LAW AND PROCEDURE. (1) Assault upon a person immediately outside a dwelling may constitute assault upon a person "therein" for purpose of first-degree burglary. *State v. Gilbert*, 33 Wn. App. 753 (1983). (2) Semi-trailer, whether or not attached to a tractor, is "building" within meaning of burglary statute (although a truck is not). *State v. Tyson*, 33 Wn. App. 859 (1983). (3) Controlled substance act is not unconstitutionally vague merely because it identifies drugs by their chemical names (here, diazepam) rather than by their trade names (here, Valium). *State v. Brown*, 33 Wn. App. 843 (1983). Cf. *State v. Barringer*, 32 Wn. App. 882, 650 P.2d 1129 (1982), which held that instruction that Valium was diazepam was unconstitutional comment on evidence.

—G. R. Nock

EMINENT DOMAIN. (a) In determining whether two physically separated parcels are a "single parcel" for severance damages, while unity of use is an important factor, it is not the only factor. Others are distance between parcels, adaptation of parcels to their use, and availability of alternative parcels. (b) Condemnee may not recover compensation for profits lost during pre-condemnation period, because he reduced business activity in anticipation of condemnation. *State v. McDonald*, 98 Wn.2d 521, 656 P.2d 1043 (1983).

—W. B. Stoebuck

INSURANCE. (1) (a) Settlement by financially responsible agent capable of paying claim and approved by trial court, may be determined by trial court to discharge any vicarious liability of agent's principal (RCW 4.22.040[1]). (b) In absence of agreement otherwise, any claim against agent for contribution or "active-passive" tortfeasor indemnification in favor of principal, arising from its independent or vicarious tort liability, is barred by agent's settlement. Distinguishes and limits *Finney v. Farmers Ins. Co.*, 92 Wn.2d 748, 600 P.2d 1272 (1979). *Caveat*: Traps lurk here! Read footnote 4, 98 Wn.2d 708, at 724. *Glover v. Tacoma Gen'l Hosp.*, 98 Wn.2d 708 (1983). (2) Property losses resulting from mudflows caused by the eruption of Mt. St. Helens were covered under homeowners policy that excluded earth movement but excepted from the exclusion, "Direct loss by . . . explosion . . . resulting from earth movement," if jury found that eruption was "explosion," that it was caused by prior earth movement, and that it was proximate cause of damage. Abandons "immediate cause" test of *Bruener v. Twin City Fire Ins. Co.*, 37 Wn.2d 181, 222 P.2d 833 (1950). *Graham v. Public Emp. Mut. Ins. Co.*, 98 Wn.2d 533, 656 P.2d 1077 (1983).

—R.S.L. Roddis

PERSONAL PROPERTY. Court of Appeals accepts trial judge's finding that son who had long managed family business as well as mother's personal business affairs was fiduciary to

mother. Held, in Washington, contrary to many jurisdictions, a fiduciary who has received a gift (of family home) from his principal has in court the burden to prove the gift was not the result of undue influence. *White v. White*, 33 Wn. App. 364, 655 P.2d 1173 (1982).

—W.B. Stoebeck

A REMINDER . . .

Board of Governors Elections Near

Nominating petitions for the office of Governor in the Second, Fourth and Seventh Districts are due May 31, 1983. See page 25 of this month's "Board's Work" for details.

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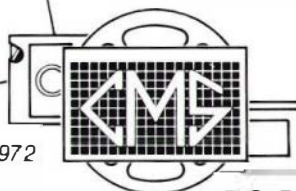
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Handling Business Valuation Disputes and Other June CLE

by Joel G. Green

Assistant Director of CLE

HANDLING BUSINESS VALUATION DISPUTES is the Third Attorney/Certified Public Accountant Seminar co-sponsored by the CLE Committee and the Washington Society of CPAs. This seminar presents a unique and fresh approach that goes beyond the multitude of valuation programs currently offered to CPAs and to attorneys. When a business valuation is seriously contested, both the CPA and lawyer will need to have a grasp of something more than negotiation skills and general valuation concepts to protect their materials from attack and to dig out and expose flaws in those of the opposition. Since there is no single true and accepted way to value any asset not having a ready market, a command of valuation techniques, applications, and standards of admissibility is essential to enable the practitioner to prepare a presentation that will withstand adversary challenge.

This program faculty features both CPAs and lawyers. Registrants will learn the concepts and approaches to valuation and how to present evidence of value. The program concludes with three concurrent workshops, wherein the standards and techniques introduced during the program will be applied to disputed valuation situations in estate planning and administration, marriage terminations, and business organization dissolutions and distributions.

In addition to worksheets for the hands-on workshops, the course manual will contain valuable articles, a bibliography, and reprints for future reference, including complete copies of technical training manuals currently used by the Internal Revenue Service in preparing its examiners in the field, and which may alone be worth the price of admission to the program. This practical and controversial approach to valuation is designed to benefit all members of the bar who have valuation problems.

THE FIFTH ANNUAL REAL PROPERTY, PROBATE AND TRUST MID-YEAR MEETING & SEMINARS follows the pattern of previous programs where general and concurrent sessions will focus on areas of concern to real property and probate/trust lawyers. The probate and trust general session focuses on premarital and cohabitation planning and documentation, immediate per-death planning, simultaneous death problems and planning, and counseling the terminally ill and their families. The real property general session covers appraisal from the viewpoint of an MAI and deals with selected problems in realizing on real estate collateral. Some of the topics of the concurrent sessions are an update on the Washington State Inheritance Tax, retirement planning under TEFRA, the nuts and bolts of guardianship practice, analyzing insurance problems involving commercial leases, and problems involving secured debt and leases. This year's program will

feature a Hosted Beer Tasting Reception and the traditional Hosted Wine Tasting Reception.

CREATING A CONDOMINIUM will focus on major new developments and selected topics involving the creation of condominiums. Eight years have passed since the WSBA published *The Basics of Condominiums* manual. During that time, dramatic developments have occurred as residential condominiums have become a major factor in providing residential housing and the condominium concept has been utilized for a wide variety of non-residential purposes. The faculty will assume registrants have at least a basic understanding of the fundamental principles of condominium ownership.

COLLECTION OF JUDGMENTS is another topic where a number of changes have occurred since the 1978 presentation. This program will cover prejudgment remedies, enforcing judgments against personal property and real property, federal, state and county tax liens, and the effect of bankruptcy filing on liens and judgments including fraudulent conveyances.

For more information on all of these programs, please refer to the list of approved courses in this issue of the *Bar News*, and to the announcing brochures, which have been mailed.

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June 17, 1983, Spokane 7.00

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June 17, 1983, Seattle 6.00

Creating a Condominium (New Developments and Selected Topics)

June 24, 1983, Seattle 7.00

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June 16, 1983, Seattle 6.50

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June 30, 1983, Seattle 4.00

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June 17, 1983, Seattle 5.75

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LEWIS COUNTY

by T. CHARLES ALTHAUSER

As of this writing, the Lewis County Judges are considering adoption of the ASCJ Uniform Child Support Guidelines. Considering the Lewis County economy, perhaps the judges will see fit to adopt only the low end of the scale.

Speaking of judges, **Judge Draper** is returning from a well-earned vacation while **Judge Ray Byrd** of the District Court is taking advantage of the "peso exchange" in Mexico.

Joe Mano rebroke his hand while skiing. Rumor has it he was competing for the title of "Most Spectacular Suicide" when he crashed under the chair lift. **John McKerricher**, with whom Joe was racing at the time, advises that Joe previously broke the same hand when he mistook his hand for an ax during a make-believe karate exhibition.

Overlooked in the list of new attorneys/partners last month were **Teresa Landreau**, a new deputy prosecutor; **Denny Allen**, a new partner with **Eli Halpern** (formerly **Lar Halpern**) and **Laurel Smith** in Rochester; **Kay Brossard**, an associate with the firm of **Armstrong, Vander Stoep, Remund and Kelly**; and **Brian W. Chance**, who opened an office in Centralia.

Jeremy Randolph, now serving as municipal court judge for both Centralia and Chehalis, is rumored to be considering moving his office to one of his court chambers.

With the arrival of spring, it is likely that several of the county bar members will become less accessible. It has been suggested that a local rule be adopted requiring these absent members to install mobile phones on their golf carts.

SNOHOMISH COUNTY

by RUTH ELLEN WAGNER

After a long silence in these pages, the Snohomish County Bar Association is pleased to announce that it still exists.

Our new year officially began at the annual Bar Banquet held February 12, 1983,

at the Everett Golf & Country Club. The Bar installed new officers: President **Richard A. Bailey**; Vice-President **Bruce E. Jones**; Secretary **Ruth Ellen Wagner**; and Treasurer **Douglas B. Marsh**.

That evening the Bar was pleased to entertain many Justices and Judges: two Supreme Court Justices, **Charles F. Stafford** and **Fred H. Dore**; Snohomish County Superior Court Judges **Daniel T. Kershner**, **John E. Rutter**, **John F. Wilson**, **Stuart F. French** and **Gerald L. Knight**; Snohomish County Superior Court Commissioner **Catherine E. Davis**; Skagit County Superior Court Judge **Walter J. Deierlein, Jr.**; and South District Court Judges **Lawrence Wilson**, **Thomas Wynne** and **Robert E. Schillberg**.

We held a memorial service on March 11th in the Presiding Department to honor our senior member **Charles Jordan** who died at age 92 after 65 years of an illustrious private practice in the City of Everett. He will be missed.

The officers and members began a noble experiment on March 17th by replacing our traditional noontime luncheon meeting with late afternoon educational sessions. We began our discussions with the delightful topic: How to Send a Bill Your Client Will Want to Pay.

Scott Holte continues to head the effort to create a Snohomish County *pro bono* program to partially fill the gap left by federal budget cuts in Evergreen Legal Services. We hope to get something off the ground soon.

SOUTH KING COUNTY

by CARLOS M. SOSA, III

The first of the year brought some changes in the South King County area, as the law firm of **Hawkins, Ingalls, West & Edwards** added a new partner, **Patrick LePley**. Welcome back to Auburn, Pat.... **Kenneth P. Tickner** announces the relocation of his office to Suite 407, 16400 Southcenter Parkway. He also announces the acquisition of a corner office....

The March meeting of the South King County Bar Association was held at



Olympia, and included numerous legislators and a meeting with the members of the Supreme Court Bench. An excellent time was had by all, and there is no truth to the rumor that bus rides will be provided for subsequent meetings....

District Court has a new judge, pursuant to an election held last November. Former Southcenter practitioner **Darrell Phillipson** was elected to fill the third vacancy on the Aukeen District Court. Congratulations, Judge Phillipson, and those of us in the southend hope that we will be able to get our civil trials heard within a reasonable time, now that we have three full-time working judges....

Also in a political vein, Auburn attorney **Ernest Crane** was elected to the State Legislature representing the Auburn area. Congratulations are in order to him, and we are encouraged by the fact that there is another attorney added to the rolls of the State Legislature.

IN MEMORIAM

Richard C. Pinkerton, Camas attorney and former newspaperman, died February 15 at the age of 56. Mr. Pinkerton was a partner in the law firm of Knapp, O'Dell and Pinkerton, and had served as president of the Camas-Washougal and Woodland Chambers of Commerce, treasurer of the Washington Newspaper Publishers Association and of the Clark County Bar Association, and as a member of the Columbia Gorge Commission. A graduate of Northwestern School of Law, Mr. Pinkerton was admitted to the Bar in 1970.

Former Superior Court Judge **Glenn L. Bean**, 86, of Walla Walla, died March 6. His 40-year legal career also included terms as U.S. court commissioner, Walla Walla County prosecuting attorney, and president of the Walla Walla County Bar Association and the Washington State Prosecuting Attorneys Association. Mr. Bean served with the U.S. Navy in both World Wars, as judge advocate and as lieutenant commander. He was admitted to the Bar in 1923.

Public Defender Seeks Matching Funds

The Public Defender office in King County may be able to restore some of its juvenile staff, cut because of county budget reductions, thanks to a \$7500 challenge grant by a local foundation.

The Defender Association has until July to find matching funds.

The Defender juvenile program has been recognized nationally as an innovator in the utilization of investigative and social work staff to provide high quality representation to children and to find alternatives to incarceration for youthful offenders. In 1982, the juvenile court accepted the Defender's social work staff dispositional recommendations in 85% of the cases.

The Defender recently received a gift of \$8500, the largest personal gift ever made to the program, from Seattle waterfront entrepreneur Ivar Haglund, who waived the Defender's December rent at the Smith Tower just before Christmas.

Anyone wishing to donate to the matching fund is invited to send contributions to The Defender Association, 202 Smith Tower, Seattle.

UPS Announces Family Law Seminars

This June, as part of its second annual Summer Institute, the University of Puget Sound Law School will present a number of CLE programs on Family Law and on Dispute Resolution. The Institute, which will be held June 20-27 in Seattle, is co-sponsored by the Family Law Section of the Seattle-King County Bar Association. Nationally-known and local experts in taxation, custody, and dispute resolution in family law, environmental law, and labor law will be featured.

The program schedule is as follows: *Tax Aspects of Separation & Divorce*, Monday-Friday, June 20-24; *Custody Law & Practice*, Monday, June 20; *Use of Psychological Testing & Expert Testimony in Family Law*, Tuesday, June 21; and

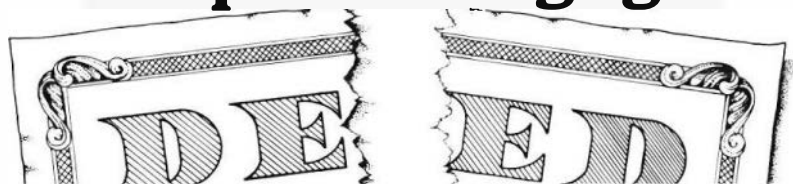
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Mediation, Arbitration, & Other Ways of Resolving Disputes, Monday, June 27.

For more information or registration, contact Robert Cane, Director of CLE, University of Puget Sound Law School, 950 Broadway Plaza, Tacoma, Washington 98402, telephone (206) 756-3485.

Trustees Become Educated

Bankruptcy trustees met March 5 at UPS Law Center in Tacoma to discuss common concerns at a workshop given by the Bankruptcy Court Administrators for the Western District.

Reportedly well-attended and a rousing success, this first-ever workshop featured a program on preferences and fraudulent conveyances, bankruptcy sales, and a review of current issues and practices. Income tax laws, as they pertain to bankruptcies, were also discussed, and a collective shudder is said to have run through the crowd at the subject of non-filing penalties.

One common concern, although not formally discussed, was that so many people call trustees, only to learn that a large number of calls have prevented their answering correspondence or returning calls. Practice tip: Don't be among the problem-callers.

Kitsap Rules

Telephone calls regarding Trial Settings and Special Settings in accordance with Kitsap County Local Court Rules should be made to Cathy Sotiropoulos, Superior Court Scheduler, at (206) 876-7008. Her address is 614 Division Street, Port Orchard, Washington 98366.

Access to Court Files Limited

The King County Superior Court Clerk's office has announced its intention to close its file counter to non-court personnel, due to emergency county budget constraints.

Requests for files must be given to the "will call" desk by telephone at (206) 344-3976, or in person. The file should be ready and waiting for the requestor the next day. If the backlog of requests grows too large to service in that length of time, the requestor will be given the date on which the file can be picked up.

International Trade Directory Planned

A new *International Trade Directory* will be published this summer to include a listing of attorneys and law firms engaged in the practice of international law. The directory will be published by the Washington State Department of Commerce and Economic Development.

Attorneys interested in being included in this listing are invited to contact Don Jackson at the Washington State Department of Commerce and Economic Development, 312 First Avenue North, Seattle, WA 98109. The deadline for submissions is May 15.



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Since more and better legal materials are becoming available on audio-cassettes, and since the Bar has expressed an interest in them, the State Law Library has begun purchasing cassettes on a selected basis. The following list is limited to audio-cassettes recently acquired by the Law Library and available on loan by calling (206) 753-6525 or by mailing your request to: Washington State Law Library, Temple of Justice, Olympia, Washington 98504. A bi-monthly Selected Recent Acquisitions list is also available at our cost of \$5 for six issues. Copies can be obtained by sending your check, payable to the Washington State Law Library, to the above address.

APPELLATE PROCEDURE

Dubofsky, Jean, and others. *Appellate argument: purposes, preparation and introduction*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Appellate Argument Series)

Freidman, Paul, and others. *Appellate argument: rebuttal, problems, court conference*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Appellate Argument Series)

Merritt, Gilbert. *Appellate argument: argument*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Appellate Argument Series)

CIVIL PRACTICE & PROCEDURE

Miller, Arthur. *Modern civil litigation*. Minneapolis: National Practice Institute, 1982? Audio-cassette, 4 tapes, 6 hrs., plus 23 p. outline.

CRIMINAL LAW & PROCEDURE

Bailey, F. Lee. *Opening and closing statements in a criminal trial*. Minneapolis: National Practice Institute, 1982? Audio-cassette, 3 tapes, 3 hrs., plus 37 p. manual.

Moylan, Charles A., Jr. *Criminal procedure and the trial advocate*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 6 tapes, 6 hrs., plus manual.

EVIDENCE

Burgess, John A. *Principles of cross examination*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Master Advocate's Series)

Burgess, John A. *Principles of direct examination*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Master Advocate's Series)

Galatz, Neil. *Discovery deposition lecture*. St. Paul: National Institute for Trial Ad-

vocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Master Advocate's Series)

Jeans, James. *Cross examination*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Master Advocate's Series)

Jeans, James. *Direct examination*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Master Advocate's Series)

Rossi, Faust. *Hearsay update*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Master Advocate's Series)

Rothblatt, Henry. *The art of cross examination*. Minneapolis: National Practice Institute, 1982? Audio-cassette, 3 tapes, 3 hrs., plus 46 p. manual.

Stein, Ed. *Experts I lecture*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Master Advocate's Series)

Stein, Ed. *Experts II lecture*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Master Advocate's Series)

Tierney, John and William McDaniels. *Direct and cross examination of an expert witness: psychiatrist*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Master Advocate's Series)

Toomey, Daniel. *Direct and cross examination of expert witness: pathologist*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Master Advocate's Series)

Younger, Irving. *Credibility and cross examination*. Minneapolis: National Practice Institute, 1982? Audio-cassette, 3 tapes, 3 hrs., plus 61 p. outline.

Younger, Irving. *Discovery techniques*. Minneapolis: National Practice Institute, 1982? Audio-cassette, 3 tapes, 3 hrs., plus 50 p. outline.

Younger, Irving. *Evidence for trial lawyers*. Minneapolis: National Practice Institute, 1982? Audio-cassette, 6 tapes, 7 hrs., plus 65 p. outline.

Younger, Irving. *Expert witnesses*. Minneapolis: National Practice Institute, 1982? Audio-cassette, 3 tapes, 3 hrs., plus 61 p. outline.

Younger, Irving. *The law of evidence*. Minneapolis: National Practice Institute, 1982? Audio-cassette, 16 tapes, 15 hrs., plus 65 p. outline.

Younger, Irving. *Ten commandments of cross examination*. Minneapolis: National Practice Institute, 1982? Audio-cassette, 2 tapes, 2 hrs., plus outline.

JURY SELECTION

Becton, Charles. *Jury selection*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Master Advocate's Series)

Becton, Charles, and others. *Jury selection in a criminal case*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Jury Selection Series)

Becton, Charles. *Jury selection lecture*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Jury Selection Series)

Jaudon, Joseph, and others. *Jury selection: communicating information/challenges*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Jury Selection Series)

Landau, Norman J., and others. *Jury selection in a civil case*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Jury Selection Series)

SETTLEMENTS

Williams, Gerald. *Effective negotiation and settlement*. Minneapolis: National Practice Institute, 1982? Audio-cassette, 8 tapes, 8 hrs., plus 97 p. manual.

TRIAL PRACTICE

Bright, Myron. *Effective oral advocacy*. Minneapolis: National Practice Institute, 1982? Audio-cassette, 2 tapes, 2 hrs., plus outline.

Brosnahan, James. *Trial notebook*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Master Advocate's Series)

Grusin, Richard. *Communication in the courtroom*. Minneapolis: National Practice Institute, 1982? Audio-cassette, 2 tapes, 3 hrs.

Jeans, James. *Case preparation*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Master Advocate's Series)

Jeans, James. *Closing argument*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Master Advocate's Series)

Jeans, James. *Trial presentation*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 1 tape, 1 hr. (Master Advocate's Series)

Younger, Irving. *Trial techniques*. Minneapolis: National Practice Institute, 1982? Audio-cassette, 6 tapes, 7 hrs., plus 98 p. outline.

Zimmerman, Gordon. *Effective communication in the courtroom*. St. Paul: National Institute for Trial Advocacy, 1982? Audio-cassette, 3 tapes, 3 hrs., plus 50 p. manual.



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