Washington State Bar News
Volume 37, No. 6, June 1983

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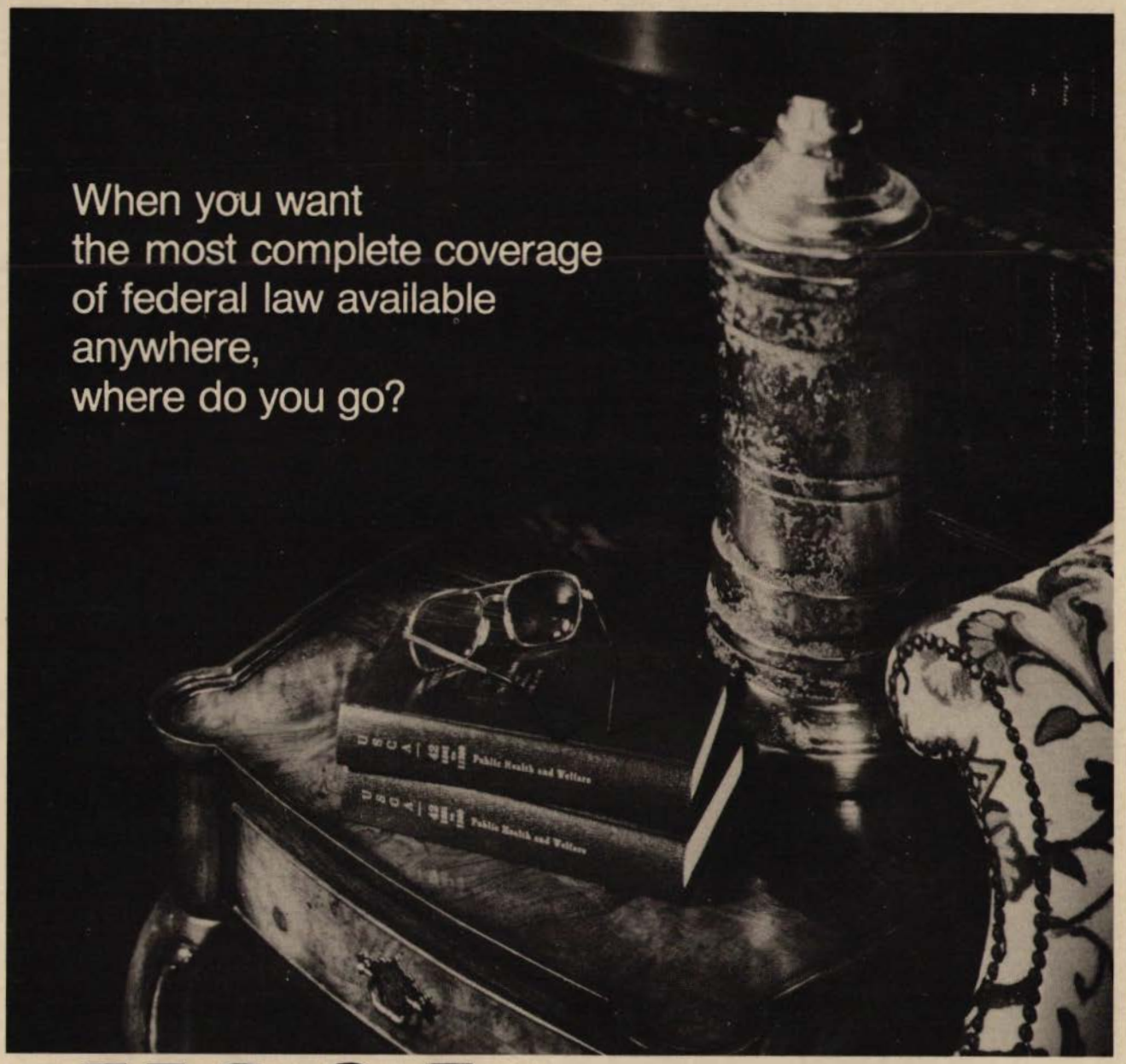

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Bainbridge Island, WA 98110
Phone: 206/382-9438

Kathe Paulson
P.O. Box 1733
Tacoma, WA 98401
Phone: 206/851-4062

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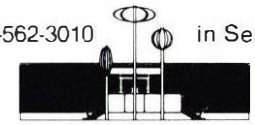

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Washington State Bar News
Volume 37, No. 6, June 1983

Published by
WASHINGTON STATE BAR ASSOCIATION
505 Madison Street Seattle, Washington 98104
Steven A. Reisler, *Editor*
Karin Foster-Garrison, *Managing Editor*
Dennis M. Eagan, *Advertising Manager*

Published on the last day of the month preceding cover date. Deadline for editorial and classified advertising materials: 25th of second preceding month.

Direct all correspondence and editorial copy to *Washington State Bar News*, State Bar Office, 505 Madison, Seattle 98104. Telephone: (206)622-6054.

Subscription price is $12.00 a year for inactive members (included in active membership), $24.00 a year for non-members. Single copies $5.00 per issue; article reprints $4.00 each.

Printed by United Graphics, Seattle

FEATURES

IN THE NEWS

DEPARTMENTS

Our Cover

Although you cannot take it with you, by saving and investing wisely you can at least keep your money longer. "Buried Treasure" pen and ink drawing by Elaine Y.L. Tsing.

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.

King County Rules Serve All

Editor:

We read with concern your editorial in the March, 1983, issue entitled "War and Peace." The tongue-in-cheek manner in which you suggested that some intentional rules war exists among Washington county bar associations or county officials failed to differentiate between Local Rules and administrative procedures. It is important to note that certain procedural changes which were initiated by the judges of King County Superior Court, and to which you referred, are purely administrative in nature and have been undertaken in an effort to provide predictable court services to *all* litigants and attorneys who utilize the services of the court.

Such efforts as reducing the number of continuances requested and granted, confirming calendar appearances, and requiring counsel to affirm that they have at least discussed a pending civil motion before appearing in court have all been initiated to improve the quality of the judicial services provided to the public we serve. It should be an ordinary courtesy, *not* requiring a rule, for attorneys to notify the court in a timely fashion that the case is either settled or confirm their readiness for trial. We do that customarily when we cancel an appointment with a doctor or dentist, and we should do no less for the court system.

Your suggestion that Local Rules be updated by all counties at one predetermined time period each year is a sound idea which has been practiced in King County for the last several years.

GERARD M. SHELLAN
Presiding Judge

ROBERT A. CANNON
Court Administrator

Seattle

No IOLTA

Editor:

I have taken my own survey among clients concerning trust account monies and not one client has indicated that he would be willing to turn over to the Bar Association or to a charity any interest earned on *his* money. If interest is to be earned, every client insisted that that interest be paid to the client.

It would appear to me that since the money belongs to the client and not to the attorney, the attorney would have no choice but to pay to the client the client's proportionate share of interest earned on the client's total trust account monies. I do not think the Supreme Court or the Board of Governors can take away interest belonging to a client and designate it for some other use.

Furthermore, if a client earned more than $10.00 of interest on his share of the client trust account interest, then that client is entitled to and the attorney will be required to issue a form 1099 to the client, complete with social security number, client's name and address and provide a copy of that form to the Internal Revenue Service and to the client, retaining a copy for the attorney's records. This would cause an intolerable burden of extra bookkeeping for the small firm and is not practical. In a firm such as mine where many real estate transactions are processed, time consumed in such additional paperwork would be a problem. Eventually, there will be withholding on interest earned, so that would require an additional tax return to be completed.

Before any final decision is made, I think that all of the lawyers should be polled and a vote of the Bar Association members taken. I would vote a resounding *no* on the imposition and requirement of investing client's funds.

PHILLIP P. SKOK

Chewelah

Clearing the Air About IOLTA

Editor:

I would like to respond to the concerns recently voiced by some about IOLTA in letters to us recently. I am making these comments as a member of the Task Force and giving you my best guess as to what the proposed Court Rule embraces. The Supreme Court will call for comment at the time the proposed rules are published.

Experience in other states has shown that all banks and savings and loans will participate in the program. All service charges will be deducted prior to the bank remitting the interest to the nonprofit foundation. I do not feel that the client will have the opportunity to participate in making that decision. In fact, a tax opinion has been given to the effect that if a client in any way exercises any discretion, the interest generated is taxable to the client.

As I view it, you will have one interest-bearing trust account in a depository of your choosing. The interest will go directly from the bank to the designated beneficiary. If a client has funds which are neither nominal nor short-term, then, in consultation with him or independently, you will make the decision to place those funds in some type of an interest-bearing certificate. In the 32 years that I have practiced, those instances have been few and far between. Actually, under our current disciplinary rules, you already have an obligation to place at interest funds that are left with you in trust that are neither nominal nor short-term.

In answer to some lawyers' concerns, we will not need to account for the interest earned. The banks will probably be required to notify the beneficiary foundation of the source of the funds, but you will have no bookkeeping to do whatsoever.

If the banks need to be monitored, that will be the duty of the beneficiary foundation and not of the individual lawyer. If this is handled the way that we think it can be, your sole duty will be to determine whether the funds in trust are "short-term or nominal," and, if so, to deposit same in your interest-bearing checking account. Your duty, obligation, responsibility and bookkeeping will end with the deposit.

I hope what I have set out here comes to pass, because, as I view it, it is workable, it is not an unfair burden on the attorney, and it certainly is no change as far as the client is concerned.

JACK R. DEAN

Seattle

WANTED:
Photography or artwork by Washington lawyers; legal and state themes. Respond to Editor, ***Bar News.***

Just What Is IOLTA, Anyway?

A new religious cult?

Is it an insidious disease like AIDS or herpes?

Do college students smoke it at parties?

Can you eat IOLTA on a bagel with cream cheese?

Everyone had been talking about IOLTA. To be perfectly honest, however, I never really knew what it was all about.

So one day I said to some attorney friends, "Friends," I said, "am I the only lawyer in the whole of Washington who doesn't know what an IOLTA is?" And my friends shook their heads because they didn't know either.

So I asked my friends, "Friends, wouldn't it be a great idea for someone to publish a straightforward, impartial primer about IOLTA in the *Bar News* so that everyone might know what the debate is all about?" And my friends all nodded and said that would be a great idea.

But when I asked my friends who they could recommend to write such an article, they could suggest no one. . .for the simple reason that everyone who knew anything about IOLTA had already made up his or her mind that it is either 1) the greatest thing since the Bill of Rights, or 2) the biggest hold-up since the Great Train Robbery.

To find an objective author, I had to find one totally ignorant of the subject matter. And lo, I could find no one more qualifiedly ignorant than myself. Thus, I buried myself in the library and cram-studied every legal article on the subject to discover the answers to these questions:

What is an IOLTA? IOLTA is an acronym. It stands for Interest On Lawyer Trust Accounts. The idea of IOLTA is to pool small and transitory amounts of money, traditionally kept in lawyers' trust accounts, to take advantage of interest rates. It had its genesis in the British Commonwealth countries in the 1960s.

What is a trust account? Lawyers' trust accounts generally contain their clients' money. The money comes from escrow funds, advance fee deposits, cash advances, etc. The money, usually small sums or on deposit for short periods of time, traditionally earns no interest. In the days before NOW accounts, moreover, checking accounts like trust accounts could not bear interest. As a fiduciary, the lawyers cannot personally benefit from the monies on deposit in the trust account.

Who has IOLTA? Many states have IOLTA in one form or another. They include New Hampshire, Maryland, Florida, Minnesota, Colorado, Idaho, California and, most recently, Oregon. Georgia, North Carolina and West Virginia have disapproved IOLTA plans. In addition, IOLTA programs are in place in parts of Canada, Australia, South Africa, Zimbabwe and Southwest Africa.

Who gets the money? Under the typical IOLTA plan, all nominal and/or short-term client trust account monies are "pooled" in one super trust account which accrues interest. Lawyers do not get the interest, nor do the lawyers' clients. The money is distributed to various organizations to benefit the public good. In Canada, for example, the interest earned on trust monies supports legal aid, funds law libraries, supports law school scholarships for the needy, and pays for projects to improve the administration of justice.

A secondary but important issue is who spends the money. Some have suggested the pre-existing Bar Foundation should do the honors. Others recommend a new, autonomous dispensing body composed partly of lawyers, partly of lay persons and partly of political appointees. Whoever is ultimately chosen to spend the money will probably have a lot of money to spend. The British Columbia IOLTA program has earned as much as $8 million in one year. Maryland's program earned $.77 million last year. It is unknown how much money IOLTA would generate in Washington.

What does the taxman say about all this? First, to qualify for special IRS consideration the beneficiaries of any IOLTA plan must be bona fide, organized charities. Second, if the client has a say in whether the interest earned on his trust money shall benefit those charities, then there may be an "assignment of income," and the client might need to report it as taxable income. That is why states like Oregon have bypassed any taxable event by simply not giving the client a choice whether or not to participate. That's pure pragmatism, say some. That's a crooked scam, say others.

What do the banks say about it? In some states, the banking community has vehemently opposed IOLTA. Generally, the savings & loan institutions have supported IOLTA programs because it permits them to compete with the banks for new business. In Oregon, for example, where lawyer participation in IOLTA is voluntary, some lawyers choose to maintain a special relationship with their own banks and not participate in the plan.

What does "short-term" or "nominal" mean? Nobody knows for certain. As is currently the case, lawyers will use their sound judgment, based on practical considerations, to determine whether a particular sum of money should be deposited into the IOLTA account or whether a separate interest-bearing account should be established for a particular client. Some states have established a $50 "safe harbor" guideline to help lawyers decide what is nominal.

How much do you have to tell to whom? This is the client notification problem. Proponents of IOLTA argue that lawyers should not be required to notify clients what happens with the interest earned on their short-term or nominal trust monies. Non-notice eliminates the so-called assignment of income problem described above. Some argue, however, that it is the clients' money, after all, and they should at least know (if not decide) whether or not to participate in IOLTA.

A middle position urged by some is that lawyers be permitted, but not re-

quired, to notify their clients. In Oregon, a lawyer has a "professional responsibility" to "generally" advise her clients what IOLTA is all about. No one is really sure exactly what that means. Note that in Oregon, however, it is the lawyer, not the client, who decides whether to participate in IOLTA.

Is it legal? The American Bar Association says it is. Formal Opinion No. 348, 68 ABAJ 1502 (1982).

Who will do the paperwork? Under IOLTA, once they convert to NOW accounts, lawyers will need do no more paperwork than they currently do for their existing trust checking accounts. Service fees will be deducted directly from the interest earned and the financial institution will forward the net income directly to the dispensing body.

What are the major anticipated advantages and disadvantages? On the upside are a) the good causes which will benefit from the pro bono allocation of potentially millions of dollars; and b) the good public relations that it will earn for the bar as a whole.

On the downside are fears that a) the program will become a complicated, burdensome tangle of paperwork; and b) it will make lawyers look like a pack of thieves.

Who decides whether we go IOLTA? The Washington Supreme Court will make the final decision whether to implement an IOLTA program by court rule, but you have an opportunity to be heard before it decides. The Court created a Special Task Force to advise it. Justice Robert Utter is the Task Force Chairperson. The WSBA Board of Governors provides input to the Task Force, as do your local bar associations.

You may direct your opinions to the Board of Governors, your local bar association, or directly to the Special Task Force. The Supreme Court, of course, will publish the proposed rule and invite comment before making its final decision.

The Greatest Calling on Earth

by **Blair F. Paul**

The practice of law in the United States is the highest calling on earth and the greatest privilege known to mankind. A mouthful, to be sure, but absolutely true. And why I write is because so few of us know it and fewer believe it.

I recently had the pleasure of breakfasting with John Miller, former Seattle City Councilman and current political commentator for KIRO Television. And, I should also say, a lawyer of by no means undistinguished capacity. During our ramblings over poached eggs and toast, on subjects from Indian law to the next gubernatorial race, John had occasion to remind me of the GM-Toyota air pollution anecdote where upon enactment of our Federal auto-emissions standards, GM reputedly put 50 new lawyers on staff to fight them and Toyota hired 50 new engineers to implement them.

I was immediately reminded of some statistics I'd recently noted comparing the per capita distribution of lawyers in the United States to Europe and Japan which showed an enormous disparity, 20-1 in most cases and as high as 100-1 in other cases with the U.S. the obvious winner. I also flashed on Chief Justice Berger's frequent harbinging of doom about the incompetence of the trial bar (up to 70% of us) and the oft heard criticism of Americans' litigiousness — all to the end that the American judicial system is rapidly reaching a point of inertia from its sheer scale.

Damn it all — why as I listened to John and reflected upon all this other nonsense did I feel almost duty bound to apologize; as if there was something to apologize for?

We as lawyers are so often trapped by this supercilious nonsense which, even amongst us who should know better, is so tempting of adoption.

It is time we remind ourselves (and the rest of the American people) that we have built the greatest industrial nation on the earth and at the same time preserved the highest degree of personal freedoms and rights of any peoples on earth because of one very simple piece of paper — the Constitution. And it is *lawyers* who invoke it and an *independent judiciary* which enforces it. *That* is why the practice of law in this country is the highest calling on earth and the greatest privilege known to mankind.

I was listening to a commentary of Dan Rather several days ago about the '83 Pulitzer Prizes. He singled out a New York Times reporter who had personally suffered from "toxic shock syndrome" resulting in the loss, among other things, of the tips of eight fingers. After her recovery, she wrote about her experience in a series of feature articles, which, according to Rather, resulted in the saving of many lives. That is wonderful.

But I dare say *lawyers*, in balance with the press, have saved infinitely more lives with a successful medical malpractice or products liability case than all the press combined. For every unjustly convicted criminal defendant freed because of a white knight riding from the pages of the *Seattle Times*, such as in the Steve Titus case a couple of years ago, thousands have been saved by the quiet, diligent, journeyman work of lawyers just doing their jobs.

Freedom of the press was not preserved because the *New York Times* printed the Pentagon Papers, but because a *lawyer invoked the First Amendment and the Supreme Court enforced it*. For every life saved or made better by an OSHA regulation, ten were saved by an insurance company employee crawling through plants and examining products for defects in order to avoid potential products liability lawsuits. For every incompetent doctor drummed out of the profession by peer review, ten have been left by the wayside because of the malpractice case. How about civil rights? Congress did not enact Brown, the Supreme Court did.

On the other side, commerce works in this country because of *lawyers*. It is *we* who created the systems to collect delinquent debt, to protect ideas and products in patent and copyright laws, to transfer property, *to simply get on a bus to go to work*, because without the complex public and private financing arrangements we write, *there would be no bus*.

Nothing in the system functions without us and nowhere in the world does the system function so well. It is time we remember that. It is time we remind the American people of that. I happen to like my freedoms, and the price we pay for a litigious society ain't much of a price at all.

I'm proud to be a lawyer.

***Blair F. Paul** is a Seattle lawyer in the firm of Paul, Johnson, Paul & Riley.*

The Role of the WSBA in Political And Legislative Issues

On rounding the halfway mark of my presidency, it occurred to me that all of my columns in the *Bar News* to date have been pretty serious. I was tempted to try one in a lighter vein in the great tradition of John Rupp.

However, an issue arose at the March meeting of the Board of Governors which I believe merits serious comment. That issue is: What is the State Bar's proper role in respect to endorsing or advocating political issues?

The World Peace Through Law Section, acting under its bylaws, submitted to the Board of Governors for approval a section resolution dealing critically with United States' intervention in Central American affairs. The World Peace Through Law Section, which is certainly one of the most idealistic and well-intentioned segments of our membership, advised that it planned to distribute the resolution to our congressional delegation and elsewhere as a statement by the World Peace Through Law Section of the Washington State Bar Association. The Board of Governors declined to give this permission by a 10-0 vote. In taking this action the record was made clear that there was no intent to inhibit any section members from expressing their views as individuals. The intent was that such views should not be expressed under the *imprimatur* of the Washington State Bar Association.

Whatever the merits of this resolution, pro or con, it presented in sharp focus the question of the Bar Association's proper role in respect to political and legislative issues.

There is no proscription in the State Bar Act or in the bylaws of the Bar Association against involvement and participation by the State Bar in the political process. As a practical matter, we have to deal with political questions every day, and we would be greatly diminished in our usefulness as your representative if we did not participate actively and effectively in the political process. We all know that the legal profession is now going through a period of high visibility and vulnerability.

So what is the proper political role of the Washington State Bar Association? An appropriate analogy can be drawn with regard to our legislative program. In that area, and as a self-imposed discipline, the Board of Governors has developed, and operates within, the following general restraints.

First, Bar positions are not taken on a legislative issue until the measure has been reviewed by the Legislative Committee, discussed with our legislative representatives, and voted on by the Board of Governors after open discussion. There are occasional exceptions, but these are limited to emergency situations where immediate action is needed.

Second, the Bar Association's legislative activity is almost always confined to measures which have a direct and substantial relationship with our profession, the law or the administration of justice.

The third, and sometimes most difficult discipline to apply, is to limit our legislative efforts to issues where there is a probability of broad consensus support among our membership. Other bar groups (e.g., Washington State Trial Lawyers Association, Defense Research Institute) can and do advocate measures tailored to the particular aims of their constituencies. The State Bar has as its constituency over 12,000 lawyers who share a keen interest in our profession but otherwise have little political commonality.

Even with these restraints, there is a considerable latitude for judgement, and our political and legislative activities are bound to reflect to some degree the philosophic makeup of the Board of Governors, which changes from year to year. However, these Governors are all directly elected by the lawyers in the several Congressional Districts of the state and all are keenly sensitive to the fact that they must represent the broadest possible consensus of our membership.

Defending Against IRS Collections

by **David W. Freese**

After a thorough training in corporate reorganizations, capital gains bail-out routines, and other less dignified schemes to deprive the tax man of his due, I entered private practice urgently awaiting the opportunity to apply these procedures.

Much to my surprise, most potential clients seeking a tax attorney had been prompted to do so not by the thought of sophisticated maneuvering amid the thicket of tax laws, but because the Internal Revenue Service was levying on their bank accounts for past due taxes. Despite the almost overwhelming advantage the I.R.S. has to collect unpaid taxes, it has been my experience that these cases are not without hope.

This article assumes that assessment of the tax—the entry made by the unknown government record-keeper wearing the green eye shade—has already occurred.

THE I.R.S.: POWER TO COLLECT

Internal Revenue Code (hereinafter "I.R.C.") §6301 states:

> The Secretary [of the Treasury] shall collect the taxes imposed by the internal revenue laws.

I.R.C. §6303 says that for unpaid assessed taxes the Secretary shall give notice and demand for payment, leaving same at the usual abode of the delinquent taxpayer.

I.R.C. §7601 provides that the Secretary and Department of the Treasury employees shall canvass the countryside seeking taxable persons and objects.

Tax Liens

Assume that while carrying out I.R.C. §7601, Treasury Secretary Regan receives less than the hospitality rightfully due one of cabinet rank and he elects to proceed with tax liens procedure against a delinquent taxpayer.

I.R.C. §6321 provides that unpaid taxes *automatically* create a lien in favor of the government upon all property of the taxpayer. I.R.C. §6322 states that this lien arises upon assessment and continues until it becomes unenforceable by reason of lapse of time. One must look to I.R.C. §6502 to discover that the government has six years after assessment to collect a tax by levy or proceeding in court. Since the minimum statute of limitations for making an assessment is three years from filing, *the minimum period of the lien upon filing the return is nine years.*

Six years past assessment, however, does not mean that the government has exhausted its remedies. This is because the government may commence suit in court to obtain a judgment on its assessment. A judgment so rendered pursuant to 28 U.S.C. §1962 creates a [new] lien to the same extent that local law provides for judgment liens. Hence, in the State of Washington, the government has, using a suit at the end of six years from assessment, *sixteen years* to keep a delinquent taxpayer's property liened and subject to sale.

The lien that occurs automatically upon assessment is ineffective against all those without actual notice, unless "Notice of Federal Tax Lien" is filed, which I.R.C. §6323(f) authorizes. Typically, this notice is not filed unless there are unpaid taxes in excess of $2,000.00, or unless the government has had difficulty in collecting the tax. The typical filing fee is $8.00, which is added to the amount due from the taxpayer.

If the government does bring suit on its assessment, there is case law that says the taxpayer may not contest the validity of the assessment. Very frequently these cases are decided upon a motion for summary judgment brought on by the government.

Seizure & Exemptions

I.R.C. §6331 provides authority for levy and seizure. The eviscerating character of this authority, however, is set out in I.R.C. §6334, which specifies the following as exempt from seizure:

David W. Freese *is a principal in the Edmonds firm of Freese and Freese. He received his J.D. from the University of Washington in 1974 and his LL.M. in Tax from New York University in 1979. He is also a C.P.A.*

—wearing apparel, etc.;

—*if the taxpayer is the head of a household,* fuel, provisions, furniture and personal effects not exceeding $1,500.00;

—unemployment benefits, undelivered mail, and workmen's compensation;

—that amount necessary to pay any unpaid pre-levy child support; and

—of *wages*, $75.00 per week, plus $25.00 per week per dependent.

Other Provisions

I.R.C. §6601 provides for [compound] interest on unpaid taxes, which rate is now set at 16%.

I.R.C. §6651 provides that unpaid taxes are subject to a .5% per month failure-to-pay penalty up to an aggregate of 25% of the unpaid tax liability.

I.R.C. §7212 provides that whoever "corruptly" attempts to interfere with the administration of the Internal Revenue laws may find himself a guest of the government for up to three years (felony conviction).

I.R.C. §7602 provides the basic authority of the I.R.S. to summons a delinquent taxpayer and examine any of his or her books and records, and the taxpayer personally.

Finally, and most importantly, I.R.C. §7421 (the "anti-injunction statute") precludes a taxpayer from bringing any suit to restrain any assessment or collection (with certain exceptions not applicable under the assumptions stated supra).

DEFENSE METHODS & PROCEDURES

The I.R.S. is a ponderous bureaucracy. The defenses and methods set forth below depend largely upon slow or non-existent administration by the I.R.S., which is a very frequent occurrence. With more than just hope that the taxpayer's file will get lost somewhere within the bowels of the I.R.S. (a somewhat less frequent occurrence), the procedures outlined below take advantage of the leverage of action on the taxpayer's part vis-a-vis inaction by the I.R.S. We do not recommend that you do *anything* illegal or unethical.

Records Procural (the "Sword")

Knowing what is in the other fellow's hand is always an advantage. The Internal Revenue Manual is composed of about eight loose-leaf volumes. Much of what is written directs the revenue agent to record his or her most intimate thoughts. There will be, therefore, much to obtain.

The principal records retrieval vehicle is the Freedom of Information Act, 5 U.S.C. §552 (hereinafter "FOIA"). Other statutes of use are: The Privacy Act, The Government in Sunshine Act (of only sporadic application in Western Washington) the Federal Records Act, the census laws, I.R.C. §6203 (record of assessment) and I.R.C. §6103.

By judicial interpretation, an exception to the FOIA standards for release of documents is I.R.C. §6103, which speaks to "confidentiality and disclosure of returns and return information." In *Zale Corporation v. United States, Internal Revenue Service*, 80-1 USTC §9123, 481 F.Supp. 486 (Dist. of Col., 1980), the court held that the standard of review of the decision to release or not to release documents which constituted "return information" was very limited. A requestor would have to show that the decision not to release was "arbitrary or an unconscionable abuse of discretion."

Since most of the information a taxpayer would want is "return information," so that I.R.C. §6103 would apply, it is important in formatting a request for records that the request be carefully worded according to the standards contained in I.R.C. §6103.

The practical steps involved in submitting a request are as follows:

1) prominently display that the request is made pursuant to the Freedom of Information Act, the Privacy Act, I.R.C. §6103 and I.R.C. §6203;

2) identify the suspected location of all files, and their type, viz., "audit" or "collection";

3) include a properly executed I.R.S. Power of Attorney, I.R.S. form 2848;

4) state that the taxpayers agree to pay all reasonable search and photocopy fees as limited by regulation (or include a request of waiver therefore); and

5) send the letter certified, return receipt requested (for proof of date of receipt) to the Disclosure Officer of the I.R.S. District where the files are maintained.

According to my experience, requests for documents are honored according to law. In part, this is because the agent assigned to the case is not the one who determines what documents are deleted or excised. Upon receipt of a FOIA request, the Disclosure Officer requests the file(s) from the agent. The agent identifies those documents which the agent believes should not be released or should be excised. The Disclosure Officer is the one who has final say as to what documents are released or excised, and in the Seattle District at least, the Disclosure Officer is the one who actually wields the blade in making excisions.

> He who "corruptly" attempts to interfere with the administration of the Internal Revenue laws may find himself a guest of the government for up to three years.

If one is not satisfied with the decision of the Disclosure Officer, or if disclosure is tardy, he may appeal to "higher headquarters" within the I.R.S., or bring suit immediately in Federal District Court—subject, however, to a possibly successful assertion of the *Zale* defense. Appeals within the I.R.S. typically take almost a year for a decision.

Review of the records supplied or *not supplied* will explain much of what the I.R.S. is planning to do. Extensive expurgations and deletions indicate possible criminal investigation and prosecution. Of great interest are revelations in the Revenue Agent's report. I have often seen statements of such clear intent as "plan to seize the TP's [taxpayer's] automobiles" [in that particular case, a Mercedes and a Porsche]. The Revenue Agent's report will reveal if the agent knows where your client works or where his bank accounts are located.

Before submitting a request for records, consider timing. Although FOIA requests are honored and administered according to law, the Revenue Agent will almost always stop writing in his case file upon receiving notice that a FOIA request has been submitted. So, if you want documents that are not yet included in the case file—for instance, documents which will be produced pursuant to a third party summons—delay the request.

Two exemptions to release of documents are the "Attorney-Client" and the Attorney work product, so an FOIA request should be made prior to commencing any litigation, because the sought documents will be less likely to be classified within those exemptions.

Attorney Representation (the Shield)

The Fair Debt Collection Practices Act, 15 U.S.C. §1692, et seq., precludes a collection agency and certain other creditors from having any contact with a debtor once the debtor has employed an attorney to represent him with respect to the subject debt. The developing case law on violations of the Fair Debt Collection Practices Act indicates a near strict liability standard. Enforcement provisions and penalties are substantial.

Governmental agencies have generally been exempted from the provisions of this law. In Section 102 of P.L. 96-74, Congress, in funding the Treasury Department, precluded the use of any appropriated funds by the I.R.S., unless the I.R.S. complied with the "no contact upon attorney representation" and "no harassment" sections of the Fair Debt Collection Practices Act. In the 1981 Treasury Appropriations Bill, P.L. 96-536, these preclusions were continued.

These requirements are now cast in stone, having been incorporated in the Internal Revenue Manual at paragraphs 51(12)(1) through 51(12)(4).

In interposing yourself between the hapless taxpayer and the minions of the I.R.S., it is practical to send the agent(s) involved a copy of the I.R.S. Power of Attorney which was sent to the Disclosure Officer, and a letter invoking the Fair Debt Collection Practices Act (along with the Fifth Amendment, if appropriate). As the provisions which subject the I.R.S. to the Fair Debt Collection Practices Act are *really buried* in uncodified appropriations acts, cite chapter and verse of the Internal Revenue Manual. Under the Fair Debt Collection Practices Act there is no monetary threshold for federal court jurisdiction, so in view of the anti-injunction statute, some threats of suit against the *individual* violator may help to elevate the revenue agent's systolic blood pressure to a satisfactory level.

Effect of a Bankruptcy Filing

Automatic Stay. 11 U.S.C. §362 provides for an automatic stay against "assessment" or "collection" of any tax. Filing a Chapter 7 petition (a liquidation petition) will provide about a four-month reprieve. If a Chapter 13 petition ("wage earner") is filed, up to the plan length, a maximum of five years is possible as a reprieve. And a Chapter 11 petition ("reorganization") can make possible a reprieve of up to six years.

It is important to note that the automatic stay allows for a *reprieve*, and nothing more. I.R.C. §6503(i) provides that a bankruptcy filing suspends the running of the statute of limitations for the duration of the bankruptcy case administration. At the conclusion of the bankruptcy case administration, the I.R.S. is free to make any assessment it wants, and commence collection.

Discharge. The liquidation discharge, 11 U.S.C. §727, is limited by 11 U.S.C. §523, "Exceptions to Discharge." In §523, one reads that taxes are not discharged:

> . . .with respect to which a return, if required (i) was not filed; or (ii) was filed . . .after two years before the date of the filing of the [bankruptcy] petition.

Interpret the phrase "after two years before" to mean "within" two years.

11 U.S.C. §523 also cross-references to 11 U.S.C. §507(a)(6), as another type of a claim that is not discharged. This provision relates to taxes less than three years old. So only income taxes older than three years may be discharged in a Chapter 7 bankruptcy proceeding.

Chapter 13 Discharge. 11 U.S.C. §1328 is the provision granting a discharge in a Chapter 13 bankruptcy proceeding. This discharge provision is considerably broader than that found in 11 U.S.C. §727; in part, because it is not limited by 11 U.S.C. §523 or §523's cross references.

Prior to the enactment of the new Bankruptcy Code, the U.S. Supreme Court in *Bruning v. United States*, 376 U.S. 358 (1964), held that pre-petition taxes, and post-petition interest thereon, survived a bankruptcy and became an obligation of the debtor at the conclusion of the bankruptcy administration.

Because the statute of limitations on I.R.S. assessments is suspended for the duration of the bankruptcy petition, *post-petition* interest and penalties on *pre-petition* taxes may be assessed per the Internal Revenue Code at the conclusion of the bankruptcy proceeding. An important exception to this rule is I.R.C. §6658(a)(2) which eliminates the failure to file penalty on pre-petition taxes during the period of the bankruptcy case administration.

There is, however, no similar I.R.C. provision with respect to interest. Because the I.R.S. views interest on its taxes to be absolute, there is sure to be a conflict. To my knowledge, there has been no appellate decision construing this issue of post-petition interest on pre-petition taxes under the *new* bankruptcy code.

There are two arguments for why there should be no post-petition interest on pre-petition taxes under Chapter 13.

First, the very broad nature of the Chapter 13 discharge section, as discussed supra, indicates that such a result is appropriate.

Second, the Bankruptcy Act of 1980 provided that for tax purposes, at least, the filing of a bankruptcy petition in the case of an individual created an *estate* which thereby required the filing of a fiduciary return, form 1041, *except in the case of Chapter 13.* A Chapter 13 filing simply did not create a separate [tax] estate.

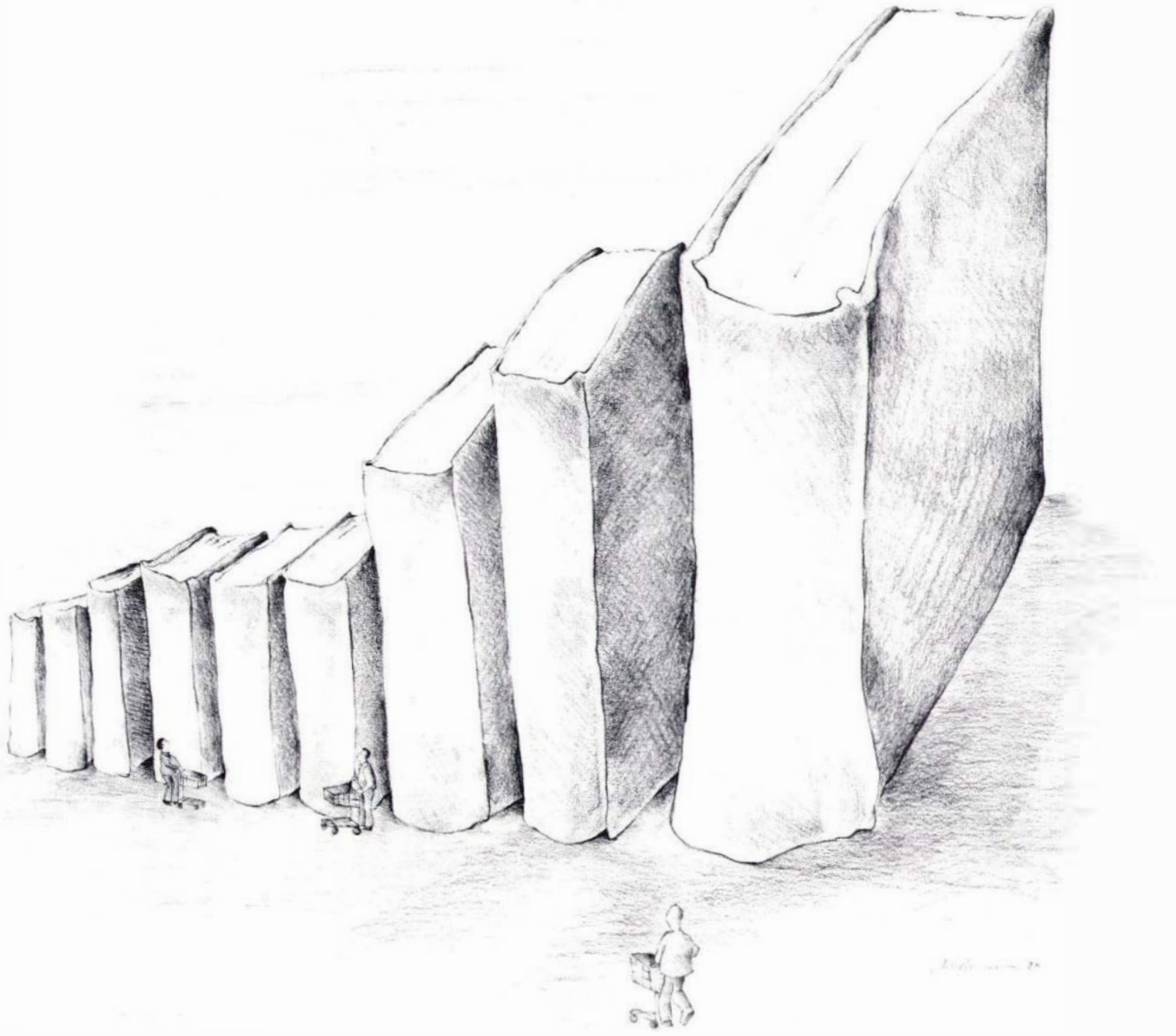
Since 11 U.S.C. §502(b)(2) provides that claims for unsecured unmatured interest (i.e., post-petition interest on pre-petition claims) are disallowed, it is arguable that any such disallowance is *against the debtors as individuals*, and not against a non-existent [tax] estate. Such a disallowance should then be *res judicata*, and preclude assessment after the conclusion of the Chapter 13 of post-petition interest on pre-petition taxes.

One note of caution in planning for taxes in a Chapter 13: there is case law which states that a Chapter 13 plan may not depart from the terms of an installment agreement negotiated with the I.R.S.—including the ever-present provision in those installment agreements for [post-petition] interest [on pre-petition taxes].

CONCLUSION

Will these methods work? Well, not every time, to be sure, but more frequently than one might suspect.

My clients who own the Mercedes and the Porsche seem to think so. Despite two-and-one-half years of sporadic I.R.S. activity seeking their assets, the I.R.S. never obtained the automobiles that the I.R.S. knew the taxpayers owned, nor any other assets of the taxpayers. The clients were able to pay off the I.R.S. during those two-and-a-half years on their own schedule, and not on that of the I.R.S. □



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A Modern Tax-Deferred Annuity . . . Just the Facts

by **Michael K. Ryan**

FACT: Annuities are among the fastest growing financial vehicles in America today! Why? Because modern annuities combine in one easy-to-use package most of the qualities needed by the prudent investor.

This article will discuss those qualities in general, explain how recent legislation (namely TEFRA) has affected annuities, and then describe a way attorneys and judges might want to incorporate annuities into their professional practices.

THE ANNUITY TURN-OFF

Most people are turned off by the word "annuity." They are reminded of "Aunt Sadie" who had an annuity income. It was not enough to live on, and when she died, the insurance company kept the money. That could be categorized as an *old fashioned annuity.* It had high front-end costs and extremely low interest rates, and normally required an immediate annuity income distribution.

The *modern annuity* has no cost to get in and highly competitive tax-deferred interest rates, and you can postpone taking a distribution to maximize your accumulation of money for retirement. It is an easy account to open, and once in, it will automatically compound without requiring you to make any further decisions until the money is needed.

Should everyone buy an annuity? No! It is not a financial panacea. A good rule of thumb is if a person is paying taxes on money set aside for future needs, *some* of that money should be considered for a tax-deferred annuity.

THE LEGAL RESERVE SYSTEM

All deposits placed into a fixed deferred annuity are guaranteed by life insurance companies. The money is safe for the same reason a life insurance policy is safe—because of the insurance industry's legal reserve system. This system requires that the surrender value of every dollar put into an annuity be placed in reserves, under strictly controlled reinvestment policies, in order to guarantee the principal. In addition, by law, the insurance company is required to then allocate additional funds from existing capital to guarantee the interest.

As a result, there is always more money in reserves than the money placed in the annuity. There is no FDIC or FSLIC insurance on *any* insurance product (including annuities), because the insurance industry already meets the strictest financial requirements of any industry in the world.

THE INCOME TAX ADVANTAGE

While money is compounding in an annuity, current taxes do not have to be paid—they are completely tax-deferred. Money compounds faster because interest is earned on dollars that would have otherwise been lost to taxes—each and every year. For many, the taxes will be paid at retirement, when it is normal to be in a lower tax bracket. But even if the tax bracket remains the same, the taxpayer is still money ahead because of the extra interest earned on dollars that weren't paid in taxes along the way.

The longer money grows without tax, the greater the gain when compared to a fully taxable account. This is why only long-term dollars should be considered. Taxes will still have to be paid, but the taxpayer chooses when. That is a real tax-deferral advantage. It provides control over an important ex

Michael K. Ryan *is marketing vice president for Great Northern Insured Annuity Corporation (GNA) in Seattle. He has been a NYSE stock broker, a financial consultant and a management consultant, and has conducted seminars throughout the country on tax advantaged investments, his specialty since 1973.*

pense—in this case the income tax—so that it can be minimized.

Downstream, random withdrawals are normally preferable to completely cashing out because only the amount of interest actually withdrawn is taxed. The rest of the untaxed interest earnings will continue to grow tax-deferred.

THE INCOME DISTRIBUTION

Almost all annuities offer a variety of ways to systematically distribute the accumulated dollars. This is known as "annuity income," and once begun, it is irrevocable.

Annuity income is a systematic distribution of both the principal and the interest each year. Therefore, a portion of the income is tax-free during the entire payout period selected. Annuity income can be a big help in continuing to minimize taxes, by spreading that tax over years as the interest earnings are received.

The available options include the selection of a time period—5, 10, up to 30 years in most cases, as well as a lifetime income that guarantees an income for as long as a person lives, even if he outlives the average life expectancy. Almost every option provides for a beneficiary, so the insurance company is obligated to distribute all the funds to someone. Because annuity income cannot be stopped once it starts, many will take an income from only a portion of their accumulated dollars, letting the rest continue to grow tax-deferred. These compounding dollars are then available for random withdrawals as needed (over and above the annuity income).

> Random withdrawals are preferable to cashing out, because only the amount of interest withdrawn is taxed.

INTEREST & NO COMMISSIONS

As of this writing, the tax-deferred compounding interest rate of most companies is still in double digits—but just barely. As rates in general trend downward, the interest paid on annuities must follow.

Competitive annuities are "no-load." No commissions or set-up fees are charged, so 100% of the money earns interest. There are, however, early withdrawal fees and potential IRS penalties.

The insurance company fees range from five to seven percent the first year or so, and then decrease to zero over the

next five to ten years. They normally apply to amounts withdrawn in excess of a 10% free withdrawal privilege.

The IRS penalty, on the other hand, is a tax of 5% applied to any interest withdrawn during the first ten years or to age 59½, whichever is sooner. It does not apply if the person is 59½ or older at the time of withdrawal. Disability, death, or an annuity income of five or more years is also exempt from this extra tax. Most agree that the IRS penalty is far less imposing than insurance company fees because it does not affect the principal and allows the investor to keep 95% of the interest earned under the worst of circumstances.

A DOLLARS & CENTS ILLUSTRATION

What does all this mean in dollars and cents? Say you have $25,000 available and are deciding between a fully taxable money market fund or a tax-deferred annuity. Let's assume both will pay an interest rate of 10% for the next ten years, and that you are paying 40% in taxes. In ten years, the taxable money market fund will grow to $45,000, while the tax-deferred annuity would grow to $65,000—a pre-tax gain of $20,000 for the annuity.

Now what? Do you cash out? Hardly! Although you would still be money ahead because of the extra interest earned on the unpaid taxes, cashing out *would* increase the tax liability.

The prudent financial choice would be to liquidate the annuity over a period of time to spread the taxes over several years. A ten-year income would generate almost $10,000 per year (a total of $100,000 dollars). If $10,000 were withdrawn from the money market fund in order to match the annuity income, assuming a continuation of interest at 10%, it would be depleted in six years (a loss of $40,000 when compared to the tax-deferred annuity).

Again, the taxpayer has the control to choose when and how taxes will be paid. The net result can be a sizable increase in future spendable dollars.

THE TEFRA IMPACT

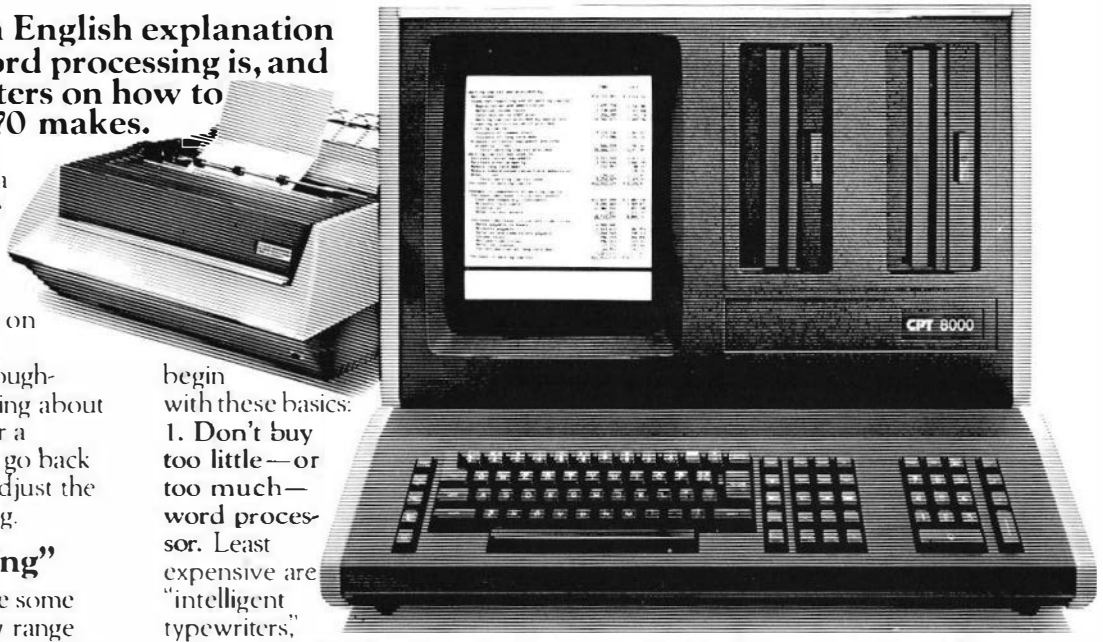
In the good old days (pre-TEFRA), annuities had one additional tax advantage not available today—the FIFO accounting method for random withdrawals. Principal could be withdrawn (tax-free) before withdrawing the tax-deferred interest earnings. This tax advantage *was* grandfathered in those annuities, but it is unavailable for any additions made after August 13, 1982.

TEFRA also imposed the IRS penalty tax discussed above, as well as certain withholding requirements applicable to distribution but not to the tax-deferred growth. The annuity taxpayer may elect NOT to have withholding deducted from the distribution. Otherwise, income taxes *will* be withheld from the taxable portion as follows:

1) Random withdrawals—withholding at a flat rate of 10%;

Tips from CPT on what to look for in a word processor

CPT offers a plain English explanation of exactly what word processing is, and some helpful pointers on how to choose from over 70 makes.



Word processing is simply a faster, easier, less expensive way to *type*.

With a modern word processor (such as the CPT 8000, right), you type on a *screen* instead of paper.

You can type at full rough-draft speed without worrying about errors. Leave out a word or a paragraph? No worry. Just go back and type it in. You can readjust the entire text *without* retyping.

"Electronic filing"

Most word processors have some form of memory. This may range from a magnetic card, which holds a single business letter, to the disks used in the CPT 8000, which hold over a hundred full-page letters.

This electronic storage allows you to recall individual pages to the screen in seconds. So you can make changes at any time as easily as you corrected the original.

Only when the document is letter-perfect do you transfer it from screen to paper—at up to 540 words a minute.

Clip and save this checklist of features to compare different models

Feature	CPT 8000		Brand "B"		Brand "C"		Brand "D"	
	YES	NO	YES	NO	YES	NO	YES	NO
Black-on-white full-page screen	✓							
Easily expanded with software packages	✓							
Standard keyboard and plain English commands	✓							
Computerized hyphenation	✓							
Low cost, easily modified billing software	✓							
Simultaneous input/output	✓							
Comprehensive training and local dealer support	✓							

Things to look for

Your search for the right word processor will be greatly simplified if you begin with these basics:

1. Don't buy too little—or too much—word processor. Least expensive are "intelligent typewriters," with very limited functions. At the other end of the scale are expensive shared systems.

Most popular by far are the "standalone" models. The CPT 8000, for example, fits easily on a desk top, yet has nearly all the automated features of even the largest systems.

2. Look for a full-page screen with a clear image. The full-size, black-on-white screen is a major feature of the CPT 8000. Some competitive models have only a partial-page display, and a green-on-green computer-like screen.

3. Be sure the word processor you select is easy to use. Look for things like a standard keyboard, and plain English commands. The CPT 8000 is so easy to learn, most secretaries will be turning out actual work after a short period of instruction.

4. Plan for your needs. It is tempting to use your word processor as a "fancy typewriter" just because your procedures are set up that way. However, a relatively new feature, called "software programming," can enhance your word processor so it can perform many other office tasks.

The CPT 8000, for instance, can also be used to prepare your office payrolls, keep ledgers, handle inventory and bookkeeping, and more. Be sure the word processor you choose has this important feature.

There are more things to look for than we can touch on here. For a thorough explanation of word processing, and more tips on what to look for, send for our free booklet *CPT Takes the Mystery Out of Word Processing.*

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The longer money grows without tax, the greater the gain.

2) Annuity income—withholding on the graduated scale based upon a married person claiming three exemptions.

THE ENTITIES INVOLVED

There are four entities to consider when setting up an annuity. By understanding how they interrelate, one can create additional advantages—depending upon the financial circumstances involved.

The Owner. The owner and the annuitant are usually the same, but that is not a requirement. The owner may be an individual, a corporation, a partnership, or a trust. Prior to an annuity payout, the owner has complete control and may make cash withdrawals, terminate the contract, and receive the accumulated proceeds or transfer the ownership.

NOTE: If the owner is not *also an annuitant, the owner must be named as beneficiary in order to receive the funds in the event of the annuitant's death and avoid the possibility of a gift tax.*

The Annuitant. The annuitant must be an individual with a measurable life expectancy by which the insurance company can guarantee a lifetime income. When the last surviving annuitant dies, the proceeds must be paid out—either in a lump sum or in the form of an annuity income—to the beneficiary as provided in the application (which forms a part of the annuity contract).

The Beneficiary. The named beneficiary receives any remaining proceeds upon the death of the annuitant. If the beneficiary does not elect an annuity income option within 60 days, income taxes will have to be paid that year on all accumulated interest earnings. The beneficiary will also continue receiving any remaining period certain annuity benefits if a payout has commenced. The beneficiary is named by the owner and may be changed by the owner at any time prior to the death of the annuitant.

The Contingent Owner. The contingent owner is useful when the owner and annuitant are not the same entities. The contingent owner automatically receives control of the annuity asset at the death of the owner.

PERIODIC PAYMENT SETTLEMENTS

The Lame Duck session of 1982 codified tailor-made settlements, a concept that is less than ten years old. Prior to that time, the traditional lump sum payment was the reasonable approach, and in 90% of the cases these funds were squandered within five years.

Now instead of a lump sum, the periodic payment settlement (also known as a "structured settlement") provides for a pre-established series of payments — all of which are completely *income tax-free* to the plaintiff. (Rev. Rule 79-220, IRC 104 and Periodic Payment Settlement Act of 1982). Most find that it is easiest to use a licensed insurance company annuity to fund the benefit. The total amount received is usually more than could ever be hoped for with a lump sum settlement, primarily because all future payments are tax exempt.

The guidelines established by the new Act are fairly simple and straightforward, and will ensure the tax-free status of the payments to the plaintiff. In general, they are as follows:

1) the periodic payments must be fixed and determinable as to amount and time of payment;
2) they must *not* be subject to acceleration, deferral, increase or decrease by the recipient;
3) the recipient must never have the right to receive the present discounted value of the future payments, nor have any control over the investment of the settlement proceeds;
4) the liability company must retain all rights of ownership in the annuity, which is purchased to fund its obligations to the claimant; and
5) the negotiations and settlement agreements should not offer a lump sum as an alternative, nor should any attempt be made to quantify the present value of the settlement.

This method of settlement can be beneficial to all the parties involved.

The plaintiff gains financial security, independence and freedom from taxes. Money, when needed, is provided through the foolproof medium of the annuity.

The attorney need not be concerned about how a lump sum will be spent or invested. Furthermore, through a periodic payment of the fee, the attorney can defer taxes and stabilize his/her own income (receiving more money at less net cost to the casualty carrier).

The Bench also avoids concern about dissipation of lump sums, leaving the plaintiff as a ward of the court and a candidate for welfare roles. Furthermore, the court does not encounter the continual special requests, paperwork, and administrative time entailed by guardianship trusts.

The defendant will benefit because the cost of the periodic payment settlement is less than the lump sum.

IN CONCLUSION

It is impossible to describe all the ways in which the modern tax-deferred annuity can be used to help provide financial security. It is limited only by the imagination of the user. If you, the reader, were "turned off" by the word annuity and yet read this far, my hope is you found the time spent worthwhile. □

Years of Loss in Earnings Capacity

The Income Tax Effect

by **Wolfgang W. Franz**

Last year, in an article published in the *Bar News*, authors Patton and Patton examined the effect that income taxes have on present cash value when the number of years of loss of earnings is varied.[1] They used a hypothetical flat rate tax model and concluded that income taxes reduce present cash value if the loss period is less than 20 years, increase the present cash value for periods over 25 years, and have virtually no effect if the loss is between 20 and 25 years.[2]

This paper uses a simulated computer model and the approximate 1983 Federal Income Tax structure to demonstrate that the specific conclusions reached by Patton and Patton are often incorrect, and that the number of years of loss required to negate the effect of income taxes depends greatly on the rate of earnings growth and the rate of discount. In general, the smaller these rates, the larger the loss period that is needed to negate the effect of income taxes.

EXPLAINING THE PROBLEM

To properly compensate a person, future lost earnings are discounted by an appropriate rate to present cash value.[3] This sum, plus the interest earned on it, is just sufficient to make future payments equal to future lost earnings. Since a person would generally have to pay income taxes on those future earnings, it seems reasonable to subtract income taxes from them.

But the resulting net of tax award plus the interest earned on it is no longer sufficient to replace future after-tax income, since the interest is also subject to income taxes. Thus, taxes paid on interest need to be used as an offset to tax paid on income. Otherwise the award is insufficient.

In most cases, there is an amount of loss where taxes on future lost income equal taxes due on interest. At that amount, present cash value is the same whether income taxes are considered or not. This amount can be found by varying the loss periods. The number of years of loss at which the effect of income taxes on present cash value of an award is zero are computed in this paper. The results are listed in the accompanying table.

***Wolfgang W. Franz** is a professor of economics at Central Washington University in Ellensburg.* *The author acknowledges the assistance of Fred Stanley in writing the computer programs used to compute the figures published herein.*

[1] Patton, Robert T., and Elizabeth C. Patton, "The Income Tax Effect on Present Cash Value of Lost Earning Capacity," *Washington State Bar News*, March, 1982, pp. 18-23.

[2] Patton and Patton used a $10,000 base income, increased it by 10%, and then used an offsetting 10% discount rate. They modified this process by applying a flat rate tax model on future lost earnings and interest earned from the award to come up with present cash values net of income taxes for up to 45 years of future earnings loss. They realized that such a simplified flat rate model does not capture the progressive features of our actual income tax structure.

[3] The appropriate discount rate is the rate of interest which could be earned on the award.

Number of Years of Loss and Various Earnings Growth Rates Offset by Discount Rates at Which the Effect of Income Taxes on Present Cash Value of an Award is Zero

Earnings Growth & Discount Rates	Years of Loss $10,000 Income	Years of Loss $50,000 Income
3%	*	*
4%	47.0	*
5%	40.3	44.1
6%	34.1	37.2
7%	29.5	32.2
8%	26.1	28.4
9%	23.4	25.5
10%	21.4	23.3
11%	19.7	21.3
12%	18.2	19.8
13%	17.1	18.4
14%	16.1	17.3
15%	15.2	16.3

* Number of years of loss cannot be computed since the amount net of taxes is always less than if taxes are not considered.

THE FINDINGS

To compute the effects of income taxes, the model uses the approximate 1983 Federal Income Tax structure for a single person who uses the standard deductions and one exemption. The same tax structure is applied to the present values of future income as well as interest.[4]

Column 1 in the table lists growth rates in earnings which are offset by discount rates. Columns 2 and 3 give the number of years of loss required for $10,000 and $50,000 base earnings at which the tax on future lost income is equal to the tax on interest earned on the award. The tax effects are offsetting (negated) and the award needed to pay for future losses is the same whether taxes are considered or not.

For example, for a 10% growth rate, 21.4 years of lost earnings are needed to negate the effects of income taxes. For loss periods of less than 21.4 years, consideration of taxes reduces the present cash value. Above these periods of years, the amount needed to pay for future losses net of income taxes is greater than when taxes are not considered.

As illustrated by the figures given in column 2, the number of years of loss needed to negate the effect of taxes increases substantially as earnings growth rates and discount rates change. Though the break-even period shortens to 15.2 years as the rates increase to 15%, the periods lengthen progressively as the rates decrease. Thus, 47 years are needed to negate the effect of taxes if the growth and discount rates are 4%. At a rate of 3%, no such break-even point is found when the loss period is lengthened further, and the amount needed net of taxes is always less than if taxes are not considered.

To measure the effect of higher income and consequently higher tax rates on the number of years needed to offset income taxes, a parallel set of figures has been computed for an annual income of $50,000. The results are listed in column 3. They indicate that the number of years needed to offset taxes increases by close to 10% for growth and discount rates up to 5% when compared with a $10,000 income. For rates below 5%, lengthening of the loss period again does not lead to a break-even point.[5]

CONCLUSION

The findings clearly indicate that the number of years of loss needed to negate the effect of income taxes varies inversely with the rates of growth in income and the rate of discount. Consequently, the categorical statement that tax effects are negated if the loss period is between 20 and 25 years is misleading. Computations need to be made for each individual case whether income taxes increase or decrease the present cash value. □

[4] A detailed analysis of the effect on income taxes on over- or undercompensation of plaintiffs, including some limitations that arise when computing taxes on lost earnings, is found in an article by Wolfgang W. Franz, "Should Income Taxes Be Included When Calculating Lost Earnings?," *Trial*, October, 1982, pp. 53-57.

[5] Average tax rates for 1983 on $10,000 income are 8.8%, and on $50,000, 26.3%.

1933–1983
The First Fifty Years of the
Washington State Bar Association

An Essay in History

by **John N. Rupp**

I remember reading, years ago, an article entitled "Ten Fingers and Two Toes" in which the writer lamented the fact that the Western World's arithmetic is based on tens—the decimal system. How much better, arithmetically if not anatomically, he said, if a person had six digits on each hand. Then our arithmetic would be duodecimal, based on twelve; and twelve is a much handier number than ten. Thus, ten is evenly divided by only two and five, whereas twelve may be evenly divided by two, three, four, and six. Just think, he said, of the number of times you have to divide the base by 3 and how valuable it would be if you could do it to produce a simple 4 rather than a clumsy 3⅓ or the impossible 3.3333^{+}. And he went on to expatiate on what he said were the numerous other virtues of twelve as a base.

His views, however, never caught on, and we still count by tens. And five times ten is 50, and 1983 minus 1933 is 50, and 50 is half a century, and the Washington State Bar Association is a half-century old this year, and the 50th Anniversary of anything is its golden anniversary. Hence the Board of Governors has concluded that the occasion warrants publication of a history of the Association.

I assume that the Board will think of other and better ways to signalize and celebrate this happy event. Revels, wassails, parades, march-pasts, fly-bys (or is it marches-past and flies-by?), concerts, pageants, paeans, odes, games, amnesties, remissions of delinquent CLE credits, masked balls, gifts of gold and rich jewels to seniors and bread to juniors, vigils, and services of thanksgiving all come readily to mind as a bare minimum—a skeleton, as it were, to be fleshed out, ornamented, and embellished by the product of the pellucid minds and lambent imaginations of the Board members. A history is all right, I suppose, but we should have celebrations which will make the "battlements shine in the morning light and glow against the sunset rays."

John N. Rupp *has been described as an itinerant observer and reporter of human foibles, of the whimsical meanderings of old and new history, and, not incidentally, of the use and misuse of the language used to describe these amazing events. He also practices law in Seattle and was President of the Washington State Bar Association in 1966-67. John is, in fact, the son of a former State Bar President, Otto B. Rupp, who in 1921-22 presided over the Washington State Bar in its pre-Bar Act days. The writings of John's scholarly and/or irreverent pen have been published frequently in the* Washington State Bar News, *a publication of which he was the first editor 35 years ago.*

Perhaps some day there will be published a real and definitive history of our State Bar Association. This paper will not be it, if for no reason other than time constraints. Edward Gibbon spent 20 years on his history of the Roman Empire; I, per contra, was graciously accorded about 20 days for this task, and I did have a few other matters to attend to. Moreover, a history of an association, as such, is pretty dull stuff. The association is only a framework—it is nothing without the people who made it and who guided its conduct and used it in the service of the public and the Law. Carlyle said, in his essay on Heroes, "The history of the world is but the biography of great men"; and Emerson wrote, "There is properly no History; only Biography."

This, then, is not a history; rather, it is an Essay In History.

THROUGH THE MISTS OF ANTIQUITY

Rupp's Law of the Perception of History is that, in general, events that occurred before the perceiver was born are Ancient History, seen only dimly through the mists of antiquity; while those occurring after one's birthdate are lively and recent, standing out clearly in the sunlight. Applying that sound principle here, and having in mind that, quite likely, most of our members were not yet born in 1933, one might conclude that all we need deal with is that Washington State Bar Association which was created in 1933 pursuant to the State Bar Act, Laws 1933, Chapter 94, RCW 2.48.

Yet our present Association did not "spring full-arm'd from the head of Jove." It has antecedents and precursors, and a forebear nearly as old as it is. Indeed, the Law is by far the oldest learned profession, and associations of lawyers in the English-speaking world go 'way back—the four Inns of Court in London trace their history over some 600 years.

More important, however, at least as I think, is the fact that the basic nature of law practice brings its practitioners into frequent contact with one another. Not only so, but the contacts commonly involve the contentions and disputes of people, the result of which is that lawyers, as the representatives of clients, must become disputants themselves.

An observer from afar might conclude that that would result in the lawyers hating one another. Yet it is not so, and the camaraderie of the Bar is legendary. Four hundred years ago, in the opening part of "The Taming of the Shrew" (Act I, Scene 2), we find Tranio admonishing Petruchio:

> And do as adversaries do in law,
> Strive mightily, but eat and drink as friends.

An early form of bar association was the "Circuit Mess." The lawyers who followed the court from town to town where court

Members of the Bar of Walla Walla and Colfax Counties in 1886: *Back row, l. to r.*—**John Dillion, Charles P. Sullivan, Lake D. Woolford, William Newton, Beriah Brown, R. G. Blair, Mark A. Fullerton, W. H. Pritchard, R. L. McCroskey, Eugene Pickrill** and **Edward H. King.** *Middle row*—**Harvey Kincaid, W. N. Ruby, C. M. Kincaid, Thomas H. Brents, James V. Odell, W. H. Doolittle, John B. Allen** and **E. H. Sullivan.** *Front row*—**Stephen J. Chadwick, Mack Wilson** and **Burton Shaw.**

The Chelan County Courthouse in Wenatchee in 1901

was held created a cooperative dining arrangement. As in the military, the man responsible for the arrangement was the Mess Treasurer; and even now we see that the principal officer of the Law Society of British Columbia is not called a "president," he is the Hon. Treasurer.

Our Origins

The origin of our Bar Association goes back to Territorial times when, on January 19, 1888, a year before Statehood, some 35 young lawyers got together in the Supreme Court's room in Olympia and formed a bar association. I say "young lawyers" because this was new country then, and there weren't any old lawyers in it. Judge George F. Ionworth once told me that when he moved to Seattle in 1888, "There were no gray heads at the Bar; not one!"

They called it the Washington Bar Association, but in 1890, revelling in the euphoria of new statehood, they changed the name to Washington State Bar Association. It was a voluntary association, much as our present county bar associations are voluntary. Not only that, but it was not open to all—a lawyer had to be *elected* to membership, although I gather that requisites for election were not particularly stringent.

About all they did at that first meeting was organize and elect officers: President, B. F. Dennison of Vancouver; four Vice-Presidents (one from each judicial district), John B. Allen, T. C. Sears, T. J. Humes, and George M. Forster; Secretary, Nathan S. Porter of Olympia; and Treasurer, Joseph W. Robinson of Olympia. I know about only two of those men. Judge Dennison had been a judge of the Territorial Supreme Court. The books list him in that position in 1868-1870, so I assume that he must have been appointed by President Andrew Johnson and not reappointed by President Grant. John B. Allen was a prominent Walla Walla lawyer who later became our State's first U.S. Senator and after that became a partner in our law firm in Seattle. Of the three volumes of Washington Territorial Reports, Allen was reporter for the first two. (Judge Henry G. Struue, one of the two founders of our firm, was reporter for Vol. 3). Imagine! Only *three* volumes for 35 years. One could keep up with the law in those days.

A year later the Association met again in Olympia and elected Elwood Evans of Tacoma as President. They transacted

Twenty-two lawyers attended the Annual State Bar Convention held in Ellensburg in 1902: *Back row, l. to r.*—**C. V. Warner, H. D. Merritt, W. B. Graves, Austin Mires, George Turner, T. L. Stiles, Milo A. Root, A. L. Slemmons, Mitchell Gilliam, J. B. Davidson** and **F. H. Rudkin**. *Front row*—**L. A. Vincent, C. H. Hanford, E. G. Kreider, Arthur Remington, Orange Jacobs, C. B. Graves, R. G. Hudson, J. B. Howe, Edward Pruyn, C. R. Hovey** and **Edward Whitson.**

some business in the form of adopting two resolutions, both proposed by Thomas H. Brents of Walla Walla. One resolution asked the Territorial Supreme Court to change its rule on the printing of briefs, and the other petitioned Congress to appropriate $5,000 "to aid in the completion of sets of reports, etc., for the Territorial Library." Such is life when you're a Territory, you have to ask Congress for everything.

The Written Record

Interestingly enough, we have a quite good written record of the proceedings of our Bar Association. Starting in 1894, the proceedings of each annual meeting were printed and published in little books. And the compiler of the 1894 volume was good enough to set forth in it the proceedings of each of the earlier meetings. Sets of those books are extant and preserved in the better law libraries and in the State Bar office.

Nine years ago Alfred J. Schweppe wrote "A Short History of the Washington Bar," which was published in the December, 1974, *State Bar News*. Al must have been thinking of future researchers because he took the trouble of finding and setting forth the history of Bar publications. Here is his report on the subject:

> The first proceedings were published in 1894. They contained the proceedings of the first six annual meetings, 1888 to 1894.
>
> Thereafter, proceedings were published each year through the 28th meeting in 1916. The proceedings of the 29th meeting in 1917 were published only in the *Washington Law Review*, Volume 1, No. 1, of April, 1919. The proceedings of the 30th, 31st and 32nd meetings (1918 to 1920) were published separately and independently.
>
> Beginning in 1921, the Association published an annual report through the years 1921 to 1927, covering the 33rd through 39th meeting.
>
> No meeting was held in 1928, except to elect officers, because the American Bar Association had its meetings in Seattle that year.
>
> Beginning with the 40th meeting in 1929, the proceedings were published in the *Washington Law Review*, and that arrangement

continued for the statutory bar association, created in 1933, down to 1961 when the agreement between the *Washington Law Review* and the state association was terminated.

However, no record will be found in the *Washington Law Review* for 1939 and 1940.

During the period in which *Washington Law Review* was the official journal of the state bar, there developed a demand for contemporary legal news as distinguished from the articles in a journal devoted to legal scholarship. In consequence, the state bar, commencing October, 1934, published a quarterly newspaper called *State Bar Review*, devoted to current news of interest to the bar. In November, 1936, this news service was incorporated into *Washington Law Review* and *State Bar Journal*. In 1962, upon termination of the arrangement with the *Washington Law Review*, the news service was again separately instituted, becoming the current monthly magazine captioned *State Bar News*. *(AUTHOR'S NOTE: Actually, the* State Bar News *has been published continuously since 1947.)*

A COLLECTION OF HISTORIES

Since I digressed a little and interrupted the smooth, graceful flow of this classy narrative to give you Al Schweppe's account of publications, I may as well digress a little more to tell you about some other historical materials.

The Court

Back in about 1931, C. S. Reinhart published his "History of the Supreme Court of the State of Washington." There is no date on it, but Reinhart says that he had then been the Court's Clerk for 40 years, and two Washington records show that he became Clerk on March 4, 1891. It is a most engaging little book. It contains many anecdotes, quaint stories, quotations from pleadings, the Court's rules, advice to lawyers and judges, accounts of cases, reminiscences, and similar materials. It also has some history in it, and biographies of the judges. The shortest, and most tantalizing, biography is on page 13. Here it is, in full:

> Judge Darwin, according to Bancroft, was a scholarly man, but the less said about him the better.

So far as I know, Reinhart's is the only published history of the Court.

Soon after John J. Champagne became Clerk in 1976, he embarked on a project of collecting information about the law clerks who had worked for the Court, but so far nothing has been published on that arcane subject, and, if anything ever is, I doubt that it will be a commercial success.

Professor Charles H. Sheldon, a political science professor at Washington State University, is working on a definitive history of our Supreme Court. I think it will soon be completed. I wish him well. I shall buy it.

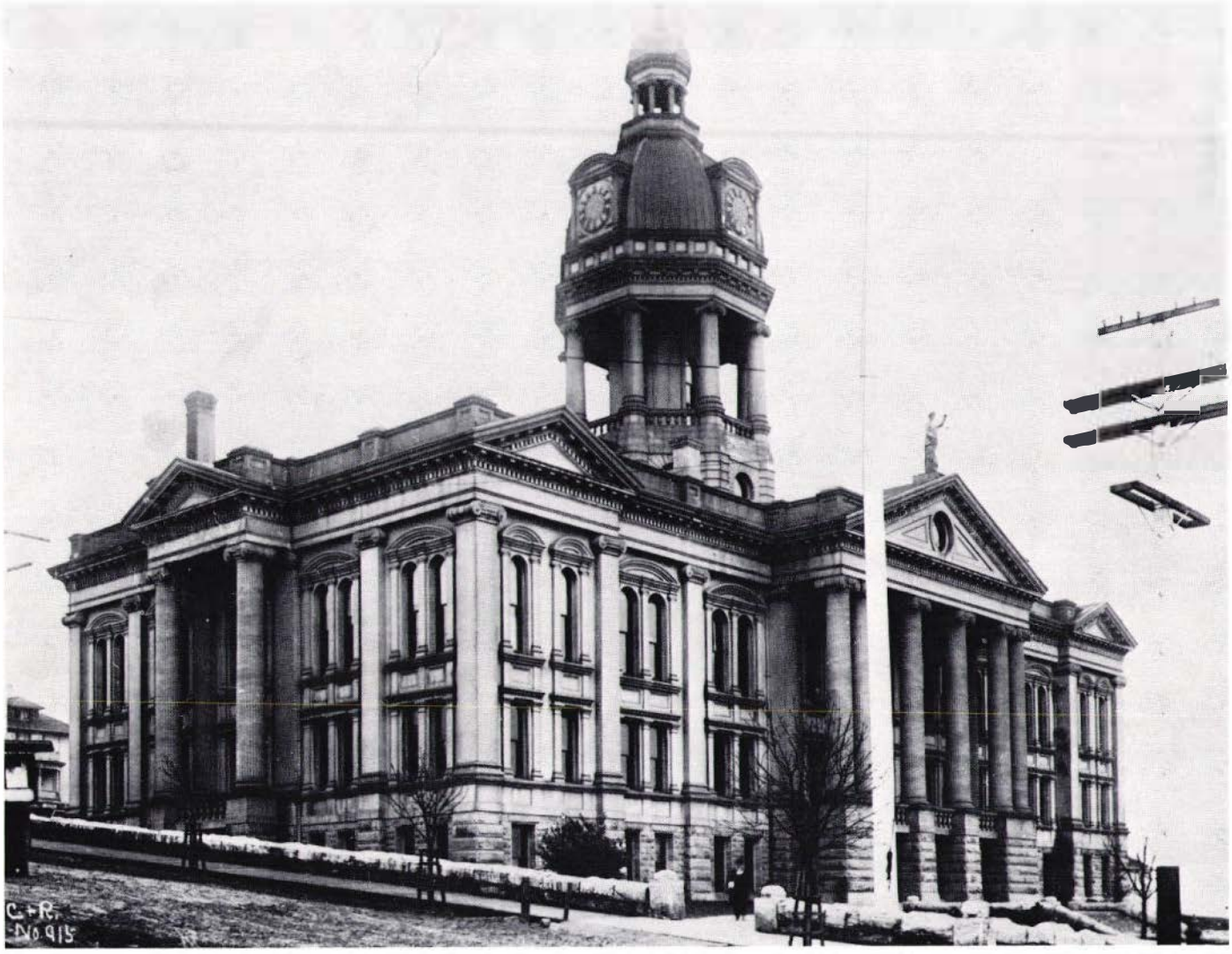
The Beardsley History

A useful and valuable article about printed material on the law of this State and the Territory appeared 40 years ago. It

ALFRED J. SCHWEPPE
Bar President 1954-55

is Dr. Arthur Sydney Beardsley's "Desiderata Pertaining to Selected Legal Materials of Washington," 18 Wash. Law Review 51. Keep it in mind, for you never know when some of the information so lovingly collected by Beardsley may be important to you.

Art Beardsley was for many years the Law Librarian at the University of Washington School of Law. He was a most assiduous collector, not only of law books (I remember his delight at finally obtaining a copy of "Fratt's South Carolina Statutes"), but also of manuscripts and historical materials. It is to him and his successor, Marian Gallagher, that we are all indebted for the excellence of that library. Part of Art's collecting acumen was devoted to materials about our judges and lawyers, and finally Art wrote a history of our Bench and Bar. That was a little more than 30 years ago, and I used to hear about "the Beardsley history" and be told by those who had read the manuscript that it was a good job. But Art had some trouble with his prospective publisher, and the book was never published. I understand that the manuscript reposes in the U.W. Law Library. Perhaps some day it will become Volume I of the definitive history to which I alluded at the beginning of this essay.



The King County Courthouse on "Profanity Hill" at 7th and Alder in Seattle served the court from 1891 to 1916. So nicknamed due to its inaccessibility, "Profanity Hill" was some 400 feet above the business district and could be reached by cable car, or by steps that lawyers said seemed to grow steeper each year.

Dr. Beardsley asked Benjamin H. Kizer of Spokane to write the introduction to his book, and Mr. Kizer was pleased to do so. To give you a view of Ben Kizer's graceful style and, more important, a concept of what is involved in preparing a proper history, here is a partial text of that hitherto unpublished introduction:

> We may surmise that when the author began his labors, he had only a partial idea of the extent of the research that would be required, of the many hundreds of letters that would have to be written, of the still greater number of personal interviews that would have to be sought, of the travel into every county of this state to sparkplug the research, of the many obscure records in files, offices, homes and libraries that would have to be laboriously pored over, to glean the last stubborn residue of fact that remained hidden. . . . It has been a labor of love of his profession that has sustained him to the end of this great task.
>
> It is not probable that any of us can grasp the full value of this history until we study it, and thus come to a better realization of the indispensible part played by the bench and bar in the development of this Pacific Northwest. . . the character, the private activities and the public services of these lawyers and jurists have entered importantly into the very warp and woof of the pioneering development of the State of Washington. . . .
>
> Individually, many of these lawyers are or will be forgotten, their lives and their labors buried in that oblivion common to all but the very greatest. But collectively, a knowledge of their services to their age and their region is indispensible to an understanding of our time and of the direction in which we trend.

Other Works

A notable lawyer, author, movie producer, and bon vivant of Seattle is Ralph Bushnell Potts. Ralph wrote a biography of George Vanderveer which was published as *Counsel for the Damned* by Lippincott in 1953. Later on Ralph wrote *Come Now the Lawyers* (Banta, Menasha, Wis., 1972), a book about

the lawyers of this State. It is, I think, as close to being a history of our Bar as anything in print, but it was not intended to be, and is not, a complete history.

There is, of course, other biographical and autobiographical material about lawyers and judges in this State. The most recent such work, and the most monumental (781 pages), of which I am aware is Frank E. Holman's "The Life and Career of a Western Lawyer" (Port City Press, Baltimore, 1963), completed by Frank when he was 75 years old. Frank Holman was an able and interesting man who, as Al Schweppe has remarked, "took things seriously." Not only did he know where he stood on any issue, but he knew where you should stand also. He told me one day, "John, I am through with this easy tolerance." Frank had good records and a retentive memory, and in many respects his book is a valuable source of much of our State's history during the 40 years or so that Frank Holman practiced law here.

In the early 1960s the editors of the American Bar Association decided to publish a series called, "Our State Bar Associations." The article on our Bar Association was written by Joseph H. Gordon of Tacoma and may be found in the January, 1962, issue of the ABA Journal. The idea was to acquaint the lawyers of the country with the organization, fields of endeavor, and accomplishments of the various State Bar Associations. Since our association is in many ways a leader and model in the field, Joe Gordon had much to write about and he performed the task admirably.

FRANK E. HOLMAN
Bar President 1944-45

BENJAMIN H. KIZER
in 1927

RALPH BUSHNELL POTTS
in 1932

Finally, to round out this catalogue of historical materials, you should know that about 20 years ago the Board of Governors decided that we should get serious about compiling and publishing a history of our Bar. A special committee was created to perform the task. Its most industrious chairman was Elias A. Wright of Seattle, who became chairman in 1964.

Letters were sent to every State Bar Association in the country asking for copies of their published histories. The response was disappointing—it turned out that such histories were rare, and the few there were were hardly models for the sort of history our Association had in mind.

Elias Wright decided that a good way to start was to have each county compile its own history, so he appointed for each county a senior and respected lawyer to head up the effort. In some cases "appointed" seems too bland a word; "dragooned" is more accurate. At any rate, Elias finally got them all lined up, gave them their marching orders, and awaited results. If things were slow, he prodded. But it was a losing game. Most of those fellows had no clear idea of how to do historical research, and, if they had, the sheer labor of the task was usually beyond them. Barbara Tuchman has pointed out that a historian who relies on the writings of others simply perpetuates and reinforces the errors of those others and that the only reliable sources are original records, which must be mined with great labor.

In the end the committee got reports from 26 of the 39 counties; one-third of the counties did not respond at all. And many of the reports were patently worthless. They are all on file in the State Bar office. The only really good one, as it

CHARLES H. PAUL
First President of the Organized Bar 1933

seems to me, is the one done by Ben Kizer for Spokane County. The committee even consulted a professional historian for help and advice, but it seems to have concluded that the wise thing to do was to "file and forget." So, except for the material preserved in the files, nothing came of the project.

THE EARLY YEARS

Leaving, then, this catalogue of historical materials and returning briefly to the days of the voluntary State Bar Association, I point out that it seems never to have had more than about a quarter of the State's lawyers as members. Nevertheless, it had a great influence in the development of the law and general polity of the State. Thus, for example, as far back as 1894 we find the Association urging (1) the creation of a "law department" (i.e., a law school) at the University of Washington, (2) reform of the community property law, (3) the non-partisan election of judges, (4) the non-partisan election of city officials, and (5) reform of the redemption laws. And all these projects were accomplished.

But we have to move along and come to the creation of the present association. It was not until 1929 that the old voluntary association even had an office—before that the president and the secretary handled its affairs from their own law offices. In 1929, Al Schweppe, who was then dean of the University of Washington Law School, took on the task of being the secretary of three organizations: the State Bar Association, the Seattle Bar Association, and the State Judicial Council. A few months later Al resigned his deanship and became a partner in McMicken, Ramsey, Rupp & Schweppe, and on June 1, 1930, he opened his "secretarial" office in a donated room in the Colman Building in Seattle. The monthly budget was $250, of which $150 paid the salary of a full-time secretary, Miss Clydene Morris, who had been a school teacher in Kent.

The State Bar Act

Almost immediately the State Bar Association decided to join the then-infant move to "integrated" State Bar Associations. This, of course, was not without opposition, for many lawyers resented and resisted the ideas of compulsory membership and of Supreme Court control through rulemaking. But the soundness of the concept carried the day, and the State Bar Act was drawn up by a committee consisting of Al Schweppe, George McCusk, and Roger Meakim.

Judge Meakim used to regale us with his account of how the statute was enacted by the 1933 session of the legislature. To appreciate Roger's story you must understand that the legislators in that session were not viewed as sympathetic toward anything wanted by "the establishment," which included the lawyers. It was that session and its successor in 1935 that led to Postmaster General James A. Farley's celebrated remark about "the 47 States and the Soviet of Washington."

Anyway, according to Roger, the atmosphere was distinctly hostile until one member got up on the floor and reminded the others of their dedication not only to strong labor unions, but also to the closed shop. "All the lawyers want," he said, "is their own union and a closed shop. We ought to give it to them." The argument carried the day, and the State Bar Act was enacted.

Association Organized

Promptly, the State Supreme Court appointed Schweppe, McCusk, I.V. Worthland, L.H. Brown, and Charles H. Paul as the statutory commission to organize the Association, and soon the Association was put together and started to function. The annual dues were $5.00 from each of some 2,700 members, and with this new-found wealth the Association hired a small staff and moved to three rooms in the Dexter Horton building.

The Judicial Council and the Seattle Bar Association, having no paid staffs, were also headquartered in that office and were served by the State Bar staff. Years later the Judicial Council moved to the law school at the University of Washington. The Seattle-King County Bar Association moved to its own office in the Central Building at the same time, almost 20 years ago, that the State Bar moved to its present quarters at 505 Madison Street.

Bar Execs

The present integrated State Bar Association has had only four full-time paid executives in the 50 years of its life: Clydene Morris (1933-1955), Alice O'Leary Ralls (1955-1972), G. Edward Friar (1972-1982), and John J. Michalik (1982 to present). Clydene's title was Executive Secretary. After Alice Ralls had held the job for several years, she pointed out that most of her opposite numbers in State Bar Associations were called "Executive Director," and the Board of Governors decided to satisfy what we called her "vanity" and changed her title accordingly.

AN ACCOMPLISHED LEADER

I have no space to describe all the accomplishments of our Association. We continue to be a leader in fields such as court administration, client indemnity, jury instructions, legal aid, continuing legal education, admission to the bar, unauthorized practice, administrative procedure, lawyer referral, and general law reform. As just one example of the lattter, consider how much simpler and less troublesome and expensive to clients is our present probate procedure, brought about by the wisdom and hard work of a Bar Association committee headed by Robert R. Beezer.

Our system of lawyer discipline is a model in the United States because of the Association's dedication and the careful attention of the Supreme Court. It was not always so. In the days before the integrated bar, discipline was quite haphazard. Even after 1933 we worked for years through the Local Administrative Committees and Trial Committees, and we had only one lawyer who handled the cases. The first three Bar Counsel that I remember were, in succession, S.H. Kelleran, A.V. Stoneman, and T.M. Royce, and no one of those fine men worked full-time at the task.

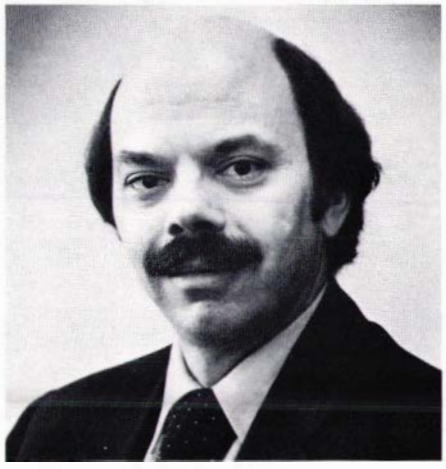
Moreover, the whole task of reviewing the trial records, deciding the cases, and, where necessary, making recommendations to the Supreme Court, rested with the Board of Governors, and at least half the Board's time was taken up by disciplinary matters.

Three rooms in the Dexter Horton Building in Seattle housed the newly organized Washington State Bar Association after the passage of the State Bar Act in 1933.

Now, of course, we have the Bar Disciplinary Board and a staff of lawyers who work full-time on disciplinary matters. Much of this extensive activity is the result of there being many more lawyers than we used to have, but much of it is also due

ALICE O'LEARY RALLS
Exec. Director 1955-72

G. EDWARD FRIAR
Exec. Director 1972-82



JOHN J. MICHALIK
Exec. Director 1982-present

to more careful and more extensive attention to disciplinary matters. The results have been excellent.

THREE VIGNETTES

I close with three vignettes of history. They might not find their way into a formal history, but I think they are worth recording.

On Washington Lawyers & the ABA

One has to do with our relations with the American Bar Association. One might suppose that a relatively small state 'way out in the far corner of the country would not have much to do with the national association, but the fact is otherwise. The ABA has met in Seattle three times. It was at the 1908 meeting here that the Code of Legal Ethics was adopted. The Lawyer's Oath then adopted was that used, and still used, in this state. Prior to the recent changes in rules of legal ethics, the most significant changes in the Code of Ethics were those adopted at the 1928 Seattle meeting of the ABA.

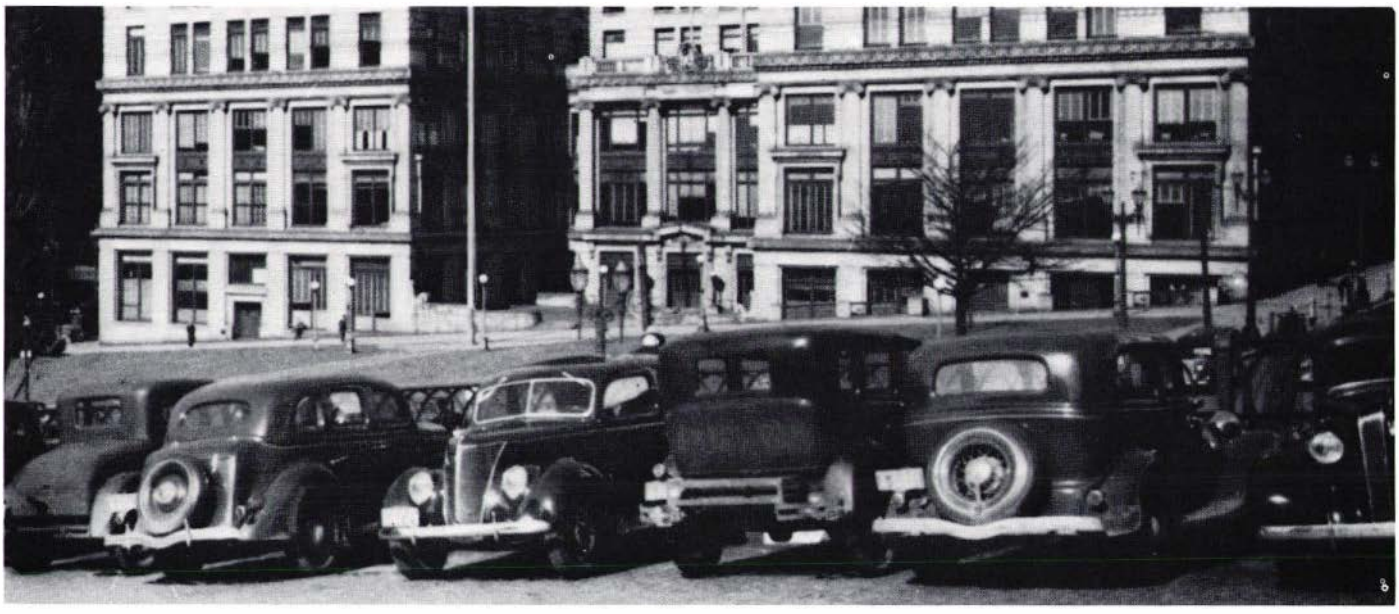
In 1948, the ABA met here again, and the meeting was memorable. Some inspired genius conceived the idea that we should not leave the delegates to the commercial hospitality of downtown, but that we should invite them to our homes for dinner. The arrangements for that were handled by the Ladies' Auxiliary. They saw to it that every delegate and his or her family were invited to dinner at some lawyer's home. The parties were a great success, and no other local association has ever successfully duplicated the program. Fifteen years later, I was in the House of Delegates, and people would see my badge and come over to tell me again what a marvelous time they had had at those dinners in Seattle.

Frank Holman was President of the ABA that year, the only Washington lawyer ever so honored. Joe Gordon of Tacoma was Treasurer of the ABA for so many years that he has a permanent seat in the House of Delegates, and he was succeeded as Treasurer by another stalwart, J. David Andrews of Seattle. And over the years our State's members of the House of Delegates have been such as Richard S. Munter, Tracy Griffin, Al Schweppe, and Grant Armstrong, who, by the forces of their personalities, have had an influence there greatly disproportionate to their small number.

On Choosing a New President

The second vignette has to do with the President of the Association. In the early years after 1933, there was an unwritten rule that one who had been on the Board of Governors would not be elected President by the Board. The idea was that people might think the Bar was being run by a small self-perpetuating coterie. So every year the new President would be elected and he would make an acceptance speech to the effect that he really knew very little of the details of the Association's business, but that he entered on the task gladly because he knew that the Board and Clydene Morris would not let him go far wrong.

Another aspect of the matter was that the identity of the new President was supposed to be a secret until he was introduced at the Annual Meeting. Of course, the secret was not always too well kept because there are blabbermouths everywhere whose delight it is to give away secrets. Still it was great fun to have the retiring President, near the close of the meeting, say, "Mr. Mortmain and Mr. Seizin, will you be good enough to bring our new President to the rostrum." And they would set forth through the crowd, much in the manner of the children's game of, "I had a little dog and he wouldn't bite you, and he wouldn't bite you, and wouldn't bite you—but HE WOULD BITE YOU!" And they would escort the new President, amid the applause of the multitude, up to make



his acceptance speech, receive the gavel, and say nice things about his predecessor.

As years passed and former members of the Board became numerous, the "little coterie" worry disappeared, and now it is common to select a new President who has had Board experience. And that is sound and sensible.

On the Annual Banquet

Finally, let me tell you of a curious circumstance that I call "The Demise of the Annual Banquet." For many years the Annual Meeting of the State Bar Association closed with a banquet. This is a custom of many organizations. There is a toastmaster and a head table and the dull procedure known as "Introduction of the Head Table," and the various other trappings of such affairs. And there is a Principal Speaker, usually a distinguished personage from afar. If someone has the wisdom to inform the speaker, well in advance, that the evening is a social affair and that we do not expect a learned address on the Rule Against Perpetuities or the Influence of Pufendorf on International Law, the speaker can be good and it can be a fine evening. And many of our banquets were excellent.

But starting in 1961, tragedy struck us three times in a row. At that year's Annual Meeting in Tacoma the speaker was Clarence Manion, who had been dean of the Notre Dame Law School. He came reasonably well-recommended, and he was a national figure. But he turned out to be a prophet of the Far Right and he developed that theme with vigor and great solemnity. Hardly the thing, don't y' know, at a sociable gathering. It was not well received.

The next year, we met in Vancouver, B.C. Obtaining the banquet speaker was the President's responsibility, and the President, for reasons which were never clear, not even to him, arranged for Ross Barnett to be our speaker. Barnett was Governor of Mississippi, and a thin-lipped white supremacist. There were pickets outside the Hotel Vancouver. He opened by telling us of the beauties of his home state. He described North Mississippi and South Mississippi, and East Mississippi and West Mississippi. I thought he was going to box the compass and tell us about Northeast Mississippi and South-southwest Mississippi, but soon he left that subject and spent the rest of his time on "nigras." The whole trouble, he said, lay with those New York troublemakers who came down to Mississippi and stirred up the nigras about something called civil rights. It went on like that for quite a spell. People were glaring and muttering, and reporters were making copious notes, and folks were stalking out of the room. Most unfortunate.

So there we were with two strikes against us. But the next year we met in Seattle and things seemed to be on the mend. Al McBee was President and he got Judge James R. Browning of the Court of Appeals for the Ninth Circuit as our speaker. Before his appointment to the Bench, Jim Browning had been Clerk of the Supreme Court of the United States and he gave us an entertaining and fascinating account of some of the history of that court, based on facts that he had dug out of the archives. He was very well-received indeed.

Ah, but cruel fate was not through with us. Someone had decided that Browning should be followed with some incidental entertainment, an idea that in itself seemed to be all right. But Clay Nixon persuaded Alice Ralls that the entertainer should be Gracie Hanson. Gracie had a girlie show at the Seattle Century 21 World's Fair and she showed up with some of her girls. They sang songs mainly in the manner of the aging Sophie Tucker about how Poppa wasn't doing enough homework with Momma. Many songs! It went on for about an hour. McBee and Browning and the others at the head table sat impassive. They could not escape. Not so, however, with the rest of the audience. About half of them decamped.

Well, that did it! Three strikes and you're out. One thinks of the graceful lines of one of the reprises of a song from "Pal Joey":

> Romance, fini,
> Your chance, fini,
> The ants that invaded my pants, fini;
> Bewitched, bothered and bewildered no more,
> No more!

We haven't had an Annual Banquet for the past 20 years. It has given place to the Annual Dinner Dance. And that, as it says in "1066 And All That," is a Good Thing.

IN CONCLUSION

When I started this essay I thought I might embellish it with anecdotes and tales about various of our brethren of the Bench and Bar. Many of these are preserved in writings, many more repose in our memories, and, of course, the store increases every day. But I found that they would be digressions here, and I already had enough of those. So it is a project for the future.

Ah, yes, there is much to be done and much effort to be employed. I have but hinted at some of it. But the existence of unstarted tasks need not dismay us. The senior Holmes exhorted us thus:

> Build thee more stately mansions, O my soul,
> As the swift seasons roll!
> Leave thy low-vaulted past!
> Let each new temple, nobler than the last,
> Shut thee from heaven with a dome more vast,...

Not bad advice, at that.

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$$

How to Choose Your Own Bank

by **William L. Schaumberg**

The problem stems from a lack of training and a shortage of time to attend to the myriad details that come with running a business office — meeting payrolls, collecting accounts receivable, administering retirement plans, arranging lines of credit.

Attorneys and efficient law office management often don't mix.

How can lawyers better manage their own professional and personal financial affairs? The dilemma may be closer to resolution now that banks recognize attorneys and other professionals as a neglected banking market.

CHOOSE YOUR BANK CAREFULLY

Banks are refining existing financial products and services and developing new ones to meet the needs of executives and professionals, a market that comprises 8 to 10 percent of their customers. As bankers rush to court these overlooked customers, attorneys face the difficult choice of the right bank and services for their needs.

Attorneys should choose carefully, says S. Rick Meikle, vice-president and legal profession specialist in the Private Banking Division of Rainier National Bank.

"Attorneys need to establish the same kind of relationships with their banks as they do with their clients," Meikle says. "The relationship should be a close, personal one, rather than one based on numbers, computers or an abstract."

Financial Inventory

The first step toward developing that banking relationship should be a financial inventory—a list of needs and goals aimed at promoting financial well-being at the office and, ultimately, at home.

It is during the inventory process that an attorney should demand the most of a bank. A lawyer should expect flexibility and a broad array of services.

The institution should recognize that attorneys have changing, uneven needs, according to Meikle. The income and other financial requirements of a young attorney just starting a solo practice differ from the needs of an older partner at a large, established firm.

"A bank should not try to pigeon-hole that professional into its existing products and services," Meikle says. "Attorneys have been regarded as with needs no different than those of a pipefitter or truck driver. If their situations fit them into one of the bank's pigeon holes, then they could be served. So it is important for the attorney to look for customized service."

In that search, an attorney should consider guaranteed income, cash flow, collection of accounts receivable, liquidity of investments, credit requirements and the structure of any debt and, finally, retirement age.

Debt Structure & Cash Flow

Debt structure should be evaluated continually, because a professional's credit needs and the shape of any borrowing can change quickly.

__William L. Schaumberg__ is executive vice president for trust administration at Rainier National Bank in Seattle. He has a B.S. in business and J.D. from the University of Nebraska, and is a member of the Oregon State Bar.

"A small firm is going to be more credit-driven," Meikle says. "It may need to borrow to finance facilities, leasehold improvements, even operating capital. As a result, it may not be a candidate for a bank's more sophisticated services right away. But it could be as it grows."

Debt structure and cash flow can be closely linked, if not dependent upon one another. A cash-short law firm may find relief simply by reshaping or basing borrowings on the equity represented in its office equipment.

$$$

A cash-short law firm may find relief simply by reshaping or basing borrowings on the equity represented in its office equipment.

"Cash may not be the most prudent way to finance a firm's operations," Meikle says. "A banker can help set up longer term financing instead of tying up assets in one lump."

Borrowings may be revolving lines of credit (secured or unsecured), outright loans, or a blend of both. A credit blend was the cash-flow answer for a firm with which attorney Jan Hadley was associated before she joined the Trust Administration Division at Rainier Bank.

Hadley's former firm specialized in personal-injury litigation, so paydays were irregular, and dependent upon the resolution of some major cases. In the meantime, the mid-sized Seattle firm drew upon lines of credit as well as upon loans. The firm supplemented its borrowings with a small amount of fee income.

Cash-management service, offered by many of the Pacific Northwest's larger banks, is another money-shepherding technique attorneys should consider in choosing an institution. It may involve nothing more than regular reporting of account balances, but it could include more sophisticated electronic features like automatic payroll depositing and lock-box service.

A financial inventory can reveal record-keeping deficiencies that could be shored up by consolidating the firm's bank accounts. By combining deposit accounts at a single bank, firms can generate or increase interest income from funds that otherwise may have been idle. While account-consolidation may include an attorney's personal household finances, the process cannot involve client funds held in trust.

Retirement Plans & Incorporation

A bank's choice of a retirement plan for a law firm will often depend on the firm's business structure. A Keogh pro-

gram may be the best plan for partnerships, while profit-sharing or money-purchase pension plans may work if a corporation is the organizational entity.

Before choosing a retirement plan, attorneys should review the bank's investment performance and plan administration and support features.

Retirement plans available to incorporated law firms can provide more funding sources, according to California lawyer Jay G. Foonberg, a frequent lecturer at law-office management seminars across the country.

"Borrowings from a corporate retirement plan can increase your cash flow," Foonberg says. "The loans must be repaid. Even so, you cannot borrow from Individual Retirement Accounts or Keoghs (without heavy withdrawal penalties).... In effect, you can form your *own* bank. You or other participants can then borrow, paying interest to the 'bank' that you own."

In addition to providing lending options and income shelters, corporate plans can help participants avoid estate taxes. Those plans carry few "downside risks," according to Foonberg.

"In most instances, the worst that could happen is that the plan would be disregarded or terminated with immediate 100-percent vesting," Foonberg says. "Then, an attorney would be taxed on the income earned in the years he or she would have been taxed had the plan never existed."

Law-firm incorporation has many other business advantages that can be explored with a banker's help.

NEED ADVICE? BANKS CAN HELP

Better banking advice and continuing-education efforts notwithstanding, law-office management problems won't disappear completely, says Don Chisum, associate dean of the University of Washington School of Law.

Law schools in the Pacific Northwest and elsewhere have their hands full just turning out the best lawyers possible. Chisum acknowledges a growing awareness of the need to train law students in office management for their own survival, if for no other reason.

While a few law schools have added office-management courses to their curricula, money and time remain significant roadblocks for most schools, including the University of Washington. Generally, law school personnel console themselves knowing that only a small percentage of graduates enter solo practice, says Chisum.

"Until we've decided we have mastered the skills of teaching the law," he says, "we won't be devoting vast resources to the issue of law-office management."

As a result, many attorneys launch their careers needing at least part-time office help and full-time financial advice. It is the latter service that banks are anxious to provide. □

WASHINGTON STATE BAR ASSOCIATION

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(206) 622-6054

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WASHINGTON STATE BAR **NEWSLINE**

The Board's Work

by **Steven A. Reisler**

NEW GUIDELINES FOR JUDICIAL RECOMMENDATIONS

WENATCHEE, Wash., May 20-21 -- The Judicial Recommendation Committee (formerly the Judicial Selection Committee) is a 21-member bar committee charged with recommending candidates for Appellate and Supreme Court appointments to the Board of Governors. The Board, in turn, recommends candidates to the Governor of the State.

In February, 1983, the Board directed the Judicial Recommendation Committee to prepare new guidelines which would define the nature and extent of the committee's activities [Bar News 36:3:24]. At the heart of the Board's 1982 action was the decision to replace the committee's single standard of excellence with a multi-tiered rating system for judicial candidates.

At the May meeting in Wenatchee, Committee Chairman William Mays of Yakima presented his group's proposed guidelines. The proposed guidelines differed from prior practice in two significant respects:

1) In previous years, a qualified and interested judicial candidate, once approved by the Judicial Recommendation Committee, was "approved" forever; under the revised guidelines, the committee's recommendation will automatically lapse after three years, and interested candidates must thereafter reapply for examination by the committee.

2) In previous years, only "excellent" candidates would be recommended to the Board; under the proposed guidelines, the committee would also recommend only "excellent" candidates, but they would be rated as "qualified" and "well-qualified" for the various available positions.

Seventh District Governor Bob Beezer pondered how to distinguish between "qualified" and "well-qualified" persons from a pool of "excellent" candidates, and concluded that the guideline, as drafted, was pure doubletalk. Chairman Mays commented that his colleagues were committed to a standard of excellence in recommending judicial candidates, but that the committee felt compelled by the Board's 1982 directive to superimpose a multi-tiered rating system upon that standard of excellence.

King County Governor Loftus urged the Board to maintain the standard of excellence previously used by the committee. He suggested that many committee members would resign if their function were relegated to rubber-stamping a meaningless list of candidates.

Governor Pat Comfort said he might concur with Loftus's single standard of excellence if everyone could agree on what excellence means. Comfort said that the committee should submit a list of "qualified" candidates, and from the general list the Board, not the committee, should recommend to the Governor of the State who to appoint to what judicial position.

It was clear throughout the discussion that political pressure can bear upon the Bar Association to enlarge the list of "qualified" candidates to include those the appointing authority wants to appoint. Board member Bill Dwyer expressed his view that the Bar should be less concerned with the political ramifications and more concerned about watering down the force of its own recommendations.

Ultimately, the Board voted 7-3 to revert to a single standard of "well-qualified" (synonymous with "excellent") candidates for judicial recommendations. The Board then adopted the proposed guidelines, as modified, without dissent. Under the new guidelines, the Board retains the right to add to the committee's list or to recommend candidates to the committee for reconsideration.

CLE TUITION WAIVER FOR JUDGES

Third Division Appellate Court Judge Munson told the Board that although judges, like lawyers, need continuing legal education, the financial situation of many judges prohibits them from paying for and attending WSBA CLE seminars. The Board voted 10-0 to waive tuition for Washington State judges for WSBA-sponsored CLE programs (subject to a $10 meals fee), if no other funding is available to the individual judges.

OTHER BOARD ACTIONS

LEGAL AID -- Spokane attorney Lew Wilson from the legal Aid Committee asked the Board to build into any proposed IOLTA plan a high priority for assisting legal services for indigents. Wilson also said his committee is developing a mandatory pro bono proposal for presentation next year.

ETHICS -- The Code of Professional Responsibility Committee proposed a formal ethics opinion which would require a city or county attorney's office to withdraw when it is apparent that an attorney in that office should be called as a witness. That rule currently applies to firms in private practice, but there is no formal opinion in this state applying it to the prosecuting attorney's office.

Governmental Lawyers representative Nick Handy spoke against the proposed ethics opinion. He pointed out that the rationale for the withdrawal rule is to prevent testimony by an interested attorney who has a pecuniary interest in the proceedings. A government lawyer may be an interested witness, said Handy, but he or she does not have any pecuniary interest in the outcome.

The Board voted 10-0 to defer consideration of the issue until it has had a chance to consider an overall revision of the Code of Ethics.

BOARD OF GOVERNORS MEETING SCHEDULE: JUNE 10-11 in LaConner; JULY 15-16 in Victoria, B.C.; AUGUST 19-20 in Port Ludlow.

NOTICE TO INTERESTED JUDICIAL CANDIDATES FOR THE SUPREME COURT AND COURT OF APPEALS OF THE STATE OF WASHINGTON

The Judicial Recommendation Committee of the Washington State Bar Association is now accepting applications to be placed on the list of recommended candidates for the above judicial positions.

NO VACANCIES EXIST OR ARE PRESENTLY ANTICIPATED IN EITHER THE SUPREME COURT OR THE COURT OF APPEALS. If you would like to be considered for recommendation in the event of a future vacancy, however, you are encouraged to make your interest known to the committee at this time.

Interested potential candidates should write for an evaluation questionnaire by contacting Marcia Caldwell, c/o Washington State Bar Association, 505 Madison Street, Seattle, Wash. 98104. (Please do not phone -- every written communication will be acknowledged.)

CLE Clearinghouse

Preparing a Negligence Case for Trial & Winning in the Courtroom

by

Joel G. Green *and* **John M. Redenbaugh**
Assistant Directors of CLE

Recognizing the need for CLE programming throughout the year, your Bar Association will present two summer programs to go along with your BBQs, weekend vacations, and sunshine.

The PREPARING A NEGLIGENCE CASE FOR TRIAL half-day seminar was conceived by Charles K. Wiggins of Edwards & Barbieri, Seattle. With major input from seminar chairperson Paul N. Luvera, Jr., of Mount Vernon, the program promises to be one of the most innovative programs to be presented this year.

This basic level seminar, co-sponsored by the Young Lawyers Section, will assist attorneys who are about to go to trial and need to organize files, contact witnesses, and take care of all matters required in order to try a case.

The faculty has been asked to prepare written materials and oral presentations around the following predicament: A new associate has just been handed a file by a senior partner about two weeks before the trial date and is told that the responsibility for preparing and trying the case is his. How does this associate go about preparing the case for trial? What are the necessary steps to properly prepare such a case for trial?

Previous seminars have dealt only with how to *try* the case; none have answered the fundamental question of how one gets *ready* for trial. This one does. Although the scenario assumes the associate is unfamiliar with the case until the partner turns over the file, the course will help you to prepare other negligence cases for trial as well.

This practical seminar will be presented from a variety of viewpoints, by both senior and young, but experienced, trial attorneys who have been confronted by the problems posed. Both the plaintiff's and defendant's perspectives will be presented. Members of the faculty come from around the state and from firms of different sizes, and their varied backgrounds will ensure registrants a unique and diverse program.

WINNING IN THE COURTROOM (A Focus on Criminal Law Practice) is co-sponsored by the Criminal Law Section. It will give you an opportunity to sharpen your knowledge in a number of areas and will help you prepare for courtroom representation of criminal law clients. *Learning can be enjoyable*, and this seminar will employ more than just lectures in order to expose you to ideas for future reference.

James Jenner of Oakland, California, will be the special guest speaker. Mr. Jenner served as defense counsel for the Symbionese Liberation Army in the Marcus Foster assassination case and the Patricia Hearst kidnapping case. He is now

Chief Public Defender for Alameda County. His entertaining and informative presentation is entitled "Creative Cost-conscious Courtroom Communication Revisited." Utilizing audio-visual aids and drawing upon his vast experience in criminal law, Mr. Jenner will provide you with a fascinating look at creativity in criminal law practice.

But that is just a portion of this program. Other topics that will be covered include: Self-Defense in the State of Washington; Methods and Practice Tips Regarding Impeachment; How to Keep Out "Prior Bad Acts" under ER 404(b); and Hypnosis and the Practice of Criminal Law. The program also features a clinical psychologist who will provide additional commentary on hypnosis and a hypnosis-related demonstration. This intermediate and advanced level program deserves your attention!

Looking down the road... The 1983 Bar Convention marks the 50th Anniversary of the State Bar Act and the unified Bar Association. The 1933 State Bar Annual Meeting was held in Spokane and, appropriately, this year's Convention will also be held in Spokane. Fourteen different CLE programs will be offered, allowing you the opportunity to choose from seminars sponsored by the CLE Committee or co-sponsored by various WSBA Sections.

Although the next two CLE Clearinghouse columns will be devoted to the Bar Convention, you should be aware now that the lead-off program on Monday, September 12, will feature nationally renowned office management expert, J. Harris Morgan, with a seminar on GETTING AND KEEPING CLIENTS, a fitting topic for our Convention theme, "Law Practice Management in the '80s."

Please refer to the Approved CLE Activities list below and to previously mailed brochures for further information on this summer's CLE.

Approved Continuing Legal Education Activities

WASHINGTON STATE BAR ASSOCIATION

Creating a Condominium (New Developments and Selected Topics)
June 24, 1983: Seattle 7.00

Preparing a Negligence Case for Trial
July 8, 1983: Spokane 4.00
July 15, 1983: Yakima 4.00
July 22, 1983: Seattle 4.00

Pacific Rim Federal Tax Conference IV — Tax Aspects of Small Businesses
August 5-6, 1983: Seattle 11.00

Winning in the Courtroom (A Focus on Criminal Law Practice)
August 12, 1983: Seattle 6.50

ABA ECONOMICS OF LAW PRACTICE SECTION

Working With Legal Assistants
June 17, 1983: Seattle 6.00

WASHINGTON STATE TRIAL LAWYERS ASSOCIATION

Legislative Update
June 30, 1983: Seattle 4.00

Anatomy of a Defense II
August 18, 1983: Seattle 6.50

Notes From the Academy

Edited by **Professor William B. Stoebuck**
University of Washington School of Law

ADMINISTRATIVE LAW. (1) Board of Prison Terms and Paroles is not constitutionally required to appoint counsel for indigent inmates for hearings in which their minimum sentences could be redetermined for disciplinary infractions. *Harris v. Kastama,* 98 Wn.2d 765, 657 P.2d 1388 (1983). (2) Reviewing court is to apply the "error of law" standard (RCW 34.08.130[6][e]) to mixed questions of fact and law when facts in record are undisputed. *Rasmussen v. Employment Sec. Dep't,* 98 Wn.2d 846, 658 P.2d 1240 (1983).

—J.M. Vache

CRIMINAL LAW AND PROCEDURE. (1) Negligent official destruction of fluid sample taken from rape-robbery victim's vagina did not bar prosecution. Despite theoretical 12 per cent probability sample would be exculpatory, other strong evidence of guilt prevented defendant from establishing "reasonable probability" that destroyed evidence would have been favorable to him. *State v. Vaster*, 99 Wn.2d 44, 659 P.2d 528 (1983). (2) *United States v. Johnson*, holding that *Payton v. New York* applies retroactively to pending appeals, applies in Washington. "Exigent circumstances" dispensing with need for warrant to enter suspect's home to make arrest under *Payton* must involve "a real danger to the police or the public or a real danger that evidence. . .might be lost." *State v. Counts*, 99 Wn.2d 54 (1983). (3) Supplemental jury instructions after jury indicates it is deadlocked are not absolutely barred. Noncoercive, clarifying instructions may be permitted. Defendant must demonstrate "reasonably substantial possibility" trial court improperly coerced verdict. *State v. Watkins*, 99 Wn.2d 166 (1983).

—G.R. Nock

INSURANCE. (a) Exclusion from liability policy issued to carpet cleaning corporation for damage to property "in the care, custody or control of the insured" does not exclude liability for damage to carpet being cleaned by employees of insured, when definition of insured referred only to corporation, executive officers, directors, and stockholders. (b) Insurer's denial of coverage, based on policy interpretation made in reliance on precedents in Washington and other states, does not violate duty of good faith imposed by Consumer Protection Act; hence, insurer is not liable for insured's attorneys' fees. *Phil Schroeder, Inc., v. Royal Globe Ins. Co.*, 99 Wn.2d 65, 659 P.2d 509 (1983).

—R.S.L. Roddis

LAND-USE PLANNING. (a) For nonprofit corporation to have standing to challenge negative threshold determination on environmental impact statement, at least one of its members must have standing. (b) For a person to have stand-

ing to challenge negative threshold determination by writ of certiorari, he must submit affidavits containing factual detail showing how challenged action will injure his person or property; a mere general allegation of harm will not suffice. *Concerned Olympia Residents v. City of Olympia*, 33 Wn. App. 677, 657 P.2d 790 (1983).

—W.B. Stoebuck

REAL PROPERTY. (1) When description of land that has a boundary on a stream contains, as its first water-related call, a call "to" the stream, this creates presumption that conveyance is to thread of stream. This presumption is not overcome by subsequent calls by courses and distances that approximately follow stream or by later call "leaving the bank" of stream. *Bernhard v. Reischman*, 33 Wn. App. 569, 658 P.2d 2 (1983). (2) Co-ownership of land does not, alone, establish that co-owners are joint venturers. Other evidence would be required of express or implied venture agreement, including agreement to share profits and losses. *Goeres v. Ortquist*, 34 Wn. App. 19, 658 P.2d 1277 (1983).

—W.B. Stoebuck

TORTS. (1) Transmission of natural gas by underground pipeline is not abnormally dangerous activity and hence not subject to strict liability. Lengthy dissent. *New Meadows Holding Co. v. Washington Water Power Co.*, 34 Wn. App. 25 (1983). (2) Measure of damages for willful conversion of personal property (Canadian silver coins) having sharply fluctuating value is highest value between time of conversion and a reasonable time after victim discovers the conversion, where converters concealed conversion. *Brougham v. Swarva*, 34 Wn. App. 68 (1983).

—R.S.L. Roddis

CODE OF PROFESSIONAL RESPONSIBILITY COMMITTEE

FORMAL OPINION NO. 176
Defense Counsel's Duty to Withdraw When There is a Conflict of Interest Between Two Clients of the Same Firm

Recently, the Bar Association has received inquiries about conflicts of interest between criminal defendants. Since the situations have recurred, it is appropriate to present a formal ethics opinion addressing the issues raised by these inquiries.

This opinion is based upon the following three fact patterns.

Fact Pattern No. 1

Client X is represented by one attorney in a law firm. Client X has entered a plea of guilty to attempted second degree rape and is awaiting sentencing on that matter. As part of the plea agreement, no sentencing recommendation was made

by the prosecuting attorney. It is the opinion of the attorney for Client X that a prison term is probable.

Client Y is represented by other attorneys in the same firm. Client Y is presently charged with first-degree aggravated murder and is awaiting trial on that charge.

Clients X and Y are incarcerated in the same jail in the same cell block. Recently, Client X informed his attorney of statements made by Client Y concerning facts relating to the charge of aggravated first-degree murder. The statements relayed by Client X contained information extremely damaging and highly prejudicial to the interest of Client Y. The general substance of the alleged statements of Client Y was relayed by the attorney for Client X to the attorneys for Client Y.

No action has been taken by the attorney for Client X to either secure greater protection for his client in the jail or to initiate discussions with the prosecuting attorney regarding the information his client possesses. Attorneys for Client Y have taken no action about advising their client to make no further statements.

There is little doubt that if the attorney for Client X were to inform the prosecutor of his client's information, he could very possibly secure a very beneficial sentencing arrangement for his client. It would also be appropriate for Client X's attorney to make efforts to remove his client from the cell with Client Y to insure his personal and physical safety.

In order to protect the client's interests, attorneys for Client Y should proceed to immediately advise their client to refrain from any further statements and to make him aware of the statements that have been made and the extremely serious ramifications if those statements were made known to the prosecuting attorney.

It is obvious that Client X may very well be a witness at the trial of Client Y either in the capacity of directly testifying to these statements or merely in a corroborative role in support of the testimony of other potential witnesses.

Fact Pattern No. 2

Client A was very recently represented on a felony charge by attorney #1. After conviction, Client A was sentenced to serve time in a work release facility. By leave of Court, attorney #1 withdrew from representation of Client A and another attorney, #2, was appointed to represent Client A on appeal. However, the first attorney, #1, has told Client A that he would move for a reduction of Client A's sentence. The second attorney, #2, is employed by a law office other than the one employing attorney #1.

Client B is charged with first degree aggravated murder. Attorneys #3 and #4, members of the same law office as attorney #1, were appointed to represent Client B.

Prior to Client B's arrest, he and Client A were roommates in the work release facility. After Client B was moved from the facility, Client A conferred with attorney #1. Client A advised attorney #1 of certain incriminating actions of Client B after the alleged time of the homicide. Client A had personally observed Client B's actions. Client A also advised at-

torney #1 that Client B had made extremely incriminating statements to Witness C, another work release inmate. Witness C advised Client A of both Client B's statements and other highly incriminating actions taken by Client B, shortly after Witness C observed the actions and heard the statements.

The local police have contact Client A, seeking to interview him. Client A has asked attorney #1 for legal advice.

The general substance of Client A's statements to attorney #1 was related to attorney #3 by investigator L, who attended attorney #1's conference with Client A and is employed by attorney #1's office.

It appears that Client A could be a valuable prosecution witness at Client B's trial. Client A could testify to his personal observations. Also, if Client B's attorney attacked the credibility of Witness C at trial, Client A could be called as a rebuttal witness by the prosecution to testify to Witness C's prior consistent statements.

Fact Pattern No. 3

Clients M and N are both charged with first-degree robbery. M and N are represented by different attorneys in the same office. M and N both intend to raise the same affirmative defense at trial which will require that each testify in his own behalf.

Clients M and N are implicated in the robbery by the statements made by M (other evidence is "conclusive"). Also, through the statements of M, M and N are implicated in a homicide investigation in another jurisdiction. The facts of their involvement, in part, form the basis of their defense to the robbery charge.

Person P is named by M as both the perpetrator of the homicide and as a duressor in the robbery charges. Person P is charged but not yet apprehended.

Client M has been approached by the homicide prosecutor as a witness, who if shown to be truthful may be granted immunity from prosecution in the homicide investigation in exchange for cooperation.

Client N has made no statements and it is not known whether immunity would be extended to Client N.

Both clients have been advised of potential and real conflicts arising from the homicide investigation. Neither are now charged in the homicide. Neither desires other counsel.

During pretrial discovery motions, the prosecutors from both jurisdictions have indicated a belief that a conflict exists due to statements made by Client M. Client M has signed a statement acknowledging his desire to have present counsel continuing his representation and allowing counsel to release his statements to Client N. M's statements are necessary for N's attorney to assist in preparation of the defense to robbery charges and to advise about the potential charge in the homicide investigation.

DISCUSSION

Is there a conflict of interest between Clients X and Y; A and B; M and N?

Yes, in each instance there is a conflict of interest.

Each of these three fact patterns will be discussed as if one lawyer were representing both X and Y; A and B; M and N. This analysis will simplify discussion and is permitted because DR 5-105(D) means that if a lawyer is required to disqualify him/herself from multiple employment then no member of that lawyer's firm may accept or continue such multiple employment.

Fact Pattern #1 — Clients X and Y

With regard to Clients X and Y, efforts by the attorney for X to use the information which Y revealed in the jail will clearly be detrimental to the interests of Y. Similarly, an attorney for Y cautioning his client to stop making damaging statements to fellow jail inmates could have a damaging impact upon the interests and personal safety of X.

An attorney for X might be able to obtain a beneficial sentencing arrangement by revealing the information revealed by Y. Revealing the statement made by Y will clearly damage his defense of the aggravated murder charge.

Finally X probably will be a witness against Y and allowing the attorney for X to continue to represent X would mean Y would be cross-examined by his own attorney.

Fact Pattern #2 — Clients A and B

The analysis outlined above with regard to Clients X and Y is applicable to these two clients. Use of the information obtained by Client A would be detrimental to Client B. Revealing to Client B the information revealed by Client A in order to allow Client B to assist with his defense, could be detrimental to Client A's personal safety.

Revealing A's information might be beneficial to A and thus it should be revealed, but revealing the information would be detrimental to Client B.

Also A will clearly be a witness against B and the same consideration as outlined above regarding cross-examination would apply.

Fact Pattern #3 — Clients M and N

Testimony as a result of immunity would seem to be in the best interests of Client M. M's testimony wil be detrimental to Client N since at best it will probably help convict him of robbery and at worst might involve him with homicide charges.

Also, both clients must testify at the trial of the robbery charges; however, both could be cross-examined by the attorney for their co-defendant. One purpose of such examination would be to discredit the testimony of the co-defendant.

ANALYSIS

All three of the fact patterns present situations where if the attorneys continue to represent the multiple clients they

would be in violation of DR 5-103(B), which prohibits continuing multiple employment when the exercise of the attorney's professional judgment on behalf of a client will be or is likely to be adversely affected by the attorney's representation of another client. As pointed out above DR 5-105(D) makes this analysis applicable even though two clients may be represented by different attorneys in the same office.

This analysis is not changed in fact pattern No. 2 by attorney's #1's formal withdrawal. There is still an attorney-client relationship between attorney #1 and Client A since attorney #1 is going to move to reduce A's sentence and because A, after obtaining information detrimental to B, seeks legal advice from attorney #1.

All three fact patterns also present, if representation were to continue, a violation of DR 4-101(B), which prohibits (1) the revealing of confidence or secret of a client; (2) using a confidence or secret of a client to the disadvantage of the client; and (3) use, without client consent, of a client confidence or secret for the advantage of a third party.

Continuing representation would also involve violations of DR 7-101(A) (3) prohibiting intentional prejudice or damage to a client.

Fact pattern No. 3 raises a separate issue of the client's consent to continuing representation despite the conflict of interest. DR 5-105(C) does permit continuing representation in situations where representation is prohibited by DR 5-105(A) and (B) with consent, provided there is both full disclosure of the possible effects and provided that "it is obvious" that the attorney can adequately represent the interests of each client. While there may be no situations where such a showing can be made, fact pattern No. 3 does not present a situation where the attorney can *obviously* represent the interests of each client, especially in view of the potential liability on homicide charges and the possibility that one defendant will be given immunity.

CONCLUSION

Since continued representation would involve violations of the Code of Professional Responsibility, all of the attorneys involved must withdraw from representation and new counsel must be obtained.

While it is not possible for an ethics opinion to outline the procedural steps necessary to effect withdrawal, all the attorneys involved must take all steps reasonably possible to preserve the clients' confidences and secrets.

RESOLUTIONS COMMITTEE

Filing Deadline for Resolutions to Be Presented at Annual Business Meeting

Anyone desiring to have a resolution presented at the Annual Business Meeting should file it with the Resolutions Committee, 505 Madison, Seattle, Washington 98104.

Resolutions must be presented to the Resolutions Committee at least 20 days before the Annual Business Meeting, that is, on or before August 26, 1983.

All resolutions must be accompanied by a written report (the resolution and report not to exceed a combined total of 1,000 words) explaining the resolution.

Preliminary Notice of Special Public Hearing on Resolutions & of Publication Deadline

The Resolutions Committee of the Bar will, as usual, hold a public hearing at the Bar Convention to consider the views of the proponents and opponents of resolutions to be presented to the membership of the Bar at the annual meeting. The hearing will be held on Monday evening, September 12, 1983, so as not to conflict with continuing legal education seminars. The time and location of the hearing will be announced in the next *Bar News*.

In addition, in an effort to allow more time to those presenting views, and to give the members of the Committee more time to consider the resolutions and to request any additional information which might be helpful to the Committee, an advance session of the public hearing will be held prior to the Convention on September 1, 1983, at 10:00 a.m., at the offices of the Bar Association, 505 Madison, Seattle, Washington.

Proponents and opponents of resolutions are urged to attend the September 1, 1983, session if at all possible, and, if not, to present their views in concise written form for consideration by the Commmittee at that session. Presence at or absence from the September 1st session will not affect any right under the by-laws to present views at the September 12th hearing. At that hearing, preference in presenting views will be given to those with viewpoints which were not expressed at the earlier session.

If a resolution is to be published in the *Bar News* before the annual meeting, the by-laws provide that it must be received by the Resolutions Committee at least 60 days prior to the annual meeting, or on or before July 17, 1983. The July issue of the *Bar News* will contain further details regarding the purpose, function, and personnel of the Committee and the time and location of the September 12th hearing.

RESOLUTIONS COMMITTEE MEMBERS

Suzanne Miller Koestner, Chairperson

John Aaby	John F. Kruger
Brian L. Comstock	Michael C. Ormsby
William E. Cullen, Jr.	Gregory H. Pratt
William L. Dowell	Lawrence C. Smith
Charles E. Gallup	Robert A. Stewart
Robert M. Keefe	Raymond R. Tanksley, Jr.
Louis C. Kiefer, Jr.	Phillip L. Thom

LEWIS COUNTY

by **JOE MANO**

On April 21, the monthly bar meeting was held and, in keeping with tradition, nothing of import was discussed or decided. Members attending, however, did gorge themselves on fine Mexican fare.

In local sports, **Chuck Althauser** was named Most Valuable Player and voted to the All-Star team after the county bar basketball team completed post-season play, breezing through 11 games in 12 days, and bagging four trophies in the process. **Nelson Hunt** sufficiently recovered from a back injury to occupy the center spot in the tournament play. Our golf team, The Paid Assassins, is gearing up for another trophy season.

Ray Lutes, formerly with **Steve Carmick**, has now moved to Tumwater with the Taylor and Beyers law firm.

District Court **Judge Ray Byrd**, having returned from a family sojourn to Mexico, recommends the trip in light of the rate of exchange; however, he has indicated that Mexican law will continue to be given little precedential value in his courtroom.

PIERCE COUNTY

by **GEORGE KELLEY**

Bob Deutscher, Chuck Granoski, and **Richard Kelley** recently obtained an $11 + million Federal Tort claim judgment. The government, hoping to reduce this year's budget deficit, appealed. Shortly afterwards Bob went to the hospital with heart problems and is recovering.

Dave Schweinler qualified for and completed the Boston Marathon in 3 hrs., 25 min. While Dave's time was much slower than the world record time, it was light-years faster than any other senior member of the local bar.

Larry Couture, the coach-manager of the not-so-young lawyer slow pitch team, has announced off-season acquisition of **John Cobb, Pete Philly,** and **Skip Stansbury. Bob Zuanich,** left fielder and .220 hitter, has been sent down to the Bellevue farm club. While the average age of the team members has been reduced and the team speed has been increased, the net scores remain about the same. Coach Couture announced a 23-5 loss of the season-opening game.

John L. Nichols has joined the firm of Johnson, Lane & Gallagher. **John McCarthy** has moved his practice to 2330 East 11th Street in Tacoma's port area. **Steve Larson, Franklin Fogg,** and **Joe Quaintance** have relocated their offices to the Washington Building. **Joe Quinn** has left the Prosecutor's Office for private practice in the Lakewood area.

SEATTLE-KING COUNTY

by **JAMES L. VARNELL**

Sartorial Excellence. This correspondent, in consultation with **David R. Koopmans** and **Andrew Hamilton,** has compiled a list of the ten best-dressed attorneys in the Seattle-King County Bar Association. The committee's exhaustive selection process has resulted in the following being chosen: **Jackie Brown; Mike Cohen; Gary Faull; Larry Finegold; Jane Gilbertsen; Graham Greenlee; Sally Gustafson; Marco Magnano; Laurence Mosler;** and **Pam Rossano**. Two additional categories include the Open-Neck Shirt/Gold Chain Division in which "Disco" **Larry Longfelder** was the hands-down winner, and the Professional Division (to be contrasted with the foregoing "amateurs") in which **Jack Steinberg** and **Alva Long** were runaway favorites.

Office Changes. Since the last column in the *Bar News*, numerous office changes have taken place. Among them are the following: **Terence P. Lukens** has become a member of Karr, Tuttle, Koch, Campbell, Mawer & Morrow, and **William H. Beaver, Jr., Mark R. Johnsen, Carol L. Moody, Christopher W. Moore, Rodney J. Vessels, John E. Shaw, David F. Ross, Patrick C. Sheldon, Christine A. Alexander, Ber-**

nard H. Friedman, Carey Michael Johnson, Pamela G. Rapp, and **Anthony R. Winchester** have become associated with the firm.

Theodore R. Willhite has become a partner in Levinson, Friedman, Vhugen, Duggan, Bland & Horowitz, and **Ronald R. Ward, Charles R. Jones** and **Marsha J. Pechman** have become associated with the firm. **David L. Friend** is associated with Weinrich, Gilmore & Adolph. **J. Ronald Sim, Judith B. Stouder, James B. Street** and **Robert J. Rohan** became members of Schweppe, Doolittle, Krug, Tausend & Beezer, P.S., and **Anthony D. Shapiro, Richard John Morrisey, III,** and **Martha J. Dawson** have joined the firm as associates.

Richard A. Hopp and **Nancy Miller** have become members of Jones, Grey & Bayley, P.S., and **John E. Glowney** and **Kerry L. MacIntosh** have become associates. **Walter J. Yund, Jr., Richard H. Blacklow** and **Steven C. Gilyeart** have become members of the firm now known as Torbenson, Thatcher, Yund, Blacklow & Gilyeart. "Downtown" **Lawrence B. Ransom** (best known for his power displayed on the softball field), **Bob M. Schwartz** and **Brian L. Budsberg** have become associated with Sax and MacIver.

Charles Z. Smith has become a member of Rosenblume, Smith & Associates, and **James J. Bennett** and **Neal T. Feinerman** have become associates in the firm. LeSourd & Patten announce that **Roger Cremo** has joined the firm as a partner, and **Jeffrey C. Wishko** and **Susan M. Gray** have joined as associates. Dodel, Skone, Leonardson & Perkins have relocated their offices to 3530 SeaFirst Fifth Avenue Plaza.

George H. Revelle, formerly King County Superior Court Judge, has become of counsel to Revelle, Ries & McDermott in the firm's Seattle office. **Judith A. Lonnquist** has become a member of Durning, Webster & Lonnquist. **Warren Lief Erickson** and **Geoffrey Groshong** have announced the formation of their partnership. **Jane I. Fantel** has become associated with Francis, Lopez & Ackerman, with new offices located at 1600 Seattle Tower.

J. Dimmit Smith, Douglas J. Smart, David Hancock and **Walter S. Tabler** have formed a partnership with offices at 3201 Westin Building. **Howard Lincoln,** formerly with Sax & MacIver, has been appointed Senior Vice President and General Counsel of Ninetendo of America, Inc. Duvall, Caryl & Wells announces that **Jeannette A. Cyphers** has joined the firm as an associate.

CLE: Criminal Law. Top-notch criminal attorneys may wish to advise their clients prior to any conviction of the possible sentencing penalties under RCW 9.92.130: being required to perform eight hours labor upon the streets, public buildings and grounds of the subject municipality wearing "an ordinary ball and chain while performing such labor."

SPOKANE COUNTY

by **JONATHAN C. RASCOFF**

Spokane attorneys **John McLendon, Bruce Kaiser** and **Bill Sorcinelli,** assisted by Montana attorney **John Hoyt,** have pulled in one of the largest jury awards ever recorded in Eastern Washington. The award—$3.2 million—was made to a former railroad conductor who lost both legs in a work-related accident. The jury found that Burlington Northern Railroad was negligent in ordering the plaintiff to make a roll-by inspection of his train without warning him of impending switching activity to his rear. The 6-person jury deliberated approximately 5 hours before rendering its decision.

The Spokane County Bar Association's annual Law Day celebration was a resounding success. The event, held in Riverfront Park, featured an address by Superior Court **Judge Harold D. Clarke.**

Legal Briefs. Congratulations are in order for **Shaun M. Cross,** recently made a partner in the Paine Hamblen law firm. **Dan Short,** formerly of the Prosecutor's Office, has recently joined the same firm as an associate.... County Bar Association Vice President **C.E. (Gene) Huppin** is recovering well from a recent bout with pancreatitis.... Spokane attorney **Doug Tuffley** has moved to Seattle to join a former classmate in practice in the rainy city. Doug and his wife were recently blessed with a new addition to their family—son Bradley, born in February.... **Cynthia McMullen,** who practices with husband **Dennis** in the firm of McMullen and McMullen, has been appointed city attorney for the City of Medical Lake, Washington...attorney **David Gallick** has been appointed to the Board of Trustees for the Young Lawyers Section of the Spokane County Bar Association.

You read it here first! Spokane attorney **Jarold (Jerry) Cartwright** and **Nadine Downing** of the County Clerk's Office have tied the knot. It is reported that CLE credits have been requested for those in attendance at the wedding. Wedding bells also rang for Spokane attorney and State Representative **Dennis Dellwo,** recently married to the former Jeannine Roe.

Briefly Noted

Career Moves. **Gary Bloom** and **Dan Harbaugh** are reportedly leaving the fold at Richter Wimberly to open their own shop. Ditto **Bob Winston,** who will be leaving Winston & Cashatt to open up offices on the 12th floor of the Washington Mutual Building.

Legal Issue. Congratulations to the following individuals, all recipients of a visit from the stork: Assistant Court Administrator **David M. Hardy** (boy); **Gary Penar** (girl); **Donald K. ("Kit") Querna** (girl); **Everett Coulter** (boy); **Joe Shogan** (boy); and **Mark Casey** (girl).

YAKIMA COUNTY

Attorney **William H. Mays** of the Yakima firm of Gavin, Robinson, Kendrick, Redman & Mays was recently awarded the Defense Research Institute's Exceptional Performance Citation "for having supported and improved the standards and education of the defense bar, and for having contributed to the improvement of the administration of justice."

Mays was honored at the Sixteenth National Conference of State and Local Defense Associations held April 15 in Point Clear, Alabama. He guided the Washington Association of Defense Counsel in a number of educational and information-related activities while serving as its president.

Job Therapy Expands

Job Therapy has moved and is expanding its facilities and services. The nonprofit employment service for ex-offenders is now located at 3927 Aurora Avenue North, Seattle, after several years in the Smith Tower. In addition to a wide range of services available to adults, including employment counseling, job referral, and job development, the agency now includes a youth program designed to provide career preparation, job development and entry-level employment for youth (ages 16-21) who are "emancipated," but not yet self-sufficient.

To make a referral or for additional information, contact Job Therapy, Inc., 3927 Aurora Ave. North, Seattle, WA 98103, telephone (206)447-3604.

Administrative Law Judges to Convene

The Washington Association of Administrative Law Judges will hold its 2nd Annual Convention at Harrison Hot Springs on August 4th through 6th. A full day CLE (approximately 5-6 hours credit) will be offered on August 5. Tentative topics include use of telephone communications in administrative hearings, decision-writing, and comparison of American and Canadian unemployment compensation law. All members of the bar are welcome.

For information on costs and credits contact Administrative Law Judge Kathleen Lovejoy at (206)464-7095 (Seattle) or Frank Homan at (206)753-7328 (Olympia).

GSLSA Elects Officers

The Greater Seattle Legal Secretaries Association (GSLSA) elected new officers for 1983-84 at its annual meeting on April 5. They are: Rogene Hiatt, president & NALS representative; Virginia DeLay, vice-president; Joyce Waddell, recording secretary; Joan Wisnowski, corresponding secretary; Georgia Hinton, treasurer; Marilyn Tiano, asst. treasurer; and Claudia Welch, governor.

AVIS Ups WSBA Discount

Avis Rent-a-Car has recently improved your discount as a member of the Washington State Bar Association. The following discounts apply in the 48 contiguous states and the District of Columbia at corporate and participating licensee locations:

-20% off unlimited mileage "We Mean Business" rates on local and intercity rentals;

-40% off normal time and mileage rates;

-10% off regular rates International;

-10% off Alaska and Hawaii; and

-10% off "See America" vacation rates.

Occasionally, you may receive special rates such as "Weekend," "Holiday," or "Florida Super Saver," which are prediscounted.

Please present your Avis/Washington State Bar identification sticker for these discounts.

Avis also offers a Wizard Number service to provide you with faster service at the rental counter. For charge card information, Wizard Number applications, or questions, contact the Avis district sales office at: 15078 N.E. 40th Street, Redmond, Washington 98052, (206)881-7577.

IN MEMORIAM

Seattle attorney **William H. Ferguson,** known nationally for his adept handling of construction and antitrust cases, died April 16 at the age of 74. Mr. Ferguson graduated from the University of Washington Law School, and was admitted to practice in 1932. In 1946, he formed the firm of Ferguson and Burdell with the late Charles S. Burdell. Mr. Ferguson was a founding member of the Federal Bar Association, Western District, a Fellow in the American College of Trial Lawyers, and chairman of the first State Bar Antitrust Section. He helped to establish the UW Alumni Fund and John Danz Lecture Series, and his firm established a scholarship fund at the UW Law School in his name.

DISCIPLINE

Thomas A. Clark Censured

Seattle attorney Thomas A. Clark stipulated to receipt of a censure dated April 13, 1983, for failure to cooperate with bar disciplinary investigations as required by DRA 2.6. This public notice is given pursuant to stipulation.

Notices

ADVERTISING RATES

Professional—Per issue: $35 per typeset column inch. *WSBA members only.* Written copy required. Billed upon publication.

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

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Antonio Salazar, an attorney with seven years active experience in immigration matters, is accepting consultations and referrals in United States Immigration and Nationality matters.

Antonio Salazar
Vance & Salazar
The Interurban Building
157 Yesler Way
Seattle, WA 98104
Telephone (206) 624-6414

Douglass A. North announces his availability for referral, consultation, or association on appellate arguments and briefs.

Douglass A. North
Hennings, Maltman, Weber & Reed
215 Norton Building
Seattle, Washington 98104
Telephone: (206) 624-6271

Ann Forest Burns, attorney and forester, is available for consultation or association in timber related matters.

Ann Forest Burns
Attorney at Law
6116 N.E. 60th Street
Seattle, WA 98115
Telephone (206) 527-2571

Alastair K. Maxwell is available for referrals in Immigration matters.

Alastair K. Maxwell
4300 SeaFirst Bank Building
Seattle, Washington 98154
Telephone (206)621-1110

Wood Products Claims

David P. Mason is an attorney and former corporate manager who has handled wood product claims for Boise Cascade Corporation, Puget Sound Plywood and Lindal Cedar Homes over the past 9 years. Mr. Mason will accept referrals, associations or provide counsel, and will perform out-of-state claims investigation.

David P. Mason
Attorney at Law
300 Park Place Building
Sixth and University
Seattle, Washington 98101
Telephone (206)343-5655

FOR SALE/WANTED

Books for Sale: West's Washington Reporter, includes Wn.2d Vol. 45-current, all Wn.App. $500.00. Contact Arthur Klym, (509)943-4681.

WordStar CP/M Computer Legal Forms: Marital dissolutions. Adoptions, Probate & Guardianships. Civil Litigation. Wills. Osborne, Xerox, IBM pc & Cromemco formats by arrangement. Yex Software/D. Slaughter, attorney. 19705 - 1st Avenue S., Seattle, WA. 98148. $50/disk. Please write.

For Sale: Washington Reporter - 56 Volumes 452 Pacific Second thru 648 Pacific Second $700.00; Amjur (not updated - Volumes 21 thru 58) $50.00; Amjur Legal Forms 22 Volumes $450.00; Amjur Pleading and Practice Forms 29 Volumes $550.00; or all books $1,500.00; Savin 755 Copier $2,000.00; Olympia ES 110 Memory Typewriter $1,800.00; Sony Secutive 35 Transcriber $150; (206) 687-3169.

Wanted: IBM 6:5 Dictating & Transcribing Units. Call (206)577-1411.

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Wanted to Buy: Administrative Decisions Under Immigration and Nationality Laws of the United States, Volumes 1-14. Greg Boos, 119 N. Commercial, #440, Bellingham, WA 98225.

OFFICE SPACE

New First Interstate Bldg., to be available Oct. 1. Space for 1-4 attorneys or firm in prime, professionally-designed, downtown location. (206)621-1110.

Office Space Available: Denny Regrade, Seattle, for sublet. 16 private, four semi-private offices. Secretarial area, use of gym and library. Total area: 6,000-plus square feet. Five-year lease/five-year option. (206)292-9827.

Office Space Available: Very attractive office space available at law offices of

Faith Enyeart and Associates. Prime Pioneer Square location with large offices. Garden court, conference room, fully computerized word processing and billing, receptionist, full secretarial staff, full library. Space for one or two attorneys. Basic overhead contribution commensurate with services requested. Call Jane Hall at (206)623-4382.

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Office Space Available: Offices are available in One Union Square. Reasonable rent includes reception area, secretarial space, conference room, library, complete kitchen, and a panoramic view of Mt. Rainier and Puget Sound. Copy machine and word processor are available at cost. Call (206)583-0088.

Office Space: Two prestige offices Pioneer Square. Receptionist, telephone, answering and messenger service, library, showers, other amenities. Secretary, word processor, billing and copier optional. Avila (206)464-1970.

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POSITION AVAILABLE

Clark County firm seeking associate with minimum one year experience for general practice, preferably member of Oregon and Washington Bars. Send resume to Mason, Greenen & Clark, 215 W. 12th Street, Vancouver, WA 98660.

Tax Attorney: Growing Seattle law firm seeks a tax attorney with 0-2 years experience. Must have an LL.M. (Taxation) with course work in International Taxation. Commitment to Seattle, and working in international taxation necessary. Send resume to Box 109, WSBA.

Moses Lake law firm, with practice limited to worker's compensation and personal injury claims, seeking an associate with preferably 2 years trial practice. Please send resume to P.O. Box 1029, Moses Lake, Washington 98837.

Wanted—Securities Attorney: Position available for practitioner with regulatory background or strong experience in Corporation/Securities Law. Seattle firm. Respond to Box 110, WSBA.

Established, growth-oriented six-lawyer Yakima firm, with general practice emphasizing plaintiff litigation, corporate, real estate, tax and estate planning law, seeks associate with one-three years of experience. Salary commensurate with experience. All replies confidential. Reply to Box 113, WSBA.

Position(s) available: Immediate openings. Membership in the WSBA required. Candidates should have interest in criminal and civil practice and ability to work without supervision. Respond to Box 114, WSBA.

Wanted: Insurance defense lawyer with existing partial defense caseload to join Seattle office of multi-state insurance firm. Please reply to Box 115, WSBA.

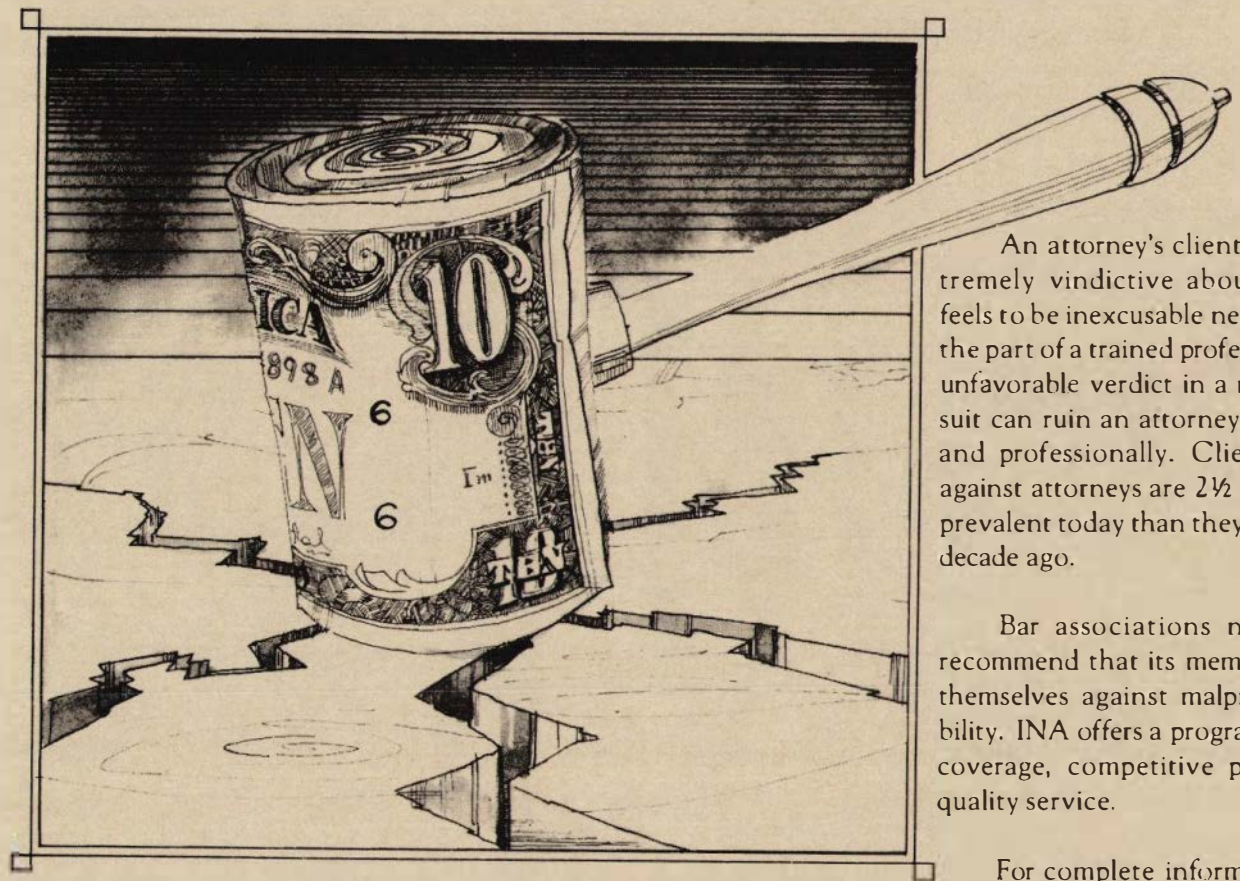
POSITION WANTED

Attorney with two years experience in civil litigation, admiralty, personal injury, commercial and real property practice seeks position with mid-sized firm. Reply to Box 112, WSBA.

SERVICES

Experienced Olympia firm will file, monitor, expedite documents through State agencies. Personal service eliminates unnecessary delays. Documents Control Division, David C. Hubert & Associates, Box 7022, Olympia, WA 98507 (206)754-4544.

Recently, an Ohio Jury Awarded $2.35 Million in a Legal Malpractice Suit!



An attorney's client can be extremely vindictive about what he feels to be inexcusable negligence on the part of a trained professional. An unfavorable verdict in a malpractice suit can ruin an attorney financially and professionally. Client actions against attorneys are 2½ times more prevalent today than they were just a decade ago.

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