

Washington State Bar News

Volume 38, No. 12, December 1984



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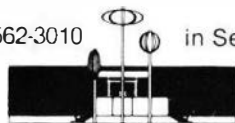
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INTERIOR ART CREDITS

At page 11, "Driving Under Influence," watercolor by **Tony Pepito**, courtesy of West Publishing Company, copyright 1982. At page 16, pen and ink by attorney **Christine Wyatt** of Bainbridge Island. At page 21, police report, contributed by Seattle attorney **Maryalice Norman**.

Our Cover



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Board of Governors petitions for delay in IOLTA implementation

The Board of Governors of the Washington State Bar Association has petitioned the State Supreme Court to delay the effective date of revisions to CPR DR 9-102—the interest on lawyer trust accounts rule (IOLTA).

In mid-June the Court adopted the IOLTA rule with a specified effective date of January 1, 1985. Under the IOLTA rule all client funds paid to any Washington lawyer or law firm must be deposited in identifiable interest-bearing trust accounts. The new rule provides for two kinds of interest-bearing trust accounts. The first type of account bears interest to be paid, net of any transaction costs, to the client. The second type of account is a pooled interest-bearing account with the interest to be paid directly to the Legal Foundation of Washington, a nonprofit entity established by the Court's Order.

The Board of Governors has petitioned the Supreme Court to delay the effective date of the IOLTA rule to March 1, 1985. Delays in obtaining needed IRS and Federal Reserve System rulings have slowed administrative implementation of the rule by the Trustees of the Foundation. In addition, the Board has asked for additional time in order to properly disseminate information on the IOLTA rule, and compliance with that rule, to all State Bar members.

Information on the IOLTA rule and program will be sent to all WSBA members in mid-December.

Legal Foundation seeks executive director

The Legal Foundation of Washington is seeking a candidate to head its new Interest on Lawyers Trust Accounts Program beginning March 1, 1985. The Executive Director will supervise receipt and distribution of trust funds. Candidate will work closely with local

bar associations, financial institutions and the Trustees of the Legal Foundation of Washington.

Qualifications include a B.A. degree or two years full-time experience in a related field, experience working with volunteers, the ability to communicate well in front of groups and in writing and the ability to deal effectively with all socioeconomic levels, especially low income people.

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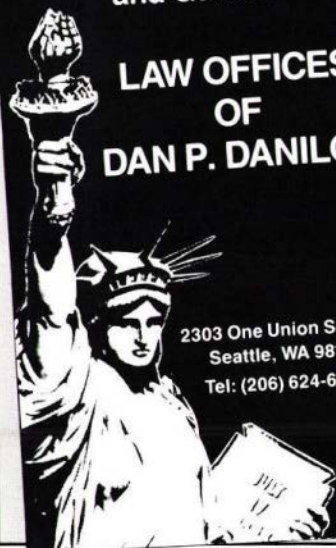
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Letters

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.

Too late

Editor:

Specialization is moot.
Telephone companies made this so.
See the yellow pages.

GOSTA E. DAGG

Everett

Tunnel vision

Editor:

While at first glance, specialization seems to be a well-founded idea, further inquiry reveals some problems.

In the larger firms, each lawyer could be a specialist and the combination of the different interests would enable such firms to continue with a form of general practice.

In contrast, the smaller firms (and especially sole practitioners), even if they qualified for three specialties, would be limited to practicing in those three areas.

An additional problem which would be faced by the small practitioner in qualifying for specialization is the difficulty in obtaining 45 hours of specialized CLE credits.

Furthermore, to make malpractice insurance coverage a prerequisite to specialization would effectively eliminate a large percentage of otherwise eligible attorneys.

Thus a policy decision must be made. Are the specialization proposals (as they now stand) of such importance to the public that the sole and family-oriented general practitioners should be so burdened?

Unfortunately, the specialization rules appear to be promulgated by large firm lawyers. Perhaps, if specialization is indeed a thing to be desired, a revised proposal could avoid the discriminatory consequences of the existing draft.

For instance, the malpractice insur-

ance portions should be stricken; the percentage of the practice should not be categorically set at 30%, but rather should be based on other considerations which would have some relevance; and the 45 hours of CLE credit should likewise either be reduced, or an alternative provided to show knowledge of the subject matter.

The Bar should take a close look at the desirability of encouraging specialization. The medical profession has encountered the devastating results of such tunnel vision, resulting often in misdiagnosis and mistreatment. Similarly, the attorney handling domestic matters is regularly faced with issues ranging from tax law to criminal law. Specialization could detrimentally affect an attorney's ability to properly handle a matter, by limiting the scope of inquiry and failing to comprehend all issues involved.

The interests of the sole practitioner and the right of people to hire general practitioners to represent them in a variety of matters should not be overlooked.

MARY FUNG KOEHLER

Seattle

General support

Editor:

I enthusiastically support Richard O. Kummert's opinion [*Bar News*, October, 1984] that certification of a "general counselor specialty" would be of enormous benefit to both the public and the bar.

A widely-held but erroneous belief is that all attorneys are specialists, and that an attorney who describes himself as a general practitioner is merely a lawyer who has failed to choose and develop specialized expertise.

While the practice of law has grown more complex, and there is undoubtedly a need for specialization, the practice of law is often interdisciplinary. The role of the general practice attorney has become increasingly important to the goal of providing satisfactory access to legal services to the majority of the public.

RICHARD D. REED

Seattle

Poll lacks credibility

Editor:

This letter expresses my objection to the Judicial Preference Poll which was mailed to all members of the Bar near August 26, 1984.

While the poll requested an indication of preference regarding the candidates for the State Supreme Court, the mailing contained no information whatsoever regarding the qualifications or background of the candidates. As a result, this type of poll, either intentionally or accidentally, benefits only those candidates with substantial name familiarity, regardless of qualifications or background. Since such a poll makes no attempt to educate the members of the Bar, unlike similar Seattle-King County Bar polls, I believe it is an imprudent use of Bar resources.

I further believe the publication of the poll results, and the inherent de facto endorsement of the winners, is a disservice to the voters of Washington who would assume an organization such as the Bar would conduct a fair and reliable poll.

BLAIR C. HENRY

Seattle

No new jokes

Editor:

This letter is prompted by the fact that the other night at a convention of one of my clients (guess who was the only lawyer in the room), I was placed in the embarrassing predicament of hearing a new lawyer joke. I pass it on to you as part of my obligation to the profession:

"We are reliably advised that medical science will no longer use white mice in experiments. They will henceforth use lawyers. Lawyers are more plentiful, and there's no chance of becoming fond of them."

My concern is not that the public loves to tell these jokes, but rather that I do not want to hear one for the first time from a non-lawyer. I would rather sit there and smile and tell them, "That's an old one."

RUSSELL A. AUSTIN, JR.

Seattle



Specialization is the answer. . . but what is the question?

Specialization could dramatically affect the way you practice law.

In August, 1984, the WSBA Board of Specialization presented to your Board of Governors an "umbrella plan" for specialization. The proposal, patterned after the ABA Model Plan, would "certify" that certain lawyers were genuine specialists in particular legal fields. Only lawyers who satisfied the standards of a particular legal discipline could publicly describe themselves as certified specialists in that discipline. On the other hand, the umbrella plan would not prevent a non-certified attorney from practicing in any legal field, provided she did not hold herself out as an expert or specialist.

According to the proposed umbrella plan, a specialist at law would need to comply with seven basic requirements:

1. maintain professional liability insurance;
2. demonstrate substantial involvement in the specialty field (30%) in the five years preceding certification;
3. accrue 45 specialty CLE credits in the five years preceding certification;
4. obtain approval from five "peers" experienced in the field;
5. pass a written examination;
6. pay a certification/examination fee; and
7. obtain recertification after five years.

The proposed plan is fair insofar as it applies equally to all age groups. There are no exceptions: young or old, experienced or inexperienced, no lawyer could call herself a specialist unless she first satisfied the seven prerequisites.

The proposed plan is unfair, however, because it would weigh most heavily upon the shoulders of young and small town lawyers.

If certification is to be considered desirable, we must assume that clients would want their lawyers to be certified experts in their particular legal con-

cerns. Thus, although no lawyer would be prevented from practicing in whatever field of law, the economics of the market place would cause increasing numbers of laypeople to seek the services of a specialist rather than a general practitioner.

True, the umbrella plan calls for the establishment of a "general counselor" specialty (something like a certified family doctor); but that specialty calls for "proficiency" in 18 practice items ranging from "advising employees on their rights" and "marriage dissolution and property settlement agreements" to "individual creditor arrangements and bankruptcy" and "pension, retirement, disability, guardianships and durable powers." Merely passing the Bar examination should qualify you to be a general counselor specialist, or it is a specialty for the "jack of all trades, master of none."

Assuming that most laypeople would rather have specialized legal problems handled by specialists, how could a young lawyer ever hope to devote 30% of five years of her practice to that legal specialty in order to qualify for certification? Where would the young lawyer find five certified specialists to vouch for her when most of her peers, too, would be non-specialists? How would a young lawyer, struggling to survive, find the cash to pay for the certification process?

In the formative early years of practice when a lawyer is first deciding what area of law she likes best, why should that lawyer feel compelled to take CLE courses in only one field of practice? Why should we foster legal tunnel vision? By emphasizing specialization would we encourage law students to narrow their fields of study in order to get a head start on certification? Would they feel duped when, after passing the Bar exam, they were faced with yet another written examination to pass before they could practice as "real lawyers?"

Some say that specialization is needed to control the problem of lawyer advertising. But what exactly is wrong with the current state of lawyer adver-

Editor's Position Open

The position of editor for the *Washington State Bar News* will be open as of April 1985. Washington State Bar members interested in becoming editor of the *Bar News* should send a letter stating interest, plus a resume to: Editor's Position, Editorial Advisory Board, c/o WSBA Public Affairs Department, 505 Madison Street, Seattle, WA 98104.

Beginning in 1985, the editor's stipend will be increased from \$200/month to \$500/month.

Interested persons should apply no later than January 10, 1985.

tising, and why should specialization affect it in the slightest? The threat of a Consumer Protection Act claim for treble damages and attorneys fees should be more than enough incentive for lawyers to keep their advertising honest. [See *Short v. Demopolis*, ___ Wn. 2d ___ (Nov. 1984); lawyers are subject to the CPA for the entrepreneurial aspects of the practice of law.]

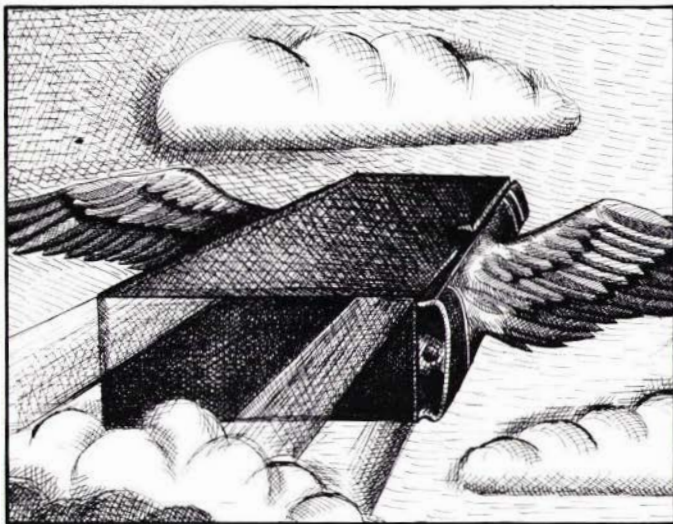
Some say that specialization would help lay people to identify the true specialists in any given legal field. Possibly true, but when has the public ever stated that this was a problem in need of a solution?

The umbrella specialization plan under consideration by the Board of Governors is well and fairly drafted. Its high standards are calculated to give the plan credibility. It is very strong medicine and, some would say, just what the doctor prescribed.

Now if only we knew what it is supposed to cure.

NOTE: The full text of the umbrella specialization plan will be published in the January, 1985, *Bar News*.

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Planning for the future

During the August meeting of the Board of Governors, a decision was made to create a Long Range Planning Task Force. This resulted in part from a growing concern regarding the course which advertising and the marketing of legal services seem to be taking. Board members generally agreed that the leadership of our Association should be looking ahead with the thought of adjusting to and guiding these new concepts so that the practice of law in this state may be preserved as a profession rather than as just another business. They also agreed that this should be an excellent time to begin planning for the many other changes within the profession which must be expected in the years ahead.

The Task Force has now been established and its work is underway. Twenty-six have been appointed to it, including two members of the Board of Governors, a law school Dean, a federal judge, four state judges, representatives of large and small law firms, sole practitioners, women lawyers, governmental lawyers and lawyers practicing within various areas of the state. Brad Jones, a former President of the Washington State Bar Association, is serving as Chairperson, thus assuring the Task Force of strong, capable leadership. Sub-committees have been appointed by Brad and they will be studying and reporting on such subjects as the relationship of the Bar to the public, the responsibilities and services of the Bar to its members and the structure and operation of our Association.

The term "long range planning" is too often used in the context of determining what is currently wrong or could be improved—and what should be done about it. Long range planning should be just what the term denotes: planning for the future. The Task Force intends to do just that through its recommendations to the Board of Governors. Considering the very significant changes which we have seen in the practice of law during recent years, this is certainly an appropriate time for us to be looking ahead and planning for the many additional changes which must be anticipated. Advertising of services and the substantial increase in admissions to practice are good examples. Decisions made now and in the near future regarding adjustments to such changes will obviously benefit both the public and the lawyers practicing in this state.

During my first three months as President, I have been fortunate in being able to attend the annual meetings of the State Bar of California and the State Bar of New Mexico. This gave me an opportunity to personally observe the operation and functioning of the largest bar association in the country and also one of the smallest. I was impressed by both. After each meeting I returned home with many notes on many subjects, ranging from CLE to specialization to discipline. My observations have been reported to the Board of



Governors, including my opinion that the WSBA has to be a forerunner, if not *the* forerunner, among the bar associations of this country. It seems that we are constantly a step or two ahead of the others, particularly along the lines of service to both our members and the public. Our newly-established Long Range Planning Task Force is a good example of how our Association has long maintained an exemplary position. I am confident that the recommendations to be submitted by the Task Force for our future planning and guidance will help keep us at the forefront. On behalf of our membership, I thank Brad Jones and the Task Force members for taking on this very important assignment.

Lee Laughlin

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So what's *wrong* with the breathalyzer?

Until we find a better testing procedure, our system will remain too costly, and basically unfair.

by Hon. John Darrah

Washington law (RCW 46.20.308) requires that any conscious person arrested for driving while intoxicated (DWI) be offered a breath test to determine his blood alcohol concentration (BAC). Because a refusal results in a license suspension for one year, most persons take the test (84% in Seattle).

The DWI enforcement scheme, including the breath test, was adopted by the voters by initiative in 1969. It worked relatively well until the early 1980s when legislative changes in the BAC standard, the jail penalty, and the appeal process put it to severe stress.

The new laws provided for:

- 1) a change from the presumption of influence at a .15 BAC to a flat-out violation at .10;
- 2) an increase in the penalty to a mandatory minimum of one day in jail; and
- 3) a change from the trial *de novo* on appeal to review on an electronic tape record.

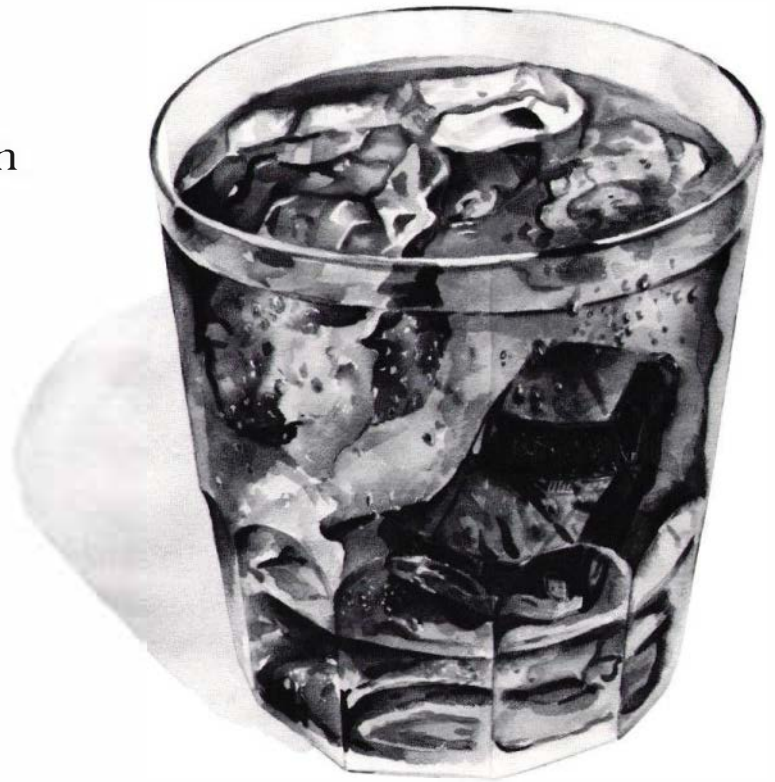
For the defendant accused of DWI, the practical effects were to:

- 1) make conviction easier;
- 2) ensure a jail sentence for the first offender; and
- 3) eliminate a frequently easy escape route.

Because the DWI offense has always had an important impact on the cost of insurance and the retention of a driver's license, it is little wonder that the last three years have seen jury trials flooding into Washington's district and municipal courts.

The Seattle experience

It is hard to assess the total increase in costs brought on by these revisions in the law, but our experience in Seattle



Municipal Court is illuminating. In 1979 there were 134 jury trials in Seattle. In 1980 the number increased to 201; in 1981 to 392; in 1982, 478; and in 1983, 504. Although DWIs account for only 3% of the criminal cases filed, they represented about 40% of the jury trials in 1982 and 50% in 1983.

Since the average jury case requires 12 times as much court time as the average non-jury case, it is easy to see the impact of increased jury demands. Faced with this problem, the city has created two new judgeships and has added supporting courtroom personnel. Extensive remodeling was necessary for new courtrooms and juror assembly and deliberation. During the 1981-1982 period of flux, fees paid to jurors increased over 200%. As the court allocates its existing resources, cases not having the social importance of DWIs

The Hon. John Darrah, King County Superior Court, served as a Seattle District Court Judge from 1979 to 1984.

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are given less attention. Thus, the cost of the DWI impact cannot be measured in dollar terms alone.

In talking with the various participants in the criminal justice system, one finds general agreement that the costs are justified by society's need to bring drunk driving under control. While I cannot disagree with this reasoning, I am dissatisfied with the present system of enforcement, particularly the reliance on the breathalyzer machine.

THE BREATHALYZER

Let us first note the part that the breath test plays, or is meant to play, in DWI cases. If every case consisted of weighing the officer's observations against the defendant's memory, the judge or jury would either have to accept the officer's version (because he was sober), or face a troubling array of conflicting testimony.

Two factors can alter this situation to the benefit of the prosecution: a victim-witness, and a "scientific" test showing the amount of alcohol in the blood. The testimony of a victim who has been injured or whose car has been damaged has a dramatic effect upon jury verdicts. Indeed, you would be hard pressed to find a judge who can remember *any* DWI case where a jury acquitted the defendant after a victim testified. In such cases the jurors appear to identify with the victim. Where no accident is involved, the scientific test provides independent evidence of the influence of alcohol. It tends to verify the subjective impressions of the arresting officer, and jurors will convict more frequently in those cases than when the test is not present.

The problem is that the present test is not generally accepted as valid by defendants and, in roughly one-third of the cases tried, is not accepted by juries either. Until Washington finds a testing procedure that is more readily accepted, our system will remain too costly and basically unfair.

Problems with the BAC

A BAC of .10 is generally accepted by doctors and other experts as the point beyond which everyone is adversely affected in his driving ability, and this standard has been accepted by the Washington legislature. There are three general problems with the present approach to testing for this standard:

- 1) there is always a delay in giving the test;
- 2) the test is of breath not of blood; and
- 3) the police officer, not an independent agency, controls the testing.

Each problem, in its own way, undermines the confidence that a juror or judge might place on the test result. Seattle's experience is that jurors disregard the test in about one-third of the cases tried. Because of this, the knowledgeable defense attorney advises the client of the stakes involved and recommends a jury trial.

Let us examine the three problems to gauge their magnitude. The problem of delay is inherent in all breath testing.

The cost of the DWI impact cannot be measured in dollar terms alone.

This is because some alcohol remains in the mouth after the last drink has been swallowed. Therefore, a waiting period of 15 minutes is required before the test is given to be certain that all of that residue has been dissipated. However, during this waiting period, the BAC may be moving up or down. If the defendant left the tavern shortly before the arrest, his BAC may not reach a peak for another hour, while the level of the person tested several hours after drinking will be falling. The delay in administering the breath test may affect how much weight the jury places on that test.

Breath and blood

The second problem with our testing approach is that measuring breath alcohol is only an indirect measure of blood alcohol. The relationship of alcohol in the breath to alcohol in the blood is expressed as the partition ratio, and a close approximation of most people's ratio is 2,100 to one, or 2,100 times more alcohol in the blood as in the same volume of breath. The partition ratio varies from person to person and, within a given individual, from time to time. Body temperature and the concentration of cells in the blood can affect this ratio. An American Medical Association committee has determined that for the purpose of the use of a breath/alcohol test, the ratio of 2,100 to one is appropriate. However, there is no agreement as to how much of the population falls within what distance of this ratio, and the defendant's own ratio is never in evidence.

Added to the inaccuracy caused by the partition ratio is the apparent variation in the concentration of alcohol in each breath. A new piece of testing equipment recently manufactured permits continuous analysis of this concentration from the start of the breath to its end. Tests using this machine have shown that the concentration read low at the start and climbed by as much as 60% above the actual blood alcohol concentration at the end.

The prosecution counters such testimony with the assertion that possible inaccuracies are largely theoretical and, in practice, the breathalyzer's greatest error is .01, or 10% of the legislative limit of .10. This assertion is frequently backed up with testimony about an ongoing study conducted under the direction of the state toxicologist, wherein simultaneous breath and blood samples are drawn from persons who have consumed alcohol. ● If more than 100 test comparisons, only two have resulted in the breath test overestimating the amount of blood alcohol by as much as .01.

The third and broadest problem in gaining the jury's acceptance of the scientific test is its control by the police. When an officer stops a driver, smells alcohol, administers various roadside tests, and brings him to the station for a breathalyzer test, the officer has already decided the person should not be driving. Lawyers have a field day before juries, arguing that a policeman who has already made up his mind cannot be expected to be impartial or accurate in giving the breath test. Rarely will counsel argue that the officer lied, but rather, that her lack of objectivity led to overlooking the subtleties of operating a sophisticated scientific instrument. In addition, the officer herself reads the meter to obtain and record the result. The machine does not print it out. If the subject belches or regurgitates raw undigested alcohol, even a minute amount, immediately before the breath sample is taken, the reading may shoot up dramatically. The officer may not notice the belch.

Experts

Most scientists say that accuracy cannot be determined from a single test, and that two, perhaps three, tests must be given before accuracy can be claimed. Washington law requires that two tests be made on any blood sample, but no such requirement is mandated for breath tests. Across the state virtually no police agency requires two breath tests. The apparent reason is the time and trouble involved, as the police

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priority is to get the officer back on patrol quickly.

Aspects of all three problems have scientific importance, and some lawyers feel that they need an expert witness to convince the jury of the seriousness of the problems. Depending upon the background of the witness (M.D., professor, forensic scientist, *etc.*), the witness fee borne by the defendants may vary from \$100 to \$500 or more. Other lawyers prefer to elicit the same information from the government's breathalyzer maintenance technician (who must be produced by the prosecution upon the request of the defense).

What is the effect of an expert witness on the outcome of the trial? Attorneys tell me that experts claim an acquittal rate of better than 50% for cases in which they testify. The statistics I keep on my own are based on a limited sample, but tend to indicate approximately 40%. The expert does not appear to be the deciding factor, but is more likely to be present for other reasons in cases where defense verdicts are rendered by the jury.

ALTERNATIVES

Why should judges or lawyers be concerned with the quality of the breath test? The reason is that a poor test will tie up our courts, place unnecessary financial burdens upon defense and prosecution alike, and result in unfairness and ineffectiveness that demoralize this part of the criminal justice system.

What are the alternatives?

One, of course, is to require a blood test. If the arresting officer did his field tests, found probable cause for arrest, and then brought the defendant to the nearest clinic, the resulting blood test would be free of the second and third problems we noted: problems of testing the breath and of police control of the test. There would remain the problem of delay. In addition, new problems would arise: for example, the police would not know right away if they had a case. Also, blood testing has a number of its own drawbacks and expenses. Even more important, as serious as drunk driving is, the invasion of the body by a needle is probably not on the political horizon.

A second alternative is to stick with breath testing, but make concerted efforts to address the three present problems.

The state is currently negotiating with a manufacturer for a new, state-of-the-art breath testing machine. If it performs as promised, it will go a long way toward meeting the problem of the police control of the test. The arresting officer will still initiate the test, but after the subject's name is punched in, the machine will take over. It will determine when an adequate air sample is given, test it twice, run a comparison test on an alcohol solution of known amount, and then take a second sample, also tested twice. The officer has no control over the results which are printed out by the machine. The

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machine is presently scheduled for introduction in 1985. However, it is still a "little black box," and its impact on juries should be small unless the other two testing problems are addressed as well.

The delay between driving and testing could be minimized by a device now in use by the Seattle police DWI squad. This is a hand-held breath tester used immediately after the stop to determine whether the driver has enough alcohol in his blood to make a trip to the station worthwhile. It is a voluntary test and rarely gets admitted into evidence. At present it is simply a tool of the officer. The officer's occasional testimony, however, indicates that it is accurate and reliable, and correlates closely with breathalyzer tests performed later at the station. A dramatically higher reading sometimes occurs, but is usually explained by an open container of alcohol in the vehicle.

If such a device were found to be accurate by the state toxicologist and certified for use (in tandem with a breath test administered at the station after a 15-minute waiting period), it could provide juries with a much better idea of what was in the defendant's blood at the time of driving. It would also help some defendants show that their BACs had been below .10 when driving, even though the readings had risen above that when tested at the precinct. Revisions of the Washington Administrative Code regulations and state law would be necessary if such a device were approved.

The medical experts vary widely in their estimates of the margin of error of a breath test on human subjects. The state toxicologist, who is on the faculty of the University of Washington School of Medicine, claims the testing error is 10% or less, while a currently popular expert defense witness, also from the medical school, testifies that the error is approximately 80%.

Others at the University advise against attempting to resolve this issue locally. They urge that an outside institution be assigned to perform definitive tests with the latest equipment and publish a study which can be relied upon by both sides, and ultimately by the jurors. Such a study exploring the partition ratio (in theory and in practice) and the breath profile as they relate to breath testing would probably cost several hundred thousand dollars. Funding sources would probably be the state department of licensing or the federal department of transportation.

It could be well worth the price.

Lawyers and judges are used to looking at a trial in much the same way as a sporting event: a test of skill and strength where the best team wins the prize. That may be appropriate for any single trial, but surely something is out of kilter in DWI trials. So much money and time go into both sides of this effort over a very narrow scientific issue.

We owe our fellow citizens, whether defendants or taxpayers, some critical and constructive thought on the problem. □

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THE WOMAN ALCOHOLIC

A lawyer's special problem

Tell her that alcoholism is a disease and it can be treated. You have the influence. The client has come to you for help.

by **Lisa Snyder-Stone**

In your practice, you have probably served male clients whose legal problems were complicated by alcoholism. However, in a growing number of cases which involve alcohol and drug abuse, the afflicted client is a woman.

The disease alcoholism must be controlled before legal counsel can be effective. Frequently a host of unique needs make successful treatment different for the two sexes. Child-care issues, stronger barriers of denial, and a severe lack of self-care skills inhibit the treatment process for many women.

Women in traditional roles often can get away with alcoholic drinking and never get arrested. They generally drink at home, and when they do go out, the husband often drives the car. But as women have emerged on the professional scene, where alcohol and drug use is prevalent, their problems have become more visible.

RED FLAGS

As an attorney, you are in a good position to influence your



client to accept evaluation and treatment. Many attorneys agree that the lawyer has a legal, ethical--even *moral* responsibility to explore all the solutions to a client's problem. When alcoholism or drug addiction is related to the case, the attorney's role is critical.

The alert attorney has a sixth sense for signs of addiction¹—the woman's husband wants to take the kids away, she writes bad checks, she is shoplifting. Once your suspicions are aroused, further questioning in the context of the interview is crucial to finding the truth. Ask her if she has had blackouts, has tried to stop drinking, or has been charged with driving while intoxicated.

Lisa Snyder-Stone is a community relations consultant to the Alcohol and Drug Addiction Treatment Program at Columbia Hospital in Yakima.

¹Discussions of evaluation and treatment in this article apply similarly to drug addiction as well as alcoholism.

The attorney can obtain a greater amount of accurate information in a shorter period of time than can any other professional or family member, because it is his or her job to ask questions. During the legal interview, the client is not as likely to see these questions as accusatory and become defensive.

Look for these clues to addiction:

- defensive or hostile denial
- frequent consumption of excessive amounts of alcohol
- attendance at meetings and court appearances after drinking
- a combination of legal problems (may indicate an inability to manage her own life)
- increased or decreased tolerance of alcohol (may indicate a physical reaction to the drug—common to many alcoholics)
- the client's own admission that alcohol is causing problems with her job, her family, or her friends

USE YOUR CLOUT AND YOUR TACT

Although these clues in and of themselves are not conclusive, when the evidence weighs in heavily, a confrontation must occur. The tone of the confrontation is critical, especially for women, who face the added stigma of the "morally deficient lush." An effective confrontation employs empathy and concern, not force. If you take special care to be supportive rather than accusatory, your recommendation for evaluation will probably be accepted by the client.

Public opinion about alcoholism has begun to shift, due to the characterization of alcoholism as a disease, and public acknowledgements by respected women (like former First Lady Betty Ford) of their own addictions. But women still harbor greater feelings of guilt and shame about their disease.

The attorney has a rare and powerful opportunity to break through that barrier of shame, because he or she can ask questions without accusing the client. The lawyer can then convince her with the evidence he or she has gathered that an evaluation is essential to her case and to her well-being.

After you have interviewed for information, focus on the drinking and the problems it is causing. There is not a practicing alcoholic who does not feel her life is unmanageable. Tell her that alcoholism is a disease, and that it can be treated. You have the influence. The client has come to you for help. She has given you the authority to advise her in solving a legal problem that is rooted in addiction.

ARM YOURSELF WITH RESOURCES

Although the attorney should not attempt to diagnose the disease, he or she can be watchful for addiction and become familiar with qualified professionals who can make that judgment and refer the woman to treatment.

These referral sources are available everywhere. An attorney should develop continuing relationships with alcoholism treatment professionals in his or her own community to be-

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The treatment process is
similar to an army M.A.S.H. unit.

come familiar with the programs available. The 24-hour Alcohol and Drug Helpline in Washington State tracks all available resources: 1 (800) 562-1240. Private agencies and community alcohol centers are listed in the Yellow Pages [also see "State approved alcoholism and drug abuse treatment services" in this issue of the *Bar News*].

If alcoholism is diagnosed, treatment is the next step. For some women, that dictates a specific treatment emphasis. Although the diagnostician will make the treatment recommendations, the lawyer can better evaluate his or her resources by understanding the elements considered in the decision.

TREATMENT OF THE WOMAN ALCOHOLIC

"We all know men and women are different," says Ginnie Gustafson, a well-known Seattle-area treatment counselor. "But when it comes to alcoholism and drug addiction treatment, the contrasts require a unique treatment emphasis for a percentage of women patients."

The top priority in any program is treating the alcoholic. Treatment first breaks through denial, then teaches the woman total abstinence from all mind-altering drugs.

A good program will also assess the individual needs of each woman and counsel her family in certain areas, to enhance recovery. A strong emphasis for some women needs to be in the areas of social, emotional and economic self-care.

It is the nature of the illness to form dependency relationships. Often the alcoholic woman's skills center around manipulating people to allow her to continue drinking or using drugs. Dependency has trapped her into being "kept." She has no vocational skills.

Building solid interpersonal relationship skills which avoid manipulation, and learning how to establish relationships with other women to form consistent support systems will greatly enhance sobriety.

These skills, which are so vital to many recovering women, are sometimes diluted in co-ed programs. But developing these skills will make the woman's relationships far less dependent, enhance her marriage and her friendships, and relieve her of the feeling that she must have a relationship to feel normal. She can then evaluate her self-image based on her own observations.

Gustafson, who has seen many women with these special problems through treatment, says, "She begins to see herself

as healthy and okay. Women learn to recognize the good things in themselves instead of depending upon others to assure them."

Two other aspects considered in the referral of women to treatment are the amount of physiological damage from alcohol and drug abuse, and the choice of inpatient or intensive outpatient treatment.

Inpatient or outpatient

A hospital-based treatment has the advantage of assessing and treating the physiological symptoms within the parameters of the program. Women with advanced physiological deterioration especially benefit from this focus.

The choice between inpatient and outpatient care is determined largely by economics, and by a woman's social and emotional environment.

Women involved in high stress jobs or relationships should ideally get completely away from those responsibilities and concentrate on themselves and their own needs. The inpatient treatment center gives such a woman that opportunity. However, sometimes economic responsibilities make it impossible for her to leave her job, in which case an intensive outpatient program may be preferred.

The treatment process is similar to an Army M.A.S.H. unit: stabilize the patient, then send her home for recovery. An ongoing recovery program is critical to long-term success.

The twelve-step program of Alcoholics Anonymous (AA) and Al-anon, or a similar program, is used in most treatment processes. This connects women with recovery resources in their own communities. Through group support, the alcoholic acknowledges her commitment to sobriety on an ongoing basis.

One last barrier impedes the treatment process for a woman—her children. Often the woman is solely responsible for her child's day-to-day care, and she finds herself bound by childcare responsibilities.

THE MISSING LINK: CHILDREN

A woman responsible for the everyday care of her children faces all the unique treatment barriers of her gender, plus the possible loss of childcare and custody should she acknowledge her addiction and seek treatment.

It is a valid concern when a woman says, "I can't go to treatment—I'll lose my children," or "There is no one to take care of them." These women cannot desert their children, nor do they want to.

The attorney should be aware of the risks and of the mother's options. Many women fear they will lose custody of their children once they submit to a diagnosis and are labeled alcoholic. That fear is unfounded. The small risk that treatment will have an adverse effect is greatly outweighed by the positive outcome of treatment.



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Most attorneys, but few mothers, know that in Washington, custody is determined by what is in the best interests of the child, and the court considers the current status of the mother, not her past history. Judges are not likely to penalize a woman for recovery.

Childcare can make or break a treatment. Treatment planning should include helping the woman with decisions on child care during the treatment process, and long-range custody choices. A mother who is distracted by concerns for the welfare of her children cannot give adequate attention to the sobriety program.

Nevertheless, most treatment centers leave it to the woman to find a neighbor, a family member, or a friend who will care for her offspring during treatment. These children frequently do not understand their mother's absence. They consistently create problems that are unmanageable, and often the mother must interrupt treatment to return to her family.

Single women with children, who because of their toxicity have been busy maintaining dysfunctional relationships at the cost of learning parenting skills, often have neglected those children emotionally and physically. A children's inpatient program can provide the necessary tools for effective relationships to both the child and mother on an intensive basis where they are learning, applying, evaluating, and trying again.

Children living in the home of an alcoholic are affected in various ways. Adapting physically and emotionally has left

them waiting for life to happen to them rather than making life happen. They learn survival skills, rather than life skills, as they protect themselves from harm. With intensive inpatient treatment those behaviors can be identified.

Children of all ages begin to understand the disease and its effects on their family. The withdrawal and aggression—the survival behaviors—are left behind for more functional behaviors that leave them in control of their lives and not always “waiting for the other shoe to drop.”

Children learn how to get their needs met instead of saying, “It's not important” or “I don't care.”

THE FINAL WORD

Although alcoholism is a virulent disease with potentially tragic ramifications for its victims and their families, you as an attorney have the power to end its vicious cycle by understanding the special plight of the woman alcoholic.

Bellevue attorney Richard Carrithers has developed and implemented a program for the successful identification and referral of potentially alcoholic clients. He reflects the opinion of a growing number of lawyers who feel this power is in fact an *obligation* on the part of the attorney:

“The crime and the tragedy is that 99 percent of the attorneys don't take advantage of their clout. Alcoholism is a progressive and fatal disease. Lawyers kill their clients by not talking to them.” □

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The late night phone call

Take the breathalyzer, two aspirin,
and call me Monday morning.

by Michael J. Heavey

"O ld pal, I just drove off the West Seattle Bridge, I am at the jail, under arrest for a DWI. What should I do? Should I take the breathalyzer?"

The foregoing questions have been asked countless times of countless lawyers. Although most of us conduct business on weekdays, we sometimes find ourselves thrust into the role of the doctor who receives the weekend late night phone call. If you have not received one of these phone calls, then it is only a matter of time.

What should you do if your client calls you late at night to report his arrest for DWI? *Know that this is a most critical point.* The case can be won or lost depending upon what you, the attorney, advise and do.

It is difficult to convict a DWI defendant if the prosecutor does not have an admissible breathalyzer reading of .10 or above. However, circumstances can be such that there will be a guilty verdict even if the client has refused the breathalyzer.

Michael J. Heavey, a 1976 graduate of the University of Santa Clara School of Law, is a sole practitioner in Seattle.

Ask the police officer about the driving which prompted the arrest. . .

DIAGRAM OF COLLISION 1. IDENTIFY ROADWAY & RAMP FEATURES VEHICLES PEDESTRIANS OBJECTS ON OFF ROADWAY TRAFFIC CONTROLS SKID MARKS UNUSUAL TEMP. CONDITIONS ICE PATCH, CONSTRUCTION AREAS, ETC. 2. LOCATE PROBABLE POINT OF IMPACT 3. SHOW VEHICLE, PEDESTRIAN OR OBJECT POSITIONS AT IMPACT 4. SHOW PROBABLE VEHICLE OR PEDESTRIAN PATHS BEFORE AND AFTER COLLISION	
DESCRIPTION OF COLLISION	INDICATE WHAT PROBABLY HAPPENED BEFORE, DURING AND AFTER THE CRASH. INCLUDE INFORMATION NOT ON DIAGRAM, E.G. DRIVER DISABILITY, REDUCED VISIBILITY, PEDESTRIAN CLOTHING COLOR, CONSTRUCTION OR REPAIR WORK, ETC.
VEH. WENT UNDER THE PHYSICAL BARRIER. THE BARRIER IS OF THE PIVOTING WOODEN ARM TYPE AND IS EQUIPPED WITH TWO REVOLVING RED LIGHTS. THE VEHICLE DROPPED APPROX. 3' FROM ROAD TO BRIDGE SURFACE, JUMPED 10' GAP, AND WEDGED ITSELF BETWEEN BRIDGE AND ROAD SURFACE ON OTHER SIDE. ACCIDENT WITNESSED BY BRIDGE TENDER FROM SWITCH HOUSE ON SO. SIDE OF BRIDGE. WIT. STATED VEH. WAS AIR-BORN BY SEVERAL FEET AFTER MAKING JUMP. NO DAMAGE TO BRIDGE. PHYSICAL BARRIER WAS MERELY SCRAPPED, AND NOT DAMAGED.	

For example, bad driving, independent witnesses stating that your client was intoxicated, or bad field sobriety tests can all lead to a quick guilty verdict with or without a breathalyzer.

BE POLITE AND COURTEOUS

First, tell your client to be polite and courteous, but to exercise his right to remain silent. Your client's attitude may be of use when the police officer writes his report, or later if there is a chance for a plea bargain. Then tell your client you would like to speak with the arresting officer.

Inform the police officer you don't wish to cause him any delay, but you need certain information to properly advise your client. Ask him about the driving which prompted the arrest, the names of witnesses, and how your client performed on the field sobriety tests. Inform the officer that your client wishes to remain silent and that he should not ask your client any more questions. Ask the officer to stand back out of hearing range so your client can talk to you freely. The officer must have the suspect within his observation for 15 minutes prior to taking the breathalyzer, but there is no requirement that he listen to a privileged conversation.

If it is your decision to proceed to the police station, ask the police officer to release him into your custody and tell him the time you will arrive. Most officers will comply, and your client will not be booked or need to post bail.

By this time you should have an inkling for whether or not your client is "bombed." Is he slurring his words? Did he crawl out of his car on his hands and knees? Does he think you are his wife?

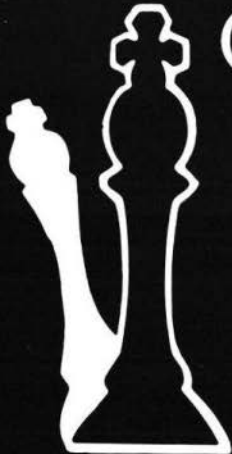
ELICIT FACTS

Ask your client if he can talk freely and direct him to move as far away as he can from the police officer.

If you are unsure about your client's age, ask it. If the suspect is 16 or 17 years of age, refuse the breathalyzer. Upon the first DWI conviction, a person's driver's license is suspended for 90 days or until he or she reaches the age of 19 (RCW 46.61.515).

Penalties and priors. Has your client been convicted of a DWI or refused a breathalyzer within the last five years? The first DWI conviction carries a 90-day license suspension, the second DWI conviction a one-year suspension, and the third conviction a loss of driver's license for five years (RCW 46.61.516). If your client refuses the breathalyzer, he will lose his license for one year; and if it is a second refusal, he will lose his license for two years (RCW 46.20.311). Advise your client of these penalties.

If your client has a prior conviction for DWI within the last five years and no previous refusal, he may wish to refuse the breathalyzer.



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Deferred prosecution. Ask your client if he feels he has a drinking problem; if so, ask if he is willing to be treated for it. If he admits to having a problem, then he should take the breathalyzer whether or not he is facing a first or second conviction. You will then have a chance to present a deferred prosecution petition.

Occupation. Ask about your client's occupation. Is it necessary he drive for a living? If he is a realtor or salesman, he needs his license and he should not refuse the breathalyzer. If he takes the bus to work, he may want to consider refusing the breathalyzer. This is a tricky area, however. If the other factors are good, he may be below a .10 and he should definitely take the breathalyzer.

Blood alcohol concentration. Tell your client to speak freely and tell you as accurately as he can his weight, how much he had to drink, and over what period of time. Were they bar drinks, strong drinks, or whatever? You can use the chart below to estimate blood alcohol content. The chart is put out by the Washington State Liquor Control Board.

BLOOD ALCOHOL CONCENTRATION GUIDE

(●ONE DRINK equals 1 oz. of 80-proof alcohol; 12 oz. of beer; 2 oz. of 20% wine; 3 oz. of 12% wine.)

WEIGHT	DRINKS CONSUMED									
	1	2	3	4	5	6	7	8	9	10
100	.029	.058	.088	.117	.146	.175	.204	.233	.262	.290
120	.024	.048	.073	.097	.121	.145	.170	.194	.219	.243
140	.021	.042	.063	.083	.104	.125	.146	.166	.187	.208
160	.019	.037	.055	.073	.091	.109	.128	.146	.164	.182
180	.017	.033	.049	.065	.081	.097	.113	.130	.146	.162
200	.015	.029	.044	.058	.073	.087	.102	.117	.131	.146
220	.014	.027	.040	.053	.067	.080	.093	.106	.119	.133
240	.012	.024	.037	.048	.061	.073	.085	.097	.109	.122
CAUTION DRIVING IMPAIRED LEGALLY DRUNK										

Alcohol is "burned up" by your body at .015% per hour, as follows:

No. hours since starting 1st drink	1	2	3	4	5	6
Percent alcohol burned up	.015	.030	.045	.060	.075	.090

If there is no chart available, I use a rough rule of .02 per drink, then apply the appropriate burn off rate. Roughly, an average person burns off .03 percent blood alcohol every two hours.

If he is obviously under .10, then under no circumstances should he refuse. In addition, if you are unable to come to the station, you should advise the police officer to take your client to a hospital for a blood test. No matter what happens, make sure he gets his blood drawn and preserve your chain of evidence.

PIONEER CENTER



Quality Alcoholism/Drug Abuse Treatment

We believe that alcoholism/drug abuse is a primary, chronic and potentially fatal disease that is treatable. Our treatment programs are backed by years of success. We're the largest and one of the oldest state-licensed J.C.A.H. accredited alcoholism/drug abuse treatment facilities. Our staff is caring, professional and experienced. All of our counselors are certified by the state's Alcoholism Certification Board.

RECOVERY TREATMENT PROGRAMS

- **ADULT INTENSIVE INPATIENT:** A 28-day program focuses on self, family, community and human effectiveness with AA/NA participation.
- **WOMEN'S INTENSIVE INPATIENT:** A separate program that focuses on women's special needs.
- **ADOLESCENT RECOVERY PROGRAM:** 42-day residential program offers treatment, family involvement, basic education, recreation and aftercare. This successful program was made possible by a grant from SAFECO CORPORATION.
- **EMPLOYEE PROGRAM:** Employees work at their jobs while maintaining residence at PIONEER CENTER regardless of shift worked. Treatment needs are met weekdays and weekends. Family counseling is available.
- **OUTPATIENT TREATMENT PROGRAM:** A full treatment program, with three phases of decreasing intensity. Classes are scheduled morning or afternoons and evenings. Counseling for the family is available.

COURT RELATED SERVICES

Deferred Prosecution Diagnostic Evaluations

- **RECOVERY HOUSE:** Transitional care for person needing support, therapy and guidance for entry into community.

24 HOUR PHONE (206) 722-2993

9236 Renton Avenue South
Seattle, Washington 98118

A division of Pioneer Human Services:
a private, non-profit organization.

ATTORNEY'S CHECKLIST

Client. . .

- ☐ Be polite, say nothing.
- ☐ Stand away from the officer.
- ☐ Age? (under 18, refuse)
- ☐ Occupation? (need license, do not refuse)
- ☐ Prior DWIs?
- ☐ Prior BA refusals?
- ☐ Drinking problem? Want to correct?
- ☐ Weight? How much drank? Time period? (.02 per drink, .03 burnoff every two hours)
- ☐ Advise of refusal effect (one year loss of license).
- ☐ If refused, attorney instructs officer.
- ☐ Look for metal cylinder (bottle of fluid).
- ☐ Instruct how to breathe into machine.

Officer. . .

- ☐ Why arrest?
- ☐ Physicals? Alphabet?
- ☐ Stand away, no more questions.

Attorney. . .

- ☐ Advise officer no questions.
- ☐ Advise officer refusal/acceptance of breathalyzer.
- ☐ Arrange for release.
- ☐ Go to station.
- ☐ Conduct tests (physicals, alphabet).
- ☐ Get witnesses.
- ☐ Obtain blood test if close to .10.
- ☐ Take notes, note times.

If he is obviously over .10 and his other factors are good, if he can do without a license, or if he is under 18 years of age, he may wish to refuse upon advice of counsel. Be advised that this would rarely be the best choice.

THE BREATHALYZER

Tell your client to pay attention when he takes the breathalyzer. Tell him specifically to see if the officer inserts the bottle of fluid into a metal cylinder. Later he may testify that he was specifically advised to watch the officer's actions, and that the officer did not conduct the test properly, if indeed the officer forgot to test the bottle properly.

Breathing. There is credible scientific evidence that deep lung air (the last part of breath) can result in a reading higher than your client's actual blood alcohol reading. Tell the client to cooperate with the officer, breathe hard at first, and light up the green light on the machine, but not to expend all of his/her air.

Refusal. If for whatever reason, the decision is made refuse the breathalyzer, then you, the attorney, should advise the police officer that your client will not take the breathalyzer and direct the police officer to not ask the defendant any more questions whatsoever.

GO TO THE STATION

I believe you should go to the station and arrive as soon as you can. Under *State v. Staeheli*, 102 Wn.2d 305 (August 1984), you have no right to delay or observe the breathalyzer exam.

Tactically, I believe you do not want to observe the breathalyzer test because it could tend to lend credibility to the result at time of trial.

At the station you should do two things. First, in private, you should have your client say the alphabet, walk a line heel to toe, hold his foot off the ground, touch his nose with his fingertip. If he does well, find witnesses, ideally police officers in the area, and repeat the test for them. If you cannot find a witness, you may have to withdraw as counsel and be a witness at trial.

Blood tests. If you feel, from your estimate of his blood alcohol and his general conduct, that your client may be below .10 blood alcohol, or close to .10, then get him to a hospital to have his blood drawn. You should take notes and write down important times, e.g., time of call, time arrived at station, time arrived at hospital.

This article has been written in general terms and for the attorney inexperienced in DWI defense. There are nuances, complexities, and exceptions present in almost every case. If you accomplish, or attempt to accomplish, all of the above, I believe you will have represented your client to the greatest possible extent. ☐

State approved alcoholism and drug abuse treatment services

ADAMS COUNTY
Adams County Community
Counseling Services
165 North First
Othello, WA 99344
(509) 488-5162

ASOTIN COUNTY
Alcohol Resource Center
1231 Highland Avenue
Clarkston, WA 99403
(509) 758-9591

Asotin County M.H. Ctr.
Assoc.
900 - 7th Street
Clarkston, WA 99403
(509) 758-3341

BENTON COUNTY
Benton-Franklin Alcoholism
Program
P.O. Box 607
Big Pasco Industrial Park,
Building T-180
Pasco, WA 99301
(509) 545-0855

Benton-Franklin Detoxification
Center
P.O. Box 607
1020 South 7th Avenue
Pasco, WA 99301
(509) 547-9000

Mid-Columbia Mental Health
1175 Gribble
Richland, WA 99352
(509) 943-9104

Psychological Consultants
660 George Washington Way
Richland, WA 99352
(509) 946-9613

Tri-Cities Alcohol Treatment
Center
1350 Grandridge Boulevard,
Suite 200
Kennewick, WA 99336
(509) 735-6347

CHELAN COUNTY
Chelan County District Court
Probation Dept.

415 Washington Street, #210
Wenatchee, WA 98801
(509) 662-2542

Chelan-Douglas Alcoholism
Services Association
P.O. Box 950
327 Okanogan
Wenatchee, WA 98801
(509) 662-9673

CLALLAM COUNTY
West-End Outreach Services
Forks Community Hospital
RR#3, Box 3575
Forks, WA 98331
(206) 374-6177

North Olympic Counseling
Services
Clallam Co. Courthouse
223 East 4th
Port Angeles, WA 98362
(206) 452-2381

Peninsula Counseling Center,
Inc.
603 East 8th Street, Suite 4
Port Angeles, WA 98362
(206) 457-0431

CLARK COUNTY
Clark County Council on
Alcoholism
P.O. Box 1678
1950 Fort Vancouver Way
Vancouver, WA 98668
(206) 696-1631

Clark County Probation
Services
703 West 15th Street
Vancouver, WA 98668
(206) 699-2342

St. Joseph Community
Hospital
Alcoholism Treatment Center
600 N.E. 92nd Ave.
P.O. Box 1600 - 4th Floor
Vancouver, WA 98668
(206) 256-2170

Branch Office
Intensive Inpatient
Treatment Program

P.O. Box 1600
116 East 33rd Street
Vancouver, WA 98668
(206) 699-4443

Square One
1010 Washington St.
Vancouver, WA 98660
(206) 696-3307

SWARF Alcohol and Drug
Programs
V.A. Medical Center,
Ward 16
P.O. Box 1738
Vancouver, WA 98668-1738
(206) 696-1659

Branch Offices
SWARF Inpatient Center
V.A. Medical Center,
Wards 16-20
P.O. Box 1738
Vancouver, WA 98668-1738
(206) 696-1659

SWARF Outpatient Center
2703 Mill Plain Blvd.
Vancouver, WA 98668
(206) 695-1297

Veterans Administration
Medical Center
Vancouver Division
Alcohol and Drug Dependence
Treatment Section
P.O. Box 1035
Portland, OR 97201
(206) 696-4061

COLUMBIA COUNTY
Columbia County Services
213 West Clay
Dayton, WA 99328
(509) 382-2525

COWLITZ COUNTY
Cowlitz County District &
Municipal Court Probation

312 South First West
Kelso, WA 98626
(206) 577-3077

Drug Abuse Prevention Center
2112 South Kelso Drive
Kelso, WA 98626
(206) 636-1050

Lower Columbia Council on
Alcoholism
1260 Commerce, #213
Longview, WA 98632
(206) 577-2216

Monticello Medical Center
Care Unit
600 Broadway
Longview, WA 98632
(206) 636-7363

SCOAP Outpatient
Alcohol/Poly-Drug Program
Monticello Hotel, Suite 311
Longview, WA 98632
(206) 423-8021

SWARF Outpatient Center
1127 Broadway
Longview, WA 98632
(206) 425-1914

DOUGLAS COUNTY
see Chelan County

FERRY COUNTY
Ferry County Community
Services
P.O. Box 443
Klondike Plaza, Clark Street
Republic, WA 99166
(509) 775-3341

FRANKLIN COUNTY
see Benton County

GARFIELD COUNTY
Western Consortium for
Human Services

This listing is reprinted from A Directory of Alcoholism and Drug Abuse Services in the State of Washington, March 1984, provided by the Bureau of Alcohol and Substance Abuse, Department of Social and Health Services. Although an effort has been made to confirm all entries, the Bar News is not responsible for the accuracy of this listing.

P.O. Box 758
856 Main Street
Pomeroy, WA 99347
(509) 843-3791

GRANT COUNTY

Grant County Alcoholism
Programs
P.O. Box 1217
502 South "C" Street, Room 1
Moses Lake, WA 98837
(509) 765-5402

Branch Office

300 Lincoln Avenue
Grand Coulee, WA 99133
(509) 633-1189

Grant County Mental Health &
Family Svc. Ctr.
P.O. Box 1057
Moses Lake, WA 98837
(509) 765-9239

GRAYS HARBOR COUNTY

Grays Harbor Adult Probation
Services
2109 Sumner Avenue,
Room 200
Aberdeen, WA 98520
(206) 532-0164

Grays Harbor Community
Alcoholism Center
2301 Simpson Avenue
Aberdeen, WA 98520
(206) 533-4940

Branch Office

Hillside Emergency
Treatment Center
2301 Simpson Avenue
Aberdeen, WA 98520
(206) 533-2529

Inner-Sight

Catholic Community
Services—West Central
611 Eighth Street
Hoquiam, WA 98550
(206) 538-0191

St. Joseph's Hospital Careunit
1006 North "H" Street
Aberdeen, WA 98520
(206) 533-8500

Youth Help of Grays Harbor
510 ½ Eighth Street
Hoquiam, WA 98550
(206) 533-7500

ISLAND COUNTY

Herbert Johnson Clinic
5055 - 50th Street Northwest

Oak Harbor, WA 98277
(206) 679-3806

Camano-Whidbey Alcoholism
Services
404 South Main Street
Coupeville, WA 98239
(206) 678-4005

Island County Mental Health
Center
P.O. Box 160
904 Main Street
Coupeville, WA 98239
(206) 678-5555

Whidbey Island Naval Air
Station
Counseling and Assistance
Center
Oak Harbor, WA 98278
(206) 257-2394

JEFFERSON COUNTY

Community Alcoholism/Drug
Abuse Center
802 Sheridan, MS 115
Port Townsend, WA 98368
(206) 385-0650

Halcyon House
P.O. Box 481
14 East Fremont
Quilcenc, WA 98376
(206) 765-3421

KING COUNTY

Alcohol and Drug 24-Hour
Helpline
3700 Rainier Avenue South,
Suite B
Seattle, WA 98144
(206) 722-3703

Alternatives
1818 Westlake North, Suite
106B
Seattle, WA 98109
(206) 283-5255

Auburn Youth Resources
117 D Street S.E.
Auburn, WA 98002
(206) 939-2202

Ballard Community Hospital
Careunit
5409 Barnes Avenue N.W.
Seattle, WA 98107
(206) 789-7209

Bellevue Probation Division
P.O. Box 98009
655 - 120th Ave. N.E.
Bellevue, WA 98005
(206) 455-6956

C & M Counseling and
Consulting Services

2366 Eastlake Avenue East
Suite 428
Seattle, WA 98102
(206) 323-3699

C.A.R. Institute
222 Williams Avenue South
Renton, WA 98055
(206) 255-7614

Cabrini Alcohol Program
*see Saint Cabrini Recovery
Program*

Careunit Hospital of Kirkland
P.O. Box 480
10322 N.E. 132nd Street
Kirkland, WA 98033
(206) 821-1122

Case Services, Inc.
P.O. Box 4295
105 So. Main Street, Suite 325
Seattle, WA 98104
(206) 467-7964

Aurora Village Medical Center
1207 N. 200th St., Suite 217
Seattle, WA 98133
(206) 329-9106

Center for Addiction Services
120 - 23rd East
Seattle, WA 98112
(206) 323-0930

Center for Human Services
17011 Meridian Avenue North
Seattle, WA 98133
(206) 546-2411

Central Area Community
Alcohol and Substance
Abuse Center
340 - 15th Avenue East,
Suite 301
Seattle, WA 98112
(206) 322-2970

Central Area Mental Health
Center
2200 Rainier Avenue South
Seattle, WA 98144
(206) 329-1751

Chemical Dependency
Program
1207 Pine St.
Seattle, WA 98101
(206) 634-3947

CHOICE
Suite 203
2448 - 76th Avenue Southeast
Mercer Island, WA 98040
(206) 232-4330

Community Psychiatric Clinic
4319 Stoneway North

DWI ASSESSMENTS

**DEFERRED PROSECUTION EVALUATIONS
AND OUTPATIENT TREATMENT**

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12063-15th Ave. N.E.
Seattle, WA 98103
(206) 363-0031

**FIRST
STEP**

14400 Bel-Red Rd.,
#204
Bellevue, WA 98007
(206) 746-3888

State Approved Alcohol Recovery Program

Seattle, WA 98103
(206) 447-3614

Comprehensive Alcohol
Services
2450 Star Lake Road
Auburn, WA 98002

Conquest Center - Women's
Residence
19204 - 15th Avenue N.E.
Seattle, WA 98155

Consejo Counseling and
Referral
3808 South Angeline
Seattle, WA 98118
(206) 721-0800

Counter Balance Program
1100 Virginia
Suite 201
Seattle, WA 98101
(206) 623-2174

Dell Craig Therapists, Inc.
Marina Professional Center
22030 - 7th Avenue South
Des Moines, WA 98188
(206) 824-9273

Eastside Alcohol Center
Building 400
1111 - 110th N.E.

Bellevue, WA 98004
(206) 454-1505

Evergreen Treatment Services
557 Roy Street
Seattle, WA 98109
(206) 282-2959

Federal Way Counseling
Services
32700 Pacific Hwy. So., Suite
11
Federal Way, WA 98002
(206) 874-4443

Federal Way Youth Services
31101 - 18th Ave. So.
Federal Way, WA 98003
(206) 839-6555

CareUnit Clinic of WA, First
Step
14400 Bel-Red Road, #204
Bellevue, WA 98007
(206) 746-3888

CareUnit Clinic of WA
12063 - 15th Ave. N.E.
Seattle, WA 98125
(206) 363-0031

Genesis House
P.O. Box 95115

4508 - 16th Avenue Northeast
Seattle, WA 98105
(206) 524-6767

Group Health Cooperative
Alcohol & Drug Abuse Unit
1600 East John, Annex #5
Seattle, WA 98112
(206) 326-7057

Highline West Seattle Mental
Health Center
10015 - 28th Avenue
Southwest
Seattle, WA 98146
(206) 241-0990

Highline Youth Service Bureau
P.O. Box 66086
156th and Des Moines Way
South
Seattle, WA 98166
(206) 243-5544

Chinook Center
1800 Westlake Avenue North
Suite 201
Seattle, WA 98109
(206) 282-9991

Intercept Associates
30620 Pacific Hwy. So., Suite
108

Federal Way, WA 98003
(206) 941-7555

Kent Valley Youth Services
525 North 4th, Kent Commons
Kent, WA 98031
(206) 872-3550

King County District Court
Probation Svc. Div.
E-310 King County
Courthouse
516 - 3rd Avenue
Seattle, WA 98104
(206) 344-3897

King County Division of
Alcoholism & Substance
Abuse Svcs.
1008 Smith Tower Building
Seattle, WA 98104
(206) 344-7615

Branch Offices
King County Alcoholism
Treatment Facility
1421 Minor Avenue
Seattle, WA 98101
(206) 587-0161

King County Cedar Hills
Alcoholism Treatment
Center

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Assessments and evaluations of persons convicted of DWIs and court-related progress reports are among the many outpatient services of the Saint Cabrini Recovery Program*.

In a convenient, confidential setting, certified alcohol counselors, therapists, physicians and nurses will meet with your client and recommend an appropriate course of action. You'll find our reports concise, complete and to the point. And, prepared within the time frame you require.

The Saint Cabrini Recovery Program also features a comprehensive inpatient program for treatment of alcoholism and/or other chemical dependencies, outpatient and individual and family counseling, employee assistance program consultations, and public education sessions and speakers bureau.

* Formerly the Cabrini Alcohol Program

For timely, accurate assessments you and your client can trust, write us at Saint Cabrini Hospital, Terry and Madison, Seattle, WA 98104, or call the Saint Cabrini Recovery Program at **(206) 583-4344**.



15900 - 227th Avenue
Southeast
Maple Valley, WA 98038
(206) 392-9159

King County Emergency
Service Patrol
1008 Smith Tower
Seattle, WA 98104
(206) 344-7615

King County Extended Care
Unit
16200 - 227th Avenue
Southeast
Maple Valley, WA 98038
(206) 392-9467

King County Labor Council—
Alcoholism Program
2800 First Avenue
Room 218
Seattle, WA 98121
(206) 622-9534

Mental Health North
10510 Meridian Avenue North
Seattle, WA 98133
(206) 365-5550

Milam Recovery Center
14500 Juanita Dr. N.E.
Bothell, WA 98011
(206) 621-9636. (206)
823-3116

Moss and Associates
1410 - 130th Northeast
Bellevue, WA 98005
(206) 453-0550

Moss Bay Comprehensive
Treatment Center, Inc.
801 Market Street
Kirkland, WA 98033
(206) 828-4774

Branch Office
2800 E. Madison,
Suites 304-305
Seattle, WA 98102

Mt. Baker Youth Service
Bureau Community
Association
1730 Bradner Place South
Seattle, WA 98144
(206) 322-7676

Municipal Court of Seattle
Municipal Prob. Svcs.
612 Smith Tower
Seattle, WA 98104
(206) 625-4618

North Community Alcohol
Center
10501 Meridian Avenue North

Suite E
Seattle, WA 98133
(206) 367-2700

Northwest Teen Challenge
1808 - 18th
Seattle, WA 98122
(206) 324-3560

Northwest Treatment Center
9010 - 13th Northwest
Seattle, WA 98117
(206) 789-5911

Pioneer Human Services
Administrative Offices
2200 Rainier Avenue South
Seattle, WA 98144
(206) 322-6645

Branch Office
Pioneer Center South
9236 Renton Avenue South
Seattle, WA 98118
(206) 722-2993

Renton Area Youth Services
1025 South Third
Renton, WA 98055
(206) 271-5600

Renton Vocational Technical
Institute
3000 Northeast Fourth Street
Renton, WA 98056
(206) 235-2352

Residence XII
14506 Juanita Drive N.E.
Bothell, WA 98011-4992
(206) 823-8844

Riverton General Hospital
Careunit
12844 Military Road South
Seattle, WA 98168
(206) 244-0180

Ryther Child Center
2400 N.E. 95th Street
Seattle, WA 98115-2499
(206) 525-5050

Saint Cabrini Recovery
Program
920 Terry Avenue
Seattle, WA 98104
(206) 583-4344

Salvation Army Harborlight
Center
416 - 2nd Avenue
Seattle, WA 98104
(206) 621-0145

Schick Shadel Hospital
12101 Ambaum
Boulevard S.W.
Seattle, WA 98146
(206) 244-8100

Seattle Drug and Narcotic
Center (SEADRUNAR)
P.O. Box 24344
Seattle, WA 98124
(206) 767-0244

Branch Offices
SEADRUNAR Phase I
976 South Harney
Seattle, WA 98108
(206) 767-0244
SEADRUNAR Phase II
809 - 15th East
Seattle, WA 98112
(206) 324-8500
SEADRUNAR - Queen
Anne
200 West Comstock
Seattle, WA 98119
(206) 284-2010

Seattle Indian Alcoholism
Program
1912 Minor Avenue
Seattle, WA 98101
(206) 324-9360

Branch Office
Thunderbird Fellowship
House

1531 - 13th Avenue South
Seattle, WA 98144
(206) 322-6230

Seattle Mental Health Institute
Substance Abuse Recovery
Program
1600 East Olive Street
Seattle, WA 98122
(206) 281-4357

Southeast Community Alcohol
Center
P.O. Box 1041
Titus Building, 232 South
Second
Kent, WA 98032
(206) 854-6513

Southwest Community Alcohol
Center
15025 - 4th S.W.
Suite B
Seattle, WA 98166
(206) 242-3506

Square One
P.O. Box 1178
1275 - N.W. 12th Avenue
Issaquah, WA 98027
(206) 392-7815. (206)
453-1275

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222 Williams Ave. So.
Renton, WA 98055
(206) 255-7614

Branch Office

7811 - 159th Place N.E.
Redmond, WA 98052
(206) 881-7084

Sunrise Centers

12650 - 1st Ave. South
Seattle, WA 98168
(206) 248-3006

Vashon Community Alcohol Center

Sunrise Ridge Vashon-Maury
Health Center
P.O. Box 99
Vashon, WA 98070
(206) 463-9492

Veterans Administration Medical Center

Alcohol Dependence Treatment Program
1660 South Columbian Way
Seattle, WA 98108
(206) 764-2123

Washington Drug Rehabilitation Center

P.O. Box 4036
421 - 30th Avenue South
Seattle, WA 98104
(206) 325-4005

Youth Eastside Services
257 - 100th Avenue N.E.
Bellevue, WA 98004
(206) 454-5502

KITSAP COUNTY

Alcohol Rehabilitation Services

Navy Hospital
Bremerton, WA 98314

Awareness Express
614 Division Street
Port Orchard, WA 98366
(206) 876-9430

Bremerton Municipal Court Probation Dept.

239 - 4th Street
Bremerton, WA 98310
(206) 478-5268

Kitsap County Alcoholism Recovery Program (KCARP)

2051 Pottery Avenue
Port Orchard, WA 98366
(206) 876-5577

Kitsap County Council on Alcoholism

P.O. Box 512
532 - 5th Street
Bremerton, WA 98310
(206) 377-0051

Branch Office

P.O. Box 324
122 Moe Street
Poulsbo, WA 98370
(206) 779-2900

Kitsap County District Court Probation Services Dept.

614 Division Street
Port Orchard, WA 98366
(206) 876-7019

Madrona House

3710 Madrona
Bremerton, WA 98310
(206) 479-0744

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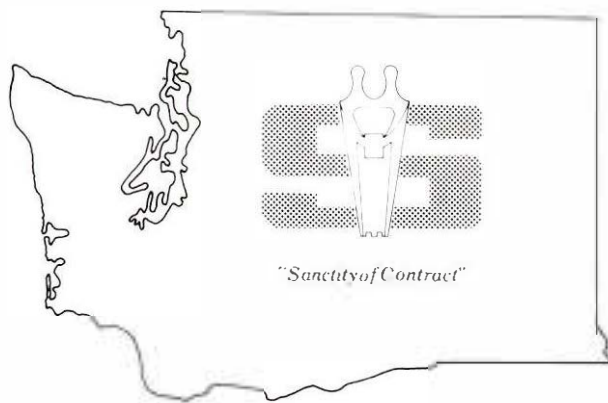
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WASHINGTON STATE BAR NEWSLINE

The Board's Work



by Steven A. Reisler

SPECIALIZATION DECISION POSTPONED

COUPEVILLE, WA, Nov. 9 -- The Board of Governors has voted unanimously to postpone its decision whether to implement a specialization program for the Washington Bar.

The WSBA Board of Specialization presented its model plan to the Board of Governors in August, 1984 [see Sept. Bar News, pp. 53-55, "Is Specialization In Your Future?"]. At its August meeting the Board requested lawyer input by November 30 and set December as the month in which it would either accept or reject the proposed specialization plan. [The pros and cons of the subject specialization plan appeared at pp. 12-18 of the October Bar News.]

Various members of the Board of Governors and the Specialization Task Force toured the state in an effort to educate the bar about the ramifications of the proposed plan. Sixth District Governor Ed Lane told the Board that at a well-attended meeting of the Pierce and South King County Bar Associations, a majority of the lawyers expressed strong concern about specialization. At a later meeting of the Kitsap County Bar, Lane found that only three out of 80 lawyers favored the specialization plan under consideration. He noted that younger lawyers and smaller firms were particularly concerned about specialization. Lane learned that his constituents want 1) a postponement of the final decision on specialization, 2) more information about the plan, and 3) an opportunity to register their opinions.

Fifth District Governor Joe Delay reported that at an October meeting of the Spokane County Bar Association, roughly 55% favored enactment of the specialization plan, but many young lawyers opposed it. The Island County Bar Association unanimously disapproved of the proposed specialization plan. WSBA Executive Director John Michalik advised the Board that a majority of the letters recently received by the Bar opposed specialization. He also observed, however, that only six persons had asked the Bar Association for a copy of the proposed rule [see October Bar News, p. 18].

Several Bar organizations asked the Board to delay consideration of specialization until after plan itself had been disseminated. SKCBA Young Lawyers representative Mary Alice Theiler told the Board that until the plan itself were distributed to the membership it would be impossible to fairly evaluate it. She also asked the the Board to answer the principal question most young lawyers ask: Why does the public really need specialization?

Fred Butterworth, representing the SKCBA Board of Trustees, reported that his organization, too, needed more time to study the specialization plan. WSBA Young Lawyers representative Claire Cordon also asked the Board to postpone its decision. Cordon noted that the Board of Washington Women Lawyers had already voted to oppose the specialization plan.

After lengthy debate, the Board voted to 1) submit for publication in the January Bar News the complete specialization plan as submitted to the Board, and 2) disseminate a questionnaire to lawyers to register their opinions.

BOARD PETITIONS FOR IOLTA DELAY

By unanimous vote, the Board voted to petition the Supreme Court to delay by 60 days implementation of the so-called IOLTA rule. If the Supreme Court grants the petition, lawyers will not need to comply with the new rule until March 1, 1985. The Board voted to seek postponement of the January 1 inauguration of IOLTA to make sure lawyers know it exists and to advise them how to comply with the new rule.

In a related matter, the IOLTA Legal Foundation Board of Trustees has advised the WSBA that the Foundation will probably need a staff of one or two persons to keep the organization going. The Legal Foundation currently receives 30-60 telephone calls and letters daily, and 80 organizations have already submitted requests for IOLTA grants. The 8.C. Foundation, which administers a fund of approximately \$8 million, employs a staff of two and spends approximately \$120,000/year to operate the program.

In order to secure interim funding for the Legal Foundation until IOLTA gets off the ground, the Trustees requested either a WSBA \$50,000 loan at prevailing interest rates or the extension of a \$50,000 line of credit. The Board, however, suggested that the Legal Foundation seek interim funding from the banking community.

CLIENT SECURITY FUND

The Board approved the recommendation of the Client Security Fund (CSF) Committee to make a gift of \$450 to Janet G. Laddusaw on a claim against disbarred attorney Robert W. Garver, Jr., and to make a gift of \$1,200 to Kathleen Swartz on a claim against attorney Eugene Stock.

Spokane attorney Patricia Crandall, chairperson of the CSF Committee, appeared before the Board to present proposed new rules governing the distribution of money from the Client Security Fund. The CSF was established to mitigate individual's pecuniary losses sustained by reason of a lawyer's defalcations. The rules under revision appear at Article XI of the WSBA By-Laws.

OTHER WORK:

CPA actions v. lawyers -- In Short v. Demopolis, the Washington Supreme Court has held that the entrepreneurial aspects of the practice of law can give rise to causes of action under the Washington Consumer Protection Act.

ABA -- The Board unanimously approved the report of the Task Force on ABA Selection, etc. Pursuant to that action, State Bar Delegates to the ABA will serve for two-year terms, the number of terms at the discretion of the Board. This changes the policy adopted by the Board at its June meeting when it restricted ABA delegates' terms to no more than six years [see July Bar News, p. 23].

Election change -- Upon the suggestion of Third District Governor Angelo Petruss, the Board voted 8-1 to amend the By-laws to move the last date for filing petitions for election to the Board of Governors from May 31 to April 30.

Professionalism -- President F. Lee Campbell addressed a joint luncheon meeting of the Board of Governors and the Island County Bar Association. Campbell told the assembled lawyers that the keynote of his presidency will be "professionalism" and how to restore dignity and honor to the practice of law.

THE NEXT MEETINGS OF THE BOARD OF GOVERNORS: SEATTLE SHERATON HOTEL, DEC. 14-15; WESTWATER INN, OLYMPIA, JAN. 11-12; TACOMA SHERATON, FEB. 8-9.

With 65,000 pages of deposition testimony to be digested and one month in which to accomplish the task . . . and with preparation of the Trial Brief, Trial Exhibits and Witness Examination Books dependent on the quality of those digests . . . whom did the Trial Attorney call?

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How to recover your fees, and what you should know about labor law

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

The successful practice of law involves more than a firm grasp of legal principles and the ability to solve problems on behalf of a client. It also requires the application of sound business principles and a bottom line of black ink.

The practical decision of whether or not to take on a new client may depend upon the presence of statutorily-provided-for attorney's fees or the ability of the client and the attorney to arrive at a mutually satisfactory agreement with regard to the payment of attorney's fees.

EFFECTIVE RECOVERY OF ATTORNEY'S FEES will guide you through the statutory and case law framework of attorney's fees recovery in six distinct areas of practice: domestic relations, workmen's compensation, social security, commercial law, employment discrimination, and bankruptcy cases. It will be presented in Spokane on January 18, 1985, at Cavanaugh's Inn at the Park, and in Seattle on January 25, 1985, at the Westin. This seminar is designed to provide guidance about arrangements for, and the recovery of, attorney's fees, and will offer oral presentations, and written materials to use when you return to your office.

It will feature practical approaches to successfully developing a business relationship with your client in a manner which *minimizes* the chances of fee disputes, and *maximizes* the likelihood of prompt payment of fees, pursuant to a well-drafted fee and retainer agreement.

Program Chairperson **William R. Sullivan** (Williams, Novack & Hansen, Everett) has assembled the following faculty for this program: **Michael J. Garrison** (Kimball & Garrison, Seattle), **Faye C. Kennedy** (Kennedy, Brewe & Roach, Everett), **Eleanor R. Fine** (Attorney at Law, Tacoma), **Michael E. Kipling** (Graham & Dunn, Seattle), **Beverly Johnson** (Law Offices of Beverly Johnson, Tacoma), and **Sheena R. Aebig** (Shulkin, Hutton & Bucknell, Inc., P.S., Seattle).

For further information about this seminar, contact Program Coordinator Sherrie Hewitt, WSBA, 505 Madison Street, Seattle, WA 98104, telephone (206) 622-6021.

* * *

The pervasive regulation of personnel and labor practices is a prominent feature on today's economic landscape. The

costs of compliance and non-compliance are substantial. The changing nature of these regulations further complicates the job of the general practitioner to deal effectively with labor relations, employment discrimination, wrongful discharge, and other current issues. In recognition of that need, seminar chairperson **J. David Andrews** and a group of recognized labor law experts have designed **WHAT THE GENERAL PRACTITIONER SHOULD KNOW ABOUT LABOR LAW** to familiarize lawyers with essential basic labor law concepts and enable them to recognize potential problems in their early stages. This seminar will be presented in Seattle on Friday, January 18, 1985, at the Westin Hotel.

An overview of laws governing the relationship among employers, employees, and unions will be given by **Hugh Hafer** and **Peter M. Anderson**. Traditional labor law concepts will be presented by **Mark A. Hutcheson** and **Herman L. Wacker**. An overview of equal employment opportunity and related laws will be handled by **Otto G. Klein** and **Jon H. Rosen**. Other critical laws affecting general practitioners will be covered by **Clemens H. Barnes** and **Susan R. Agid**. In addition, certain "hot" contemporary issues will be featured. **J. David Andrews** will handle wrongful discharge—termination at will. Comparable worth will be covered by **Patrick J. Donnelly**, and sexual harassment issues will be presented by **Elizabeth J. Bracelin**.

For further information about this program, please contact Program Coordinator Debbie Kirchhauser, WSBA, 505 Madison Street, Seattle, WA 98104, or telephone (206) 622-6021.

APPROVED COURSES

WASHINGTON STATE BAR ASSOCIATION

Antitrust Update: A Comprehensive Analysis of Current Antitrust Law and Enforcement

December 7, 1984: Seattle 7.00

Litigation Management: Cost Effective Methods of Handling Litigation

December 14, 1984: Seattle 6.75

What the General Practitioner Should Know About Labor Law

January 18, 1985: Seattle 6.50

Effective Recovery of Attorney's Fees

January 18, 1985: Spokane 6.75

January 25, 1985: Seattle 6.75

UNIVERSITY OF WASHINGTON SCHOOL OF LAW

Basic Income Tax (Part Five)

December 8, 1984 3.00

WASHINGTON STATE TRIAL LAWYERS ASSOCIATION

Rules of the Road

December 7, 1984: Seattle 7.00

Determinate Sentencing and Domestic Violence

December 13, 1984: Seattle 4.00



Caselaw Capsules

Notes from the Academy

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

ADMINISTRATIVE LAW. (1) Civil service employee (quasi-judicial officer) may not be disciplined for insubordination when he disobeys a rule (allowing lay representation in hearings) that he believes could subject him to criminal and professional sanctions if obeyed. *Lowry v. Industrial Ins. App. Bd.*, 102 Wn.2d 58, 684 P.2d 678 (1984). (2) Employee's back pay awarded upon reinstatement after appeal may not be reduced under common-law mitigation principle when relevant statute does not provide for set-offs. *Adams v. Department of Soc. & Health Servs.*, 38 Wn. App. 17 (1984).

—J. M. Vaché

CONTRACTS. (1) Owner, on counterclaim, recovered damages from breaching building contractor. Court of appeals increased damages awarded. Supreme court affirmed damages awarded but remanded for further consideration of two of owner's claims that lower courts rejected: (a) Owner is entitled to cost of remedying defects rather than being limited to difference in market value of building promised and building constructed unless cost of remedying defects is clearly disproportionate to owner's loss of value. Supreme court adopts Restatement (Second) of Contracts § 348, replacing prior Washington rule, which limited damages to difference in value unless builder had "substantially performed" and unless remedying would not involve "economic waste." (b) Owner may have private cause of action for unfair and deceptive conduct, in violation of Consumer Protection Act. Owner's proof, if admitted, may establish three essential elements that builder is in trade or commerce, that builder's promises were unfair inducements if he reasonably should have foreseen his inability to perform, and that potential for builder's repetition of deceptive acts or conduct satisfies public interest requirement of Act. *Eastlake Constr. Co. v. Hess*, 102 Wn.2d 30 (1984). (2) Refusal of loan that defendant bank promised to make upon occurrence of certain conditions may result in liability, even though conditions did not occur. Plaintiff borrower relied upon assurance by bank, made after original promise. Liability could be based upon promissory estoppel if assurance was a promise; upon equitable estoppel if assurance was by act, admission, or statement at a time before conditions were to occur; or upon waiver if assurance was given when time for occurrence of conditions had already arrived. Lost profits might be recovered under any of the three theories. *Farm Crop Energy v. Old Nat'l Bank*, 38 Wn. App. 50 (1984).

—L. V. Rieke



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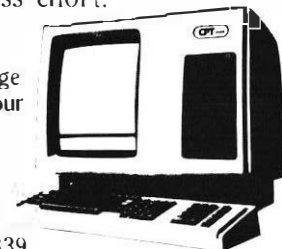
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CREDITOR-DEBTOR LAW. (1) 1981 amendment to Washington Homestead Act, creating automatic homestead for debtor who occupies residence property, applied retroactively, so that judgment pre-dating amendment did not continue as lien on debtor's condominium. Trustee in debtor's bankruptcy case, in status as bona fide purchaser under Bankruptcy Act, § 544(a)(3), had interest in value of condominium exceeding homestead value that was superior to rights of judgment creditor. *Erickson v. Wenner (In re Wenner)*, 39 Bankr. 288 (Bankr. W. D. Wash. 1984). (2) Court set aside execution sale of defendants' residence after expiration of redemption period. Plaintiff, experienced investor in real property, claimed to be bona fide purchaser of residence acquired through defendants' judgment creditor who had purchased at own execution sale. Plaintiff had knowledge that residence had been sold on execution at less than 2% of market value, that judgment debtors (defendants in this case) were in possession, and that a permit allowing improvements had been posted on the property; this was sufficient knowledge to put an experienced businessman on inquiry notice. Reasonable inquiry would have revealed that judgment debtors had been unaware of both execution sale and default judgment under which sale was held. Therefore, plaintiff had constructive notice of judgment debtors' equitable claim to have sale set aside and was not bona fide purchaser. As to equitable grounds for setting aside execution sale, absence of true effort by judgment creditor to satisfy default judgment from personal property, coupled with gross inadequacy of price bid at execution sale, was sufficient basis to justify setting sale aside. In dictum, court concluded that requirement of RCW 6.24.145 for bimonthly notices of redemption right during redemption year did not apply retroactively to execution sale confirmed before enactment of that statute. *Miebach v. Colasurdo*, 102 Wn.2d 170 (1984).

—M. D. Rombauer

LOCAL GOVERNMENT LAW. One municipality may not impose a B&O tax on another's solid waste disposal operation (a governmental function) without express statutory authority. Inconsistent provisions of *Bellevue v. Patterson*, 16 Wn. App. 386, 556 P.2d 944, rev. den., 89 Wn.2d 1008 (1977), are overruled. *King County v. City of Algona*, 101 Wn.2d 789 (1984).

—J. M. Vaché

CRIMINAL LAW AND PROCEDURE. (1) Presumption of criminal incapacity of children 8 to 11 applies in juvenile proceedings. *State v. Q. D.*, 102 Wn.2d 19 (1984). (2) Cautionary accomplice instruction should be given whenever there is accomplice testimony. If accomplice testimony is uncorroborated, failure to give instruction is always reversible error; if testimony is substantially corroborated, reversal may not be necessary. *State v. Harris*, 102 Wn.2d 148

(1984). (3) Taking certain money under belief of ownership is not robbery (though taking by force merely to collect a debt is). *State v. Hicks*, 102 Wn.2d 182 (1984). (4) Criminal nonsupport statute, proscribing nonsupport "without lawful excuse," is unconstitutionally vague. *State v. Richmond*, 102 Wn.2d 242 (1984).

—G. R. Nock

EVIDENCE. In prosecution in which a woman was accused of murdering her husband: (a) evidence that defendant suffered from battered-woman syndrome was not evidence of character and thus ER 404 and 405 were inapplicable; (b) evidence of syndrome was properly admitted under ER 702 to assist trier of fact in understanding the evidence and determining whether defendant acted in self-defense; and (3) introduction of this evidence did not justify state's introduction of rebuttal evidence that defendant had once threatened neighbor and had pounded on house and decedent's car with shovel. *State v. Kelly*, 102 Wn.2d 188 (1984).

—K. B. Tegland

REAL PROPERTY SECURITY. Due-on-sale clause in real estate installment contract between private vendor and purchaser said: "Purchasers agree not to sell said premises without paying off said Real Estate Contract." Supreme court held that such clause was enforceable as written; vendor did not have to show that sale would make him insecure. *Terry v. Born*, 24 Wn. App. 652, 604 P.2d 504 (1979), distinguished on ground that, while contract there prohibited prepayment, a restraint on alienation, clause here did not prohibit but actually required pre-payment. *Bellingham v. First Fed. Sav. & Loan Ass'n v. Garrison*, 87 Wn.2d 437, 553 P.2d 1090 (1976), distinguished on ground that deed of trust in that case was to institutional lender, while contract here was between private parties. *Morris v. Woodside*, 101 Wn.2d 812, 682 P.2d 905 (1984). ■UAERE whether the *Morris* case introduces confusing complications into Washington's already somewhat unclear law regarding due-on-sale clauses? How substantial are the points of distinction from the *Terry* and *Garrison* decisions?

—W. B. Stoeback

TRUSTS. Trial court properly allowed deviation from trust established to build "forty (40) bed Rest Home," to permit trust funds to be used to build rest home for 30 beds. Settlor had general intent to establish rest home, not specific intent to establish 40-bed home. Deviation was proper because settlor had not anticipated monetary inflation and certain tax impacts on trust. *Sisters of Charity of the House of Providence v. Columbia County Hospital Dist.*, 37 Wn. App. 708, 682 P.2d 320 (1984).

—W.B. Stoeback



CODE OF PROFESSIONAL RESPONSIBILITY COMMITTEE

FORMAL ETHICS OPINION NO. 179

Fees in Industrial Insurance Appeal cases

An inquiry has been received as to whether lawyers may enter into fee agreements with clients for representation on appeals to the Board of Industrial Insurance Appeals without advising clients of their statutory right to petition the Board for setting of the fee.

Nothing in the statute or in the Code of Professional Responsibility prohibits a lawyer from charging a fee in excess of what might be set by the Board, provided that the fee is not clearly excessive. However, there is a fiduciary relationship between an attorney and client with respect to matters involving the setting of the attorney's fee. *Cf. Perez v. Pappas*, 98 Wn.2d 835, 659 P.2d 475 (1983). To avoid any potential for misleading the client, prior to entering into such a fee agreement with a client, the lawyer must disclose (preferably in writing) that the client has a right to petition the Board to set the fee and that there is a maximum fee which the Board may set according to regulation. The lawyer should also advise the client that if the Board sets the fee, the lawyer or client has a right to a review of that amount by the superior court.

The lawyer may accept or decline such proffered employment.

TRAVEL COMMITTEE

Committee plans Oxford Study Tour

The WSBA Travel Committee has tentative plans for a two-week seminar at Oxford, England, in late September, 1985. Course offerings would include legal studies as well as art, literature, and other cultural courses. Past courses offered have, for example, included studies of 19th century English novels; English and Italian renaissance and romantic art; tours of castles and country houses in connection with lectures on social, economic, and architectural history; and a study tour of Arthur's Britain: England, Wales, and Brittany. The program is yet to be proposed by Oxford, but these past offerings give some idea of what is available.

The program cost is not yet certain, but an early estimate is

\$1,500 per person, plus air transportation from Seattle to England.

The committee anticipates that this program will qualify for CLE credit and tax deductibility.

Please indicate your interest now so that the Travel Committee may proceed to make firm plans for accommodations at Oxford.

Call Semi Reeves at the State Bar, (206) 622-6054.

COURT RULES AND PROCEDURES COMMITTEE

Committee invites comments on Criminal Rules

This year, the Court Rules and Procedures Committee has selected for its cyclical review the Superior Court Criminal Rules and the Justice Court Criminal Rules. Written suggestions for changes or comments on these rules are invited, and should be received at the offices of the Washington State Bar Association by January 31, 1985.

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PIERCE COUNTY

by ROBERT W. MARSDEN

Congratulations to the 54 new lawyers in Pierce County. The group of new admittees was the largest ever sworn-in in the county. Of note were the following introductions of candidates for admission: **Joe Betzendorfer** of his daughter, **Jeanne Betzendorfer**; **Edmund Lozier** of his long-time friend, **John Atkinson**; and **Jonathan Blado** of his wife, **Alice Blado**. The Honorable **Thomas A. Swayze, Jr.**, presided over the October 25 ceremony.

The firm of Graves, Staurset and Mauritz have announced that **Lidia Mori** has joined the firm as an associate. Ms. Mori was formerly with the Puget Sound Legal Assistance Foundation.

Marilyn Mauer Wahlberg has been on the move recently. On October 1 she was forced to move from the Broadway Terrace Building because of extensive renovation being done to that building. Then, after only 10 days at the 911 Deli Building, she relocated again at the Security Building. Hopefully, her clients and her mail will catch up to her before too long.

Tacoma has a new law firm: Smith, Alling, Hudson and O'Conner. **Daniel C. Smith** was formerly with Weyerhaeuser Corporation. **Douglas Alling** had been a sole practitioner for several years. **Edward Hudson** dissolved his firm, which used to be located at the Washington Building. **John O'Conner** and **Joseph Cicero** moved their practices from Old City Hall to join the new group. Also in the firm are **Carol MacKinnon**, recently associated with a Washington, D.C., firm, and **Robert Mack**, formerly Chief Civil Deputy Prosecutor for Pierce County. The firm's new offices are in the Rainier Bank Building on Broadway Plaza.

And, finally, from the sports desk: **Bob Rovai**, **Phil Tracy**, and **Neil Hoff** have formed a racquetball club at Tacoma's downtown YMCA. According to Rovai there are only two requirements for club admission: members have to be over 50 and weigh more than

225 pounds. I hope those guys have their medical insurance paid up.

SOUTH KING COUNTY

by A. ROBERT E. THOMSON

Coach **Leslie Wagner** is pleased to announce that the South King County Bar Association coeducational slow pitch softball team has forged through another year with its record unmarred by victory. As a matter of fact, it wasn't even close. However, the season was not without its high points, including a near-miss loss to a team called "No Justice," headed by two individuals with misguided loyalties, **Jim Gorham** and **Judge Darrell Phillips**.

Bob West has added a new son to his family, and **David Hokit** and his wife are expecting.

Tom Kalenius recently spent three weeks in Europe. Times are tough: huh, Tom?

This year the South King County Bar Association is planning a joint meeting with the Tacoma Pierce County Bar Association. It has not been determined yet whether off-duty police officers will have to be hired to keep order, but that's certainly a matter which will need to be addressed.

MEMORANDA . . .

Seattle attorney **Mary Ellen Krug**, of Schweppe, Krug and Tausend, is chair-elect of the American Bar Association Section on Labor and Employment Law. . . **John R. Tomlinson**, also of Seattle, has been appointed vice-chair of the ABA Litigation Section. Tomlinson, of Lane, Powell, Moss and Miller, says the Section's 1986 annual meeting will be in Seattle.

New on the Board of Directors of the Western Association of Equipment Lessors is attorney **Steven C. Gilyeart**, of Torbenson, Thatcher, Yund, Blacklow and Gilyeart in Seattle. . . **Margaret Sullivan Mussehl** has been appointed to the ABA Special Committee on Dispute Resolution and the Family Law Execu-

tive Committee on Mediation. Mussehl is with Mussehl, Rosenberg, Grief, Mussehl and Cotter in Seattle. . .

Diamond and Sylvester has expanded with an office in Bellevue, 10th floor ONB Plaza, 10800 Northeast Eighth, Suite 1040. Former Bellevue Mayor **Richard Foreman** and former Superior

Court Judge **Lee Kraft** will head up the new office. . .

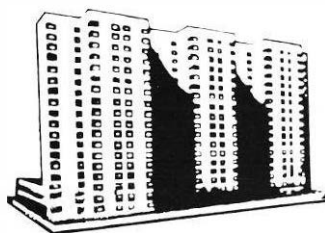
Seattle attorneys **George F. Lobisser** and **Deborah S. Malane** have been promoted to managers in the tax department of Touche Ross and Company. . . leaving Touche Ross for Davis, Wright, Todd, Riese and Jones in Seattle is **Jef-**

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50-YEAR LAWYERS—Twenty-seven lawyers were honored at the 1984 WSBA Annual Business Meeting for having completed 50 years of service as members of the Washington State Bar Association, some of whom are pictured above: **S. Dean Arnold, Frederick V. Betts, George H. Bovingdon, John D. Cartano, Lawrence S. Cleman, J. Paul Coie, John M. Cooper, Hugh A. Dressel, Harvey Erickson, Paul M. Goode, Harry Hazel, Henry Kaye, Stanley J. Krause, Paul Lemargie, Thomas Malott, H. A. Pat Myers, Lee Olwell, Howard E. Phillips, Ralph E. Purvis, James V. Ramsdell, Jess N. Rosenberg, Einar Simonarson, Joseph Starin, Gordon H. Sweany, Stanley A. Taylor, Thomas Todd, and F. A. Walterskirchen.**

frey D. Buchanan. . . also new to Davis Wright is **Richard L. Hames.**

Awards of Merit for Dean, Cross and Schubert

The Award of Merit, the WSBA's highest honor, was presented to members Jack R. Dean, Professor Harry M. Cross, and Kenneth L. Schubert, Jr., at the Annual Bar Convention September 12-15.

Jack R. Dean is a senior partner with the Spokane firm of Dean, Keane, Smith and Hemingway in Spokane, and a past member of the Board of Governors (1979-1980). He was cited for "service and leadership in connection with the revitalization of BAR-PAC" as chairman of the Washington State BAR-PAC Executive committee, and for his work as chairman of the special task force to study IOLTA issues.

Professor Harry M. Cross, now retired, served on the faculty of the University of Washington School of Law

for over 40 years. A recognized authority on property and community property laws, he was honored for "consistent and important contributions to the public, legal education, and the legal profession."

Kenneth L. Schubert, Jr., is a partner in the Seattle firm of Garvey Schubert Adams and Barer, and a fellow of the American College of Probate Counsel. As chairman of the Special Trust Task Force of the Real Property, Probate, and Trust Section, he was cited for "unselfish, and extraordinary service and leadership in the five-year project resulting in the comprehensive revisions of Washington trust law."

Convention sports results

1984 RACE IPSA LOQUITOR

Six Mile Marathon

Men—1st place **Jon Noll**, 34:21.5; 2nd place **Bill Shaw**, 36:45.8. Division winners: Age 35 & under—1st **Bill**

Shaw, 2nd **Paul Seligmann**. Age 36 to 50—1st **Jon Noll**, 2nd **Joe Mano**. Age over 50—1st **Ben Box**, 2nd **Harold Fardal**.

WOMEN—1st place **Nancy Nichols**, 44:03.8; 2nd place **Gisele Johnson**, 44:08.3. Division winners: Age 35 & under—1st **Nancy Nichols**, 2nd **Sharon Carberry**. Age 36 to 50—1st **Giselle Johnson**, 2nd **Lynne Snell**. Age over 50—1st **Carolyn Gossard**.

Two Mile Sprint

MEN—1st place **Thomas Wolfendale**, 11:42.1; 2nd place **Joel Green**, 11:50.6. Division winners: Age 35 & under—1st **Joel Green**, 2nd **David Morado**. Age 36 to 50—1st **Thomas Wolfendale**, 2nd **Larry Lundberg**. Age over 50—1st **Melvin Betts**, 2nd **Bill Mays**.

WOMEN—1st place **Jean Pope**, 14:08.1; 2nd place **Christina A. McServe**, 18:52.0. Division winners: Age 35 & under—1st **Jean Pope**, 2nd **Christina A. McServe**. Age 36 to 50—1st **Donna Mocerri**.

GOLF TOURNAMENT

MEN—*Low gross:* Bill Mays, 71. *Low net:* Bill Mays, 71. *Closest to pin:* Bill Mays. *Longest drive:* Craig Gordon. *Highest admitted score:* David Mason.

WOMEN—*Low gross:* Mary Lou Potter, 99. *Low net:* Mary Lou Potter and Sharon Gilmore, 77. *Closest to pin:* Kathy Lichtenberg. *Longest drive:* Becky Sells. *Highest admitted score:* Judith Eiler.

TENNIS TOURNAMENT

MIXED DOUBLES—*Division I:* 1st Chuck Cusack and Mary Lou Potter, 2nd Dan Austad and Nancy Dorsey, 3rd Ed and Susan Hilpert. *Division II:* 1st Tony and Nan Menke, 2nd Paul Codd and Paula Williams, 3rd Joel McCormick and Chris Cary. *Division III:* 1st Art Swanson and Judy Ball, 2nd Roy and Donna Mattern, 3rd Erik and Jan Rosenquist. *Division IV:* 1st William and Gayle Erxleben, 2nd Bill and Virginia Helsell, 3rd Robert and Dale Strong.

Judicial Recommendation Committee to interview for approved lists

The Judicial Recommendation Committee will meet at the State Bar Office on Friday, January 25, 1985, to conduct oral interviews for those persons who wish to be on the approved lists for the State Court of Appeals and the State Supreme Court.

Questionnaires are available at the State Bar Office. These should be completed and returned to the Bar Office no later than Friday, January 18, 1985.

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Washington State Easter Seal Society in Seattle at (206) 281-5700.

Pierce County rule change

Effective November 1, 1984, when filing a new case in Pierce County Superior Court, petitions may not be re-

moved from the Clerk's office until that case has been filed and indexed.

Clerk's recommendations for new King County Local Rule 84

Local Rule 84 "Forms"—(a) Requirements: (1) All original pleadings or other papers with proper caption and cause number will be file stamped, docketed and secured in the legal file by the Clerk of the Superior Court in the order received. (2) Action documents—Pleadings or other papers requiring action on the part of the Clerk/Court (other than file stamping, docketing, and placing in the court file) shall be considered action documents. Action documents must contain special caption and specify the action required on the first page.

Seminar planned on military law

The 12th annual On-Site Technical Training Program, sponsored by the Sixth Military Law Center in Seattle, will be held the weekend of February 9-10 at the University of Washington School of Law. The seminar is open to all legal officers, active and reserve, of all service branches and the National Guard. Civilians with an interest in military law are also invited to attend.

For more information, contact Sgt. Lester Pound at (206) 281-3002. There is no registration fee, and CLE credit has been requested.

From x-rays to ultrasound

"Radiology for Attorneys" will be sponsored by the University of Washington School of Medicine on Saturday, December 8, in the John R. Hoynes Auditorium, A-420, in Seattle. Endorsed by the Washington Association of Defense Counsel, the program is designed to provide participants with "an appreciation of the complexities of modern medical imaging systems from

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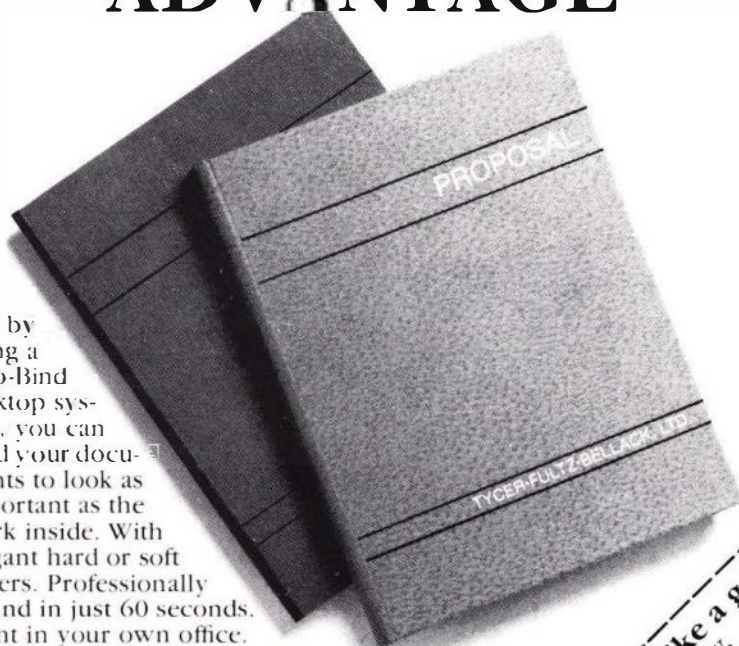
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the point of view of both the patient and the physician."

Application has been made for 5 hours of CLE credit. For more information, contact the School's Division of Continuing Medical Education at (206) 543-1050.

VIVA seeks volunteers to help elderly

A program to give volunteer support to elderly persons in King County seeks the participation of retired attorneys.

Volunteers for Vulnerable Independent Adults (VIVA) makes it possible for the elderly to remain in their homes rather than be removed to an institutional setting. Each volunteer gives four to six hours per month to help an elderly person manage his or her routine personal affairs. The Foundation for the Handicapped, which administers the program, manages the elder's finances as necessary.

The program is supported by the United Way of King County and the Greater Seattle Church Council. For more information, contact Judy Robertson, Foundation for the Handicapped, 1600 West Armory Way, Seattle, WA 98119, or call (206) 283-4520.

IN MEMORIAM

Seattle attorney **Orland M. Christensen**, 84, died August 20, after a lengthy illness. A Seattle native, Christensen graduated with honors from the University of Washington School of Engineering in 1942, and from the University of Washington School of Law in 1949. He practiced patent law for over 35 years, and was the founding and managing partner of Christensen, O'Connor, Johnson and Kindness in Seattle. Christensen's professional memberships included the Seattle-King County Bar Association, the Washington State Patent Law Association, the American Intellectual Property Law Association,

and the Institute of Electrical and Electronic Engineers. He also served as a trustee of the Seattle Opera Association and a member of the City Council of Edmonds.

DISCIPLINE

Disbarred

Camas attorney **Robert W. Garver, Jr.**, was ordered disbarred by the Supreme Court effective September 27, 1984, pursuant to a stipulation that Mr. Garver had mishandled client trust funds, failed to cooperate with the disciplinary investigation, and had failed to pay disciplinary costs ordered in a previous proceeding. Mr. Garver was also ordered to pay \$440 in costs arising in this proceeding.

Reprimanded

Redmond attorney **Gordon L. Creighton** has been ordered reprimanded after

a hearing. This discipline was based on findings that he neglected a probate matter, conduct for which he had previously been censured in 1970.

Censured

Seattle attorney **James A. Henry** has been ordered to receive two censures following a hearing. One censure was for not depositing flat fees in two criminal cases in his trust account, when the client had not agreed to the nonrefundability of those fees; for writing a trust account check to a client for a refund when in fact no client monies resided in trust; and for failure to maintain his trust account in full compliance with DR 9-102 as disclosed by audit. Henry's second censure was for failure to promptly return unearned fees when requested, causing his client to employ other counsel to secure such repayment. Henry was ordered to make restitution of \$258.00 to one client and will remain on probation for two years under a variety of conditions.

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42 U.S.C. §1983

Lawrence B. Linville would like to exchange briefs, ideas and other information with other attorneys who also represent clients pursuing claims under 42 U.S.C. §1983.

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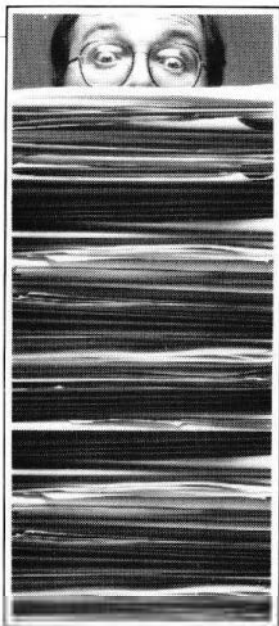


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WILL SEARCH

Will sought of Arthur Eric Spear, who resided in Seattle, Washington, until his death September 11, 1984. Contact Rebecca Gatchet, attorney, (206) 822-6600.

Anyone having information concerning a will executed by Doroteo D. Orpilla please contact the Law Office of Brian J. Linn, 245 S.W. 152nd, Seattle, WA 98166, (206)242-9876.

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