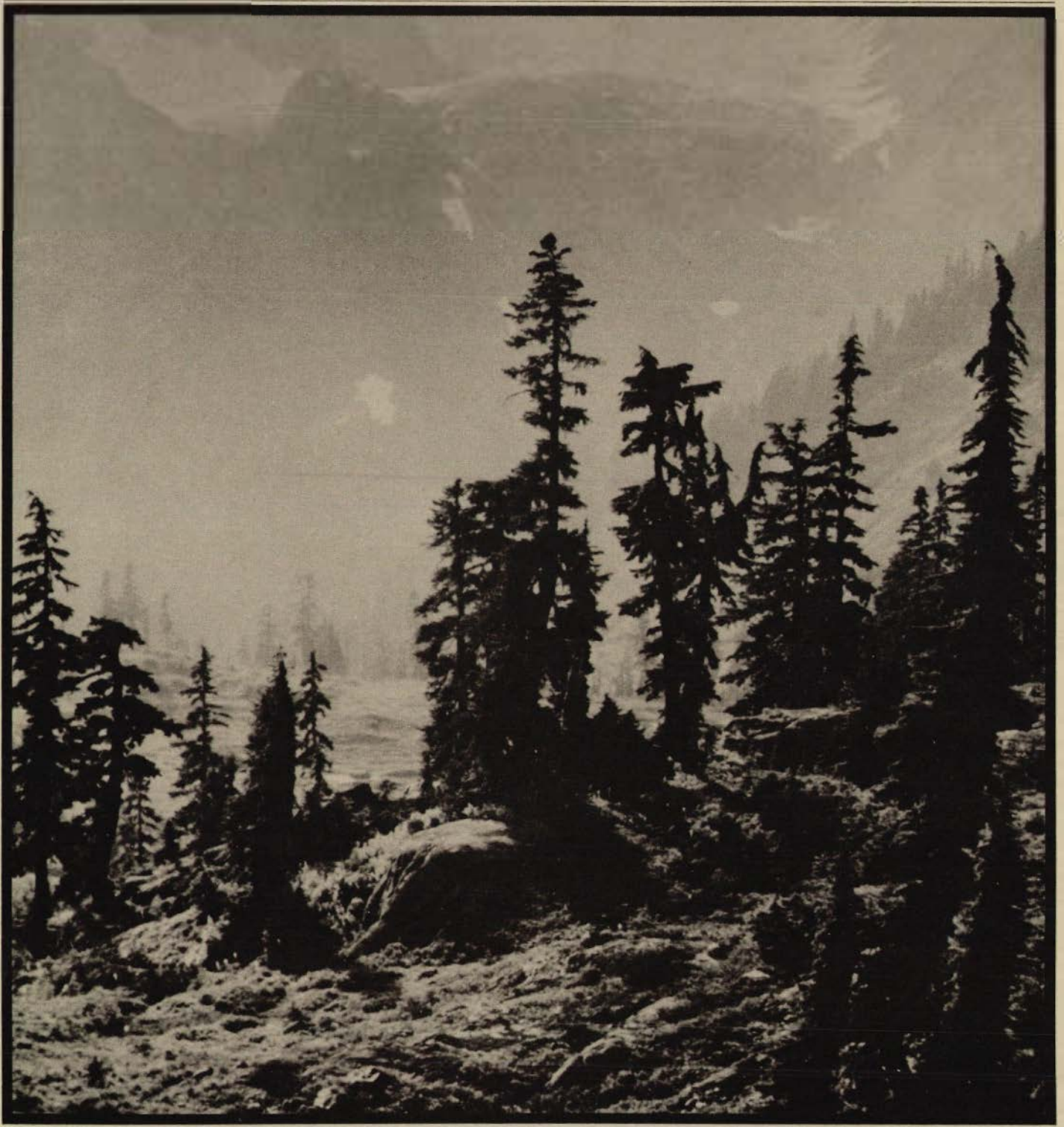


Washington State **Bar**
News Vol. 39, No. 1, January 1985



Inside: Proposed Specialization Rule

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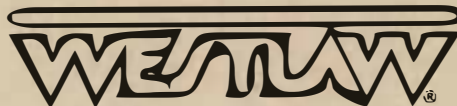
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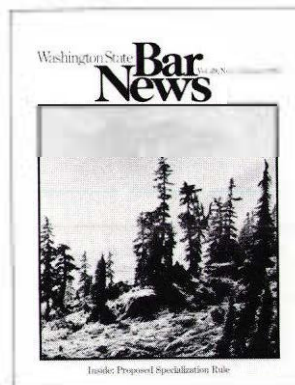
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1985 MEMBERSHIP DIRECTORY

The 1985 Directory of Attorneys is presently in its compilation stage. Listings for the Directory are being compiled from information contained on 1985 Dues Statements (mailed to all WSBA members in early December). When sending in your dues to the Bar Office, please note the instructions on the Dues Statement relative to the address and phone number to be used for your listing in the Directory. Corrections for Directory listings must be received by February 1, 1985—the deadline date for dues payment.

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Queets Basin, Olympic mountains. Photograph by Seattle attorney Kelby Fletcher.

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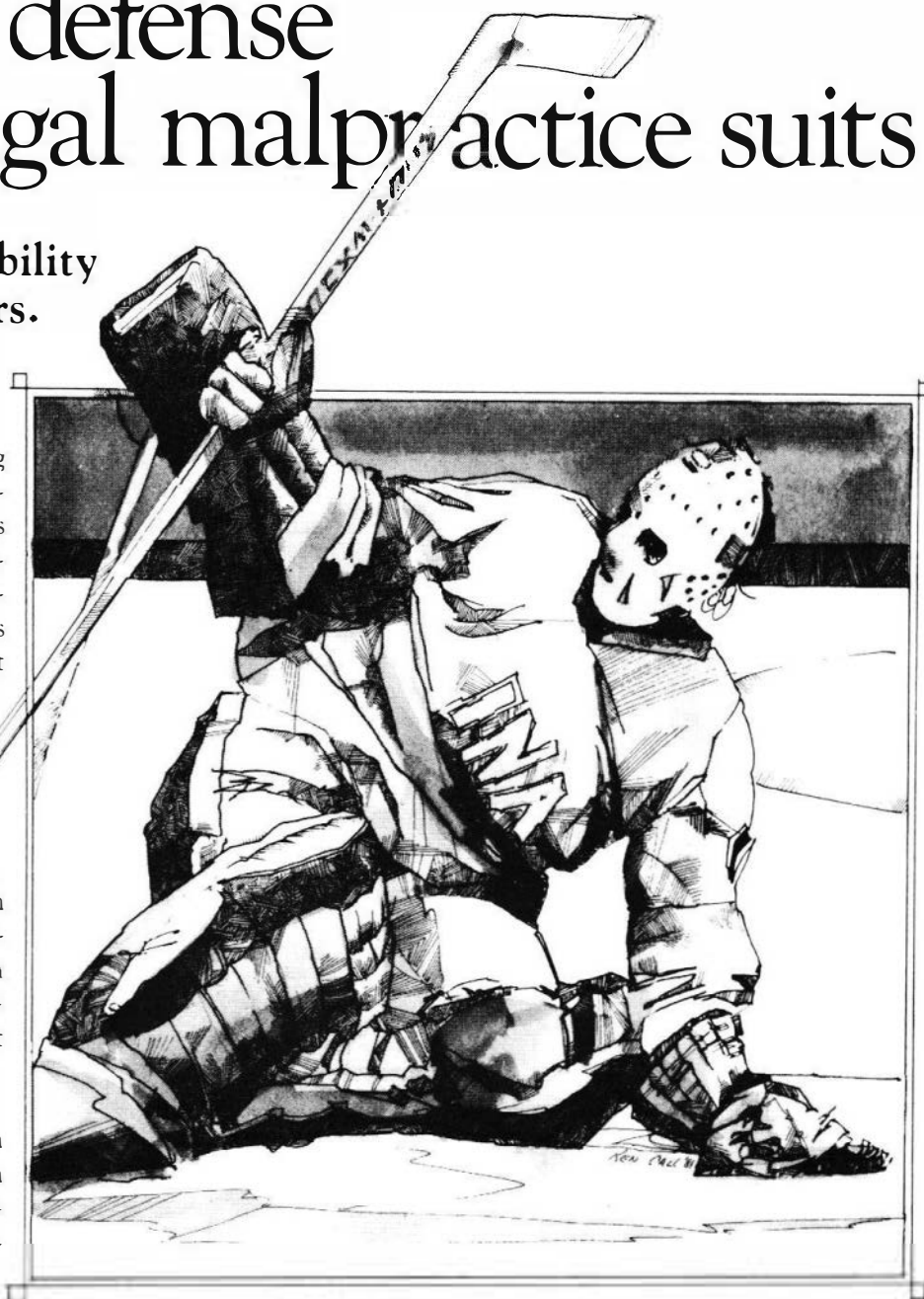
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In memory of Justice Hugh J. Rosellini

Washington State Supreme Court Justice Hugh J. Rosellini, 75, senior justice of the Court and the senior member of the state's judiciary, died November 26 in a Tacoma hospital. He had served 36 years on the bench.

Justice Rosellini was born in Tacoma in 1909 and attended the University (then College) of Puget Sound, earning his LL.B. and J.D. degrees from the University of Washington Law School in 1933. For the next 14 years he practiced law in Tacoma, during which time he held the office of State Representative from the 28th Legislative District in Pierce County from 1939 to 1945.

In 1948 he was appointed to the Pierce County Superior Court, where he served until his election to the State Supreme Court in 1954. After 30 years on the state's highest court, Justice Rosellini reached the court's mandatory retirement age last June and was sched-

uled to go off the bench December 31. Keith Callow of Seattle was elected in November to replace him.

Justice Rosellini's contributions to the profession were many. While serving as Chief Justice from 1965 to 1967, he chaired the Bench-Bar-Press Committee of Washington, a committee to preserve both free press and fair trial, which was used as a model in many other states. He also worked vigorously toward the establishment of our state court of appeals in 1969.

He was a member and past trustee of the American Judicature Society, and had chaired the Judicial Conference of Washington and the Judicial Council. In addition, he was a participant in the Thirty-first American Assembly at Columbia University in 1967; he was invited to sit as a member of the bench for the Roscoe Pound Hearing of the Moot Court Honors Program at UCLA in 1969; and he was chosen by the American Bar Association to serve as mediator between the judiciary and the state bar association in Alaska for the purpose of



Justice Hugh J. Rosellini

adopting a professional and judicial code of ethics.

For his service to the community and in the administration of justice, he was named 1981 Outstanding Citizen by the Pierce County Chapter of the National Conference of Christians and Jews. He was also honored recently for his many years on the Board of Directors of the Tacoma Boys Club.

Justice Rosellini is remembered as a strong advocate of human rights, and a respected jurist.

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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.

One Wang to another

Editor:

Our firm is facing a problem which may be shared by other members of the Bar. Several years ago we purchased a Wang OIS 140 System for word processing, timekeeping, billing and management reporting. For an extra \$10,000, we purchased Wang's timekeeping, billing and management reporting software, "Wanglaw." In doing so, we were one of the "pioneers" with that software package in the Pacific Northwest, and discovered in the process why such a small percentage of our country's population became pioneers. Pioneering ain't what it's cracked up to be!

Be that as it may, we have struggled to understand and utilize the software.

It is now actually quite useful to us. However, Wang Laboratories has announced that it will soon abandon free support of the software, that all future "support" (undefined) will be provided on a "time and materials basis" (also undefined) from its headquarters in Massachusetts. Obviously, even telephone support becomes awkward with a three-hour time difference between user and provider. "Hands-on" support is prohibitively expensive when the programmer must travel 3,000 miles to get to the equipment.

Thus far, Wang Laboratories has refused to provide a list of its Pacific Northwest Wanglaw users. Law firms using Wanglaw in the Pacific Northwest may have considerable reason to band together for economic leverage to retain an independent regional software vendor for future Wanglaw support and/or modifications. If any other lawyers or law firms out there are interested in putting together such a group, please write or call: Jay E. Leipham, Underwood,

Campbell, Brock & Cerutti, P.S., 820 Lincoln Bldg., Spokane, WA 99201; telephone number (509)455-8500.

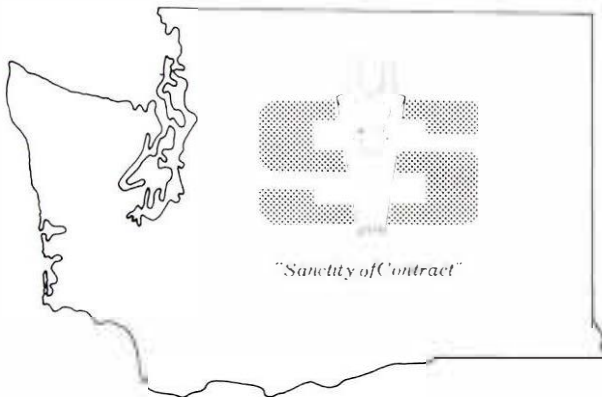
JAY E. LEIPHAM
Spokane

Lawyers are not plumbers

Editor:

I have been encouraged by recent statements from our Board of Governors that the Association will promote "professionalism" in our Bar. I had assumed that the word "professionalism" was used in its sense of dedicating ourselves to the service of our clients. I am now disillusioned and fear that to many members of the Bar the word "professionalism" refers to the economic benefits to be gained from practicing law.

My disillusionment results from my reading the article, "Collecting Your Fees," appearing in the September *Bar News*. In that article, which is promulgated by the Bar Association, I am



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told that a written fee agreement (which I only rarely use) can be "a potent weapon in an attorney's arsenal," presumably to be used against my clients. I do not need, nor do I want, weapons to be used against my clients.

It is suggested that I adopt billing practices such as plumbers or other mechanics employ. I do not want my business practices to follow those of my plumber.

I am told that I should add interest or a service charge to bills not promptly paid. Such practice was considered a breach of the Code of Ethics in force at the time of my admission. I adhere to that Code.

I am even told that law firms should designate a "hit person" for bill collection.

I am sadly disappointed if this be the "professionalism" my Association will foster and promote.

HUGH A. KNAPP
Camas

The Bar News is a forum for lawyers' views and opinions. The Bar Association does not "foster" or "promote" the views expressed by our authors . . . although this editor personally thought the article you refer to was very useful and interesting.
—Ed.

Specialization will hurt small practitioner

Editor:

Thank you for publishing in the October, 1984, *Bar News* the articles on the proposed Specialization Plan.

Almost every client I have ever met believes his case requires a specialist. The advertising of specialty certification in the yellow pages will direct all cases of any size and importance to the specialist.

The specialization plan would really hurt the small, independent, general practitioner who needs one or two "big" cases a year just to make ends meet. In the present, highly competitive market, specialization would shut off the opportunity to be independent in this business.

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Oregon lawyers sleep better

by Lester L. Rawls

The lawyers in Washington are going to experience a substantial increase in malpractice premiums.

I have read the recent article, "Legal Malpractice Insurance—What's Ahead for the Lawyer" [September, 1984, *Bar News*, page 14]. In the article, Mr. Gaiser briefly discusses the Oregon plan, and I would like to comment on some of the things he reportedly said.

He states that Oregon lawyers pay a rather substantial fee for relatively low limits. This is inaccurate. The Oregon premium for \$250,000 worth of coverage is \$800 for 1984 with no deductible and full prior acts coverage and full SEC coverage.

I am advised that one of the companies writing a substantial amount of professional liability coverage in Washington is charging some lawyers in our neighboring Clark County, Washington, \$600 per year for \$100,000/\$300,000 limits with no SEC coverage and with a \$10,000 deductible. The deductible becomes very significant when a claim is presented, and I would imagine that that company, to write a broad form coverage such as that covering Oregon lawyers, would have to charge the Clark County lawyers two to three times as much as they are providing at the present time, if they would even provide that coverage.

The statement that the monopoly provides for higher premiums is also inaccurate. When one refers to other comparable states where the commercial insurers are writing coverage, Oregon is substantially lower, because no commissions are paid to agents and no profits are necessary to be made for the benefit of stockholders.

The Oregon plan also does not include something which every other commercial plan does include which is

important for lawyers to look at when considering the Oregon plan as opposed to any other state's: Oregon lawyers are the only lawyers in the United States at this time who can leave their offices at night and be assured that some form of cancellation or non-renewal notice will not be in their mailbox the next day.

Lawyers need to reflect back ten years as to the dilemma in which their compatriots in the medical profession found themselves when the commercial carriers pulled out over night and left the doctors without medical malpractice coverage. At that time the commercial carriers stated that medical malpractice was a risk that could not be written and forced doctors to provide coverage for themselves to the extent that at the present, 50% of the medical malpractice coverage is written by doctor-owned and controlled companies. There have been one or two failures, but the overall experience of those companies has been as good as, if not better than, that of the commercial carriers writing casualty business.

The lawyers in Washington are going to experience a rather substantial increase in their premiums in 1985, and I predict a restriction in the market as to the availability of coverage. By this time next year, some may look to Oregon and say that Oregon lawyers sleep better at night knowing they have coverage available which cannot be canceled or declined, that is available to every lawyer in the private practice of law in the state of Oregon at a reasonable rate and is not subject to the whims of underwriters in Chicago, New York, or Los Angeles.

In summation, Mr. Quinan states that he thinks the frequency of claims may be similar to the claims of medical malpractice, but never the magnitude. It is my understanding that one of the carriers writing business in Washington has reserved a claim (not in Washington) for \$12 million. Their hope is that they will be able to settle within that reserve. The million-dollar legal malpractice cases are on their way.

Lester L. Rawls is the chief executive officer of the Oregon State Bar's Professional Liability Fund.



The memorandum

It was Thursday. The motion for summary judgment was set for Friday morning and opposing papers had to be served by noon.

For the eleventh time, I flipped through the other side's 98-page memorandum of law and five supporting affidavits. I had procrastinated as long as I could in replying to the motion. It was now or never.

I rolled up my shirt sleeves and sat down at my desk. Then I rolled down my shirt sleeves. Then I got up from my desk to get a cup of coffee. Then I rolled up my shirt sleeves again. Then I sharpened my pencil, cracked my knuckles and hunkered down over my dictating machine.

I thumbed the record switch. The tape moved but my lips didn't. I rewound the tape and played it back. Still nothing.

The telephone rang. I buzzed the receptionist and left word that I did not want to be disturbed all day. She was instructed to intercept all telephone calls and tell everyone I was "in conference." I got another cup of coffee, locked the office door, drew the drapes and rolled down my shirt sleeves again. My digital wrist-watch beeped at me. The minutes flashed by.

The most difficult part about writing an important brief is getting started. *Start at the beginning.* I reminded myself. *Take things one step at a time.* I breathed deeply and started dictating: "We hold these truths to be self-evident . . ." No good. I thought to myself—too heavy, too cute. I needed something clever and original to get the judge's attention.

I started anew: "This sleazy, underhanded motion is a dishonorable attempt to pervert the judicial system and no honest judge with an ounce of sense would dream of granting it." No good, either, I thought—too strong, too conversational.

I reverted to my tried and true opening line: "Moving party's position is clearly wrong because I will lose my fee

if it is granted and I have a wife and three kids to support, not to mention a hefty mortgage and the Savings and Loan breathing down my neck."

The first sentence was set. I clicked the dictator on and off several times. Silence.

I shuffled the books on my desk. They were the weightiest authorities I could find to support my position: an Arkansas traffic court case from 1923, an unpublished opinion by the Alabama Court of Appeals circa 1899, and a California case from pre-statehood days. I stacked the Arkansas reporter on top of the Alabama reporter on top of the California reporter. Then I unstacked them and stood them neatly in a little row. They immediately fell over. Using a yellow high-lighter, I emphasized a few passages from an old ALR article I had photocopied. Somehow, it didn't seem relevant anymore.

An uneasy sense of panic began to grip me. I quickly dictated an incoherent sentence. I erased it and dictated another sentence. Equally incoherent, I erased it, too. A third time I dictated and a third time I erased.

I had a headache. I took two aspirin with cold coffee. I was hungry. Maybe my blood-sugar level was too low for me to be productive? I ran downstairs to a convenience store and bought two Hershey bars, a bag of peanuts and some licorice. I ate quickly. My hunger dissipated, but I began to feel nauseous.

There was one dispositive case cited in opposing counsel's motion. It was right on point; somehow, I had to neutralize it. I distinguished it on its facts. Even though the cited case had been decided within the year by this state's Supreme Court reversing the same trial judge on the identical issue, I argued that my client was a really nice guy who certainly deserved better.

I rewound my dictation tape and played it back. I had recorded only four sentences. My wrist-watch beeped at me again. Butterflies flew about my stomach. I began to dictate furiously, wildly, thoughtlessly. I had my secretary type it up page by page. There was no first

draft, no rewrite, just one "Hail Mary" go-for-broke marathon memorandum dictation. It was done at 4:45 p.m.

I signed the last page without reading what I had wrought. A roller-skating special delivery courier with a jet pack strapped to her back waited impatiently at the front door for final service instructions. Over her walkie-talkie, Courier-Central radioed that she was cleared for take-off; with good timing she could jet-skate to the courthouse without stopping for a single traffic light.

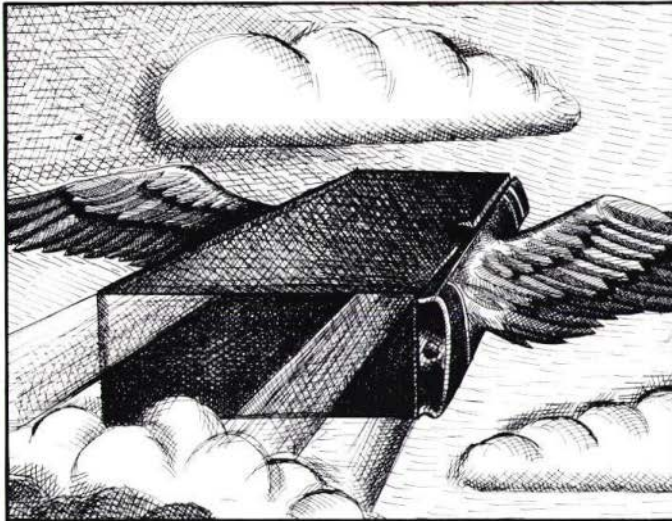
Just then the telephone rang. The receptionist signaled me that it was opposing counsel. He wanted to know if I was interested in settling.

Perspiring, I grabbed the handset and laughed: "Settle? You must be joking! This is a fantastic case I've got. I'm going to take you to the mat with this one! . . . how much are you offering?" He offered. I rejected. Brashly, I demanded an additional \$10. We settled on the spot. It was 4:55 p.m.

The roller skater messenger jetted off for another emergency delivery. I sank into my chair, pale as a sheet. I looked up at my calendar—there was another motion on another case in another county scheduled for Monday.

I thumbed the record switch and started to dictate another memorandum: "We hold these truths to be self-evident. . . ."

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The CPA decision: A reminder to stress Competence

In mid-November the Washington Supreme Court handed down its decision in *Short, Cressman, et al vs. Demopolis*. The principal issue in that case was whether lawyers are subject to the Consumer Protection Act of this state. The Court ruled that they are, but only to the extent of their "entrepreneurial" activities. It further held that the Act does not apply to that segment of lawyer activity which constitutes the actual practice of law.

I suppose this decision should be considered a compromise of sorts. Those who argued that lawyers should be subject to state regulation against fraud and deceptive practices and not allowed to "hide behind the shield" of the judicial branch of the government must be satisfied with the reasoning of the Court. On the other hand, those who contended that the state has no right to regulate the activities of lawyers must feel relieved by the decision that the existing remedies for legal malpractice and violations of the Code of Professional Responsibility will remain intact and effective.

I have a question: If a lawyer advertises his or her services and gives the impression that he or she is especially competent in a particular field of law and then later commits malpractice while handling a matter in that field, can the aggrieved client bring an action under the Consumer Protection Act by alleging deceit or misrepresentation through the lawyer's advertising? A careful analysis of the *Short, Cressman* decision leads to an answer in the affirmative. Advertising of services must be considered "entrepreneurial" and can be readily distinguished from the actual practice of law. This means to me that any lawyer who chooses to advertise must be extremely cautious in his or her choice of words. Reference to a specialty or "area of emphasis" should be made sparingly and only when the lawyer is confident that his or her training and experience will suffice as safeguards against potential Consumer Protection Act claims. It seems that the advertising lawyer may now have a greater exposure to claims for damages than the lawyer who does not advertise.

You should know that the Washington State Bar Association filed an amicus brief in the *Short, Cressman* case. This simply and briefly set forth our belief that the Court should be mindful of the separation of powers doctrine when making its decision. In effect, our position was one of neutrality. The ruling of the court recognized the distinction between the legislative and judicial branches of our state government, in both the majority and concurring opinions. It therefore appears to me that we should be satisfied with this decision, but that we should be more cautious, careful and attentive than ever before in both our practice and our "entrepreneurial"



activities. The lawyer who constantly emphasizes competency in his or her practice should have minimal exposure but the one who is inclined to be slipshod when dealing with clients and handling their legal affairs must be considered a target for future claims based upon the Consumer Protection Act.

Lee Campbell

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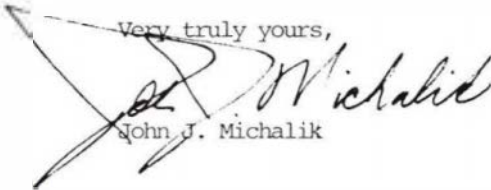
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The public image of the public's lawyers

Treat John Q. Public
as a preferred client.

by Grant K. Weed

Public attorneys, by virtue of the jobs they perform, have a unique opportunity to influence how the public views the legal profession. Many public lawyers, whether as staff attorneys at city, county, state or federal level, or as judges or hearing examiners, constantly interact with a large segment of the public and the media. Whether the public sector of the bar becomes an asset or liability to the profession depends greatly upon how these lawyers conduct themselves.

DEAF, UNFEELING, INFLEXIBLE

There are some areas of obvious concern which the public attorney should identify and improve. Certainly no public attorney should allow himself or herself to be cast in the stereotype of a deaf, unfeeling, inflexible bureaucrat. Furthermore, most public attorneys are hard working, committed individuals, and there is no reason why they should not project that image. More subtle image problems arise, however, when public lawyers attempt to communicate their role in the governmental process to the public.

Most public attorneys view their role as serving the public primarily through meeting the needs of elected and appointed

officials. However, many citizens feel that public attorneys are employed to provide them personal advice on legal matters ranging from opposing the elected official's position to dissolutions and tax issues. It sometimes takes a great deal of tact to communicate that while we represent the public in general through our agency's mission, we do not represent individual members of the public. Of course, in representing our respective agencies, we must not forget that it is the sovereign taxpayer public which employs us. As the Supreme Court stated in *Berger v. United States*, 295 U.S. 78, 88 (1935):

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. *But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.* (Emphasis added.)

The above quote should apply with equal force to civil matters.

The public should be treated as a preferred client. Attorneys and staff in a public sector office should develop and adopt in-house procedures which ensure that the public receives professional and courteous service. Office etiquette such as that found in a well-managed private practice should be the goal.

Grant K. Weed is assistant city attorney for the City of Everett.

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The public attorney and staff who take extra efforts to be helpful in answering citizen questions work wonders toward abolishing the notion of the "bureaucratic runaround." For example, staff responsible for answering phones should be able to provide callers with the names and numbers of other agencies which might be of assistance when your office is unable to do so.

EDUCATION

One of the answers to the image problem is education. Attorneys must strive to inform the public of our role. Efforts are being made in this area through the State Bar's Public Relations Committee. In the last year, the Committee has updated and improved an educational citizen rights brochure program, pursued the implementation of a state-wide speakers bureau, worked toward the creation of a state-wide tel-law service and encouraged the publication of informative articles.

There are many things a public attorney can do to assist in better serving and educating our taxpaying clients. Programs can be developed that aid the public in dealing with public agencies and their attorneys. From a prosecutorial standpoint, a good example is the crime victim and witness coordinator programs which have been implemented in the City of Everett and Snohomish County.

CHEAP SHOTS

Public lawyers should not lose sight of the image they portray when communicating with the press. Although the Canons of Ethics provide basic principles to follow when addressing the press in certain matters, it is important to exercise common sense and take extra special measures when performing in the public eye to promote the integrity and image of the profession.

It is far too often that the media dramatizes the prosecutor and public defender taking unnecessary cheap shots at one another during the course of litigation. Such publicity does little for the professional image. We must not lose sight of how we play the game for our public clients. The comments set forth in the August, 1984, *Bar News* editorial ["How you play the game," page 9] regarding respect for your fellow bar-rister are especially apropos for public sector attorneys because of their *constant* and *frequent* interaction with the community and media.

The public sector is really no different than the private sector. We both have an image problem to overcome. Public attorneys may be at an advantage when dealing with this problem, however. Due to their constant exposure to the public, attorneys in the public sector are afforded a greater opportunity to redress misperceptions and suspicions. Public attorneys must make a concerted effort to show respect for their clients as well as respect for their fellow attorneys. In order to portray a more favorable image to the public, we must strive on a daily basis to satisfy the needs of our public clients in an efficient, enthusiastic and professional manner. □

Riding a Brahma bull

. . . is sometimes easier than sending out monthly billings.

“You mean I gotta pay money just to talk to the guy?”

by Constance Williams

Many of us would agree that lawyers are poor business persons. Nowhere is this more obvious than in legal billings and collections. Michael Garrison writes, in the September, 1984, *Bar News* [“Collecting your fees,” page 23], “Perhaps the single most difficult task of any law practitioner . . . is *getting paid*.” Actually, the most difficult task of any attorney in practice anywhere is *sending out the bills*. Pulling teeth or riding a Brahma bull would be easier for most lawyers than sending out regular monthly statements to clients. *You don't get paid if you never send the bill!*

“I have never received a statement from you.”

“This statement is dated April 17 and I received it May 17.”

“My address has changed.”

“I will pay the thousand dollars and that is all.”

Sound familiar? These are typical client comments on the subject of billing. Why are lawyers' bills so different from the bills a person gets from anybody else?

Two reasons:

(1) Lawyers re-invent the wheel every day of their lives. Re-inventing the wheel is the lawyer's stock in trade. Think of a new wrinkle for the corpus juris, and the world may beat

a path to your door. Keep the opposition guessing by never doing anything the same way twice in a row.

(2) Lawyers feel guilty about the hourly rate they charge friends for talking to them. Clients often become friends, and it's hard to send a friend a bill for doing what you would want to do for him anyway.

Consumer education is an important element in law office billings. Too often, clients regard legal actions as a big crap shoot down at the courthouse: sue somebody and make a lotta money. Who pays? The *other* guy (when you win, of course). For firms flush with recent large awards, \$250,000 of unbilled fees and costs may present no problem. But for most practitioners, unbilled fees and costs are a continuing headache—for plaintiff and defense attorneys, for partners and their bankers. Often at the initial point of contact with a lawyer, the client will say, “You mean I gotta pay money just to talk to the guy?”

INSTALLMENT CONTRACT

Regular monthly bills keep everybody honest. They provide an account of work done and money spent on the client's behalf, and they remind the client that payment is expected on a regular basis. Regular monthly bills to clients will serve to protect the attorney-client privilege, because actions and intentions are now subject to the cruel, fluorescent light of the bookkeeping office. Legal representation of the client can be like an installment contract between the attorney/advocate as payee, and the client/employer as payor. The stakes of the game are understood by both parties: results cost money, and

Constance Williams is a producer and consumer of legal services, who works as law office staff in King County.

somebody has to pay for them.

"How do we go about this?" you ask. First, discuss fees and payments with the client at the onset of the case. Execute a form(al) employment agreement. Explain that you bill monthly and expect payment monthly.

If the retainer (including the trial retainer) is to come in installments, send reminder statements showing payments made or missed. Instruct your staff not to open new files unless all the boxes referencing payment on your new file memo are completed: billing cycle and format, retainer, fee estimate, hourly rates. *Mail statements monthly* and specify payment terms (see example).

The revolving credit accounts your clients offer their customers state payment terms; so should your statements. Regard your statements as reminders of an installment contract and not as punitive admonitions. Your overhead does not stop pending sale of a shopping center or appeal to the Supreme Court, and neither should your clients' payments on their accounts with you.

But, you say, "I'm a nice guy, and I've written off hundreds of dollars of fees in that case!" So let the record *show* what a nice guy you are. If you write off fees, show that. If payment received is zero, show that. If only costs and no fees accrue during the month, show it.

Put your billing process on system, whether it is manual or electronic, and stay with it.

GET WITH THE PROGRAM

The goal is to standardize the billing process so an attorney can spend less time counting and collecting money and can return to practicing law, which is the reason he or she is in the office in the first place.

Why is it so hard to standardize the process, to establish a program and "get with the program?" Because the word, "firm," is the greatest misnomer in the language. There is nothing fixed or established about law office systems, especially those systems used in billing clients for fees and costs.

Every attorney in every office in town has a different billing routine from the next, and each bill to every client is different from the last. Add to this the fact that clients are in the office because of major events in their lives which result in name changes and address changes, and the burden on office recordkeeping systems increases.

Even firms which have converted to sophisticated, computerized accounting systems find they cannot get all the attorneys to "get with the program." Everyone wants her bills done her own way, personally customized and redesigned. If the program cannot be re-designed, the wheel re-invented, "I'll have my secretary type it."

Up goes the overhead.

Down go the unbilled totals.

Up go the receivables.

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MEMBER F.D.I.C.

A sample billing format designed to put everything up front:

January 14, 1985

Name	
Address	client number
City, State	attorney initials

FOR PROFESSIONAL SERVICES RENDERED and costs advanced through January 4, 1985.

RE: (Name of this matter)

Numerous and extensive telephone and office conferences with client; correspondence and telephone conferences with opposing counsel; preparation for and attendance at court hearing on summary judgement motion.

Courtesy fee adjustment	785.00 (85.00)
-------------------------	-------------------

Costs advanced

Photocopies	5.75
Word processing	27.50

Total this matter **\$733.25**

RE: (Name of this matter)

Costs advanced

Long distance	14.00
Service of process: J. Doe	18.00

Total this matter **\$32.00**

Trial Retainer

Due by 10/1/85	2,000.00
Payment received, thank you	(500.00)

Retainer balance due **\$1,500.00**

Balance due per statement 12/06/84* 1,990.50

Payment received	0.00
Interest on unpaid balance	19.90

Balance forward **\$2,010.40**

TOTAL AMOUNT OWING \$4,243.65

Payment due date: 02/15/85
Minimum payment: \$1,050.00**

*This may be a total for several matters pending.
**This may be a percentage of the total amount owing.

THE RESULTS

Staff should be able to pick up a bill at any point in the cycle and keep the system moving on schedule: Lawyers turn in time sheets; staff prepares memoranda of fees and costs; lawyer checks description of services for accuracy and writes fees up or down; then staff produces *and mails* the final bills.

Sounds easy, doesn't it? Finished bills no longer languish on the attorney's window ledge for six months until the client is sued for nonpayment of totals appearing as receivables 90-120 days old. A standardized billing process lowers the firm's accounts receivable and raises the totals for unbilled fees and costs. The result is increased profitability for the firm and improved attorney-client relations for the individual attorneys.

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MENTOR law firms bring students to the law

MENTOR is an exciting new statewide program sponsored by the Washington State Bar Association to encourage public understanding about the law. It establishes unique partnerships between high school social studies classes and law firms, and features a program of events designed to make the law "come alive" for students.

Five pilot projects are now underway in Seattle, Tacoma, Spokane, Wenatchee and Yakima, involving approximately 150 students. This spring in each location, young people will have the opportunity to observe the law in action. They will visit a law firm, tour a state and/or federal court, perhaps meet with a judge in chambers, and discuss legal issues with judges and attorneys.

The founding law firms and their MENTOR representatives are: **Lane, Powell, Moss & Miller** of Seattle—Keith Grim and William Pelandini; **Gordon, Thomas, Honeywell, Malanca, Peterson & O'Hern** of Tacoma—Matt Stanley and Joseph Gordon, Jr.; **Paine, Hamblen, Coffin & Brooke** of Spokane—David Broom; **Jeffers, Danielson, Sonn & Aylward** of Wenatchee—Jim Danielson; and **Gavin, Robinson, Kendrick, Redman & Mays, Inc.** of Yakima—Robert Redman.

The goals of MENTOR include—

- guiding students to recognize the pervasive impact of the law in their daily lives;
- helping students to become more aware of their rights and responsibilities as citizens;
- expanding students' understanding and appreciation of our legal and judicial systems; and
- providing information about careers in and related to the legal profession.

MENTOR originated in 1983 with New York attorney Thomas W. Evans of Mudge, Rose, Guthrie, Alexander & Ferndon. The program began in five New York City schools, and was so well-received that by the spring of 1984, it had expanded to pair 22 schools and law firms. Also last spring, the National Institute for Citizenship Education in Law (N.I.C.E.L., formerly Street Law Institute) brought the program to Washington, D.C., where it continues to grow in popularity.

Program administrator Jo Rosner is an attorney/educator who teaches at Evergreen High School in Seattle. In addition to her social studies and law classes at Evergreen, Jo is also an adjunct professor at Seattle Pacific University, instructing other teachers in how to teach about the law. She serves on the State Bar's Law-Related Education Committee and on the Board of Directors of the Law-Related/Citizenship Education Coalition of Washington.

Comments and questions about the MENTOR program should be directed to Ms. Rosner's attention in care of the Public Affairs Department, Washington State Bar Association, 505 Madison Street, Seattle, WA 98104.



WASHINGTON STATE BAR ASSOCIATION
BOARD OF GOVERNORS

F. LEE CAMPBELL
PRESIDENT
111 THIRP AVENUE B
SUITE 2500
SEATTLE, WASHINGTON 98101
(206) 223-1313

TO: The Members of the Washington State Bar Association
DATE: January, 1985

SUBJECT: SPECIALIZATION

You will all recall that in late September, 1984, and by a special President's Letter, I drew your attention to a matter then pending before the Board of Governors and of great significance to us all: the concept of a specialization plan for the lawyers in Washington State. In that letter and in follow-up articles appearing in the October issue of the State Bar News, stating the "pros" and "cons", we actively solicited your thoughts and comments. The response has been unprecedented and while, because of the numbers, I have been unable to acknowledge each letter we have had come in on the subject, I do want to report to you that hundreds of thoughtful and helpful letters have been received.

Despite that response and a parallel educational effort involving presentations before local bar associations across the state, the Board of Governors has determined to defer its decision on the Specialization matter in order to allow us to take one additional step. That involves, following this letter, the publication of the full text of the "Umbrella Plan" which would establish the overall parameters, guidelines and standards for any particular recognized specialty. If approved, this overall "Umbrella Plan" would set up a framework which would provide the basis for the development of specialties in a number of areas of the law.

I urge you to read and study the "Umbrella Plan" carefully. . . and I also urge you to complete and mail in the brief questionnaire appearing at the end of these materials. That questionnaire presents an opportunity for you to have direct input to the Board of Governors on this issue. Please send your completed questionnaire in to the State Bar Office by February 28, 1985.

F. LEE CAMPBELL

PART I. WASHINGTON STATE BAR ASSOCIATION PLAN OF LEGAL SPECIALIZATION

1. PURPOSE

The purpose of this Plan of Specialization ("The Plan") is to assist in the delivery of legal services to the public by:

- 1.1 Providing greater access by the public to appropriate legal services;
- 1.2 Identifying and improving the quality and competence of legal services; and
- 1.3 Providing appropriate legal services at reasonable cost.

2. ESTABLISHMENT OF BOARD OF LEGAL SPECIALIZATION

The Supreme Court hereby establishes a Board of Legal Specialization ("Board"), which Board shall be the authority having jurisdiction under Court Rule over the subject of specialization of lawyers. The Board shall be composed of nine members appointed by the Supreme Court upon the recommendation of the Board of Governors of the Washington State Bar Association ("Board of Governors"). All members of the Board shall be lawyers licensed and currently in good standing to practice law in this state. The members of the Board shall be representative of the legal profession. One of the lawyer members shall be designated annually by the Board of Governors as chairperson of the Board. All members of the Board shall hold office for three years, except those initially appointed who shall serve as hereinafter designated. The members shall be appointed to staggered terms of office and the initial appointees shall serve as follows: two shall serve for one year after appointment; three shall serve for two years after appointment; and three shall serve for three years after appointment. Appointment to a vacancy among the members shall be made for the remaining term of that member leaving the Board. Any member shall be eligible for reappointment to not more than one additional consecutive three-year term after having served one full three-year term.

Meetings of the Board shall be held at regular intervals, at such times and places and upon such notice as the Board may from time to time prescribe.

3. POWERS AND DUTIES OF THE BOARD

The Board shall have general jurisdiction of all matters pertaining to regulation of specialization and certification of specialists in the practice of law and shall have the power and duty:

3.1 To administer the Plan; the "Plan" is comprehensive and is designed to regulate legal specialization in the State of Washington;

3.2 To designate specialties of law practice and define the scope and limits of such specialties and to provide procedures for the achievement of these purposes;

3.3 To appoint, supervise, act on the recommendations of and consult with Specialty Committees as hereinafter identified;

3.4 To consult with organizations broadly representative of users of legal services;

3.5 To make and publish standards for the certification of specialists, upon the Board's own initiative or upon consideration of recommendations made by the Specialty Committees;

3.6 To certify specialists or deny, suspend or revoke the certification of specialists upon the Board's own initiative, upon recommendations made by the Specialty Committees or upon requests for review of recommendations made by the Specialty Committees;

3.7 To establish and publish procedures, rules, regulations and bylaws to implement the Plan;

3.8 To propose, and request the Supreme Court to make, amendments to the Plan whenever appropriate;

3.9 To cooperate with other boards or agencies in enforcing standards of professional conduct and to report apparent violations of the Code of Professional Responsibility of this state to the appropriate disciplinary authority; it shall also apply and be coordinated with any new ethics code adopted for the practice of law in Washington;

3.10 To establish standards for the approval of continuing legal education courses related to specialties; to delegate to specialty committees under Board supervision the authority to evaluate and approve, or disapprove, continuing legal education courses related to specialization; and to cooperate with the

Washington State Board of Continuing Legal Education (hereafter "WSBCLE") in connection with the development and approval of continuing legal education courses related to specialties;

3.11 To cooperate with other persons, organizations, boards and agencies engaged in the certification of legal specialists or concerned with the topic of legal specialization;

3.12 To evaluate proposed examination and other testing procedures and to determine whether such examination and testing procedures sufficiently demonstrate an applicant's sufficient knowledge, proficiency and experience in the specialty in order to justify representation of special competence to the legal profession and to the public;

3.13 To evaluate proposed peer review procedures and to determine whether such procedures sufficiently provide investigation of an applicant's fitness and competence in the specialty in order to justify representation of special competence to the legal profession and to the public; and

3.14 To evaluate proposed criteria and requirements for recertification of specialists which parallel and are equivalent to the criteria and requirements for initial certification and to determine and assure that such criteria and requirement sufficiently demonstrates recertification applicants' continuing knowledge, proficiency, experience, and fitness in order to justify representation of special competence to the legal profession and to the public.

3.15 To Preserve the confidentiality of all certification records.

4. RETAINED JURISDICTION OF THE SUPREME COURT

The Supreme Court retains jurisdiction with respect to the following matters:

4.1 Amendment or interpretation of the Plan;

4.2 Hearing appeals taken from actions of the Board of Governors;

4.3 Approving fees to be charged in connection with the Plan; and

4.4 All other matters of any kind or nature relating to legal specialization in the State of Washington.

5. PRIVILEGES CONFERRED AND LIMITATIONS IMPOSED

The Board in the implementation of the Plan shall not alter the following privileges and responsibilities of certified specialists and other lawyers:

5.1 No standard shall be approved which shall in any way limit the right of a certified specialist to prac-

tice in all fields of law. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in all fields of law, even though he or she is certified as a specialist in a particular field of law;

5.2 No lawyer shall be required to be certified as a specialist in order to practice in the field of law covered by that specialty. Any lawyer, alone or in association with any other lawyer, shall have the right to practice in any field of law, even though he or she is not certified as a specialist in that field;

5.3 All requirements for and all benefits to be derived from certification as a specialist are individual and may not be fulfilled by nor attributed to the law firm or organization of which the specialist may be a member;

5.4 Participation in the program shall be on a completely voluntary basis;

5.5 A lawyer may be certified as a specialist in more than one field of law. The limitation on the number of specialties in which a lawyer may be certified as a specialist shall be determined only by such practical limits as are imposed by the requirement of substantial involvement and such other standards as may be established by the Board as a prerequisite to certification as a specialist;

5.6 When a client is referred by another lawyer to a lawyer who is a certified specialist under the Plan on a matter within the specialist's field of law, such specialist shall not take advantage of the referral to enlarge the scope of his or her representation and, consonant with any requirements of the Code of Professional Responsibility of this state, such specialist shall not enlarge the scope of representation of a referred client outside the area of the specialty field; and

5.7 Any lawyer certified as a specialist under the Plan shall be entitled to disclose to the public that he or she is a "Board Certified Specialist" in his or her specialty to the extent permitted by the Code of Professional Responsibility of this state and a revision thereof or regulations adopted thereunder.

6. SPECIALTY COMMITTEES

The Board shall establish a separate Specialty Committee for each specialty in which specialists are to be certified. The Specialty Committee shall be composed of an odd number of members consisting of not less than five nor more than nine members appointed by the Board, one of whom shall be designated annually by the Board as chairperson of the Specialty Committee. Members of the Specialty Committee shall be lawyers licensed and currently in good standing to practice law in this state who, in the judg-

ment of the Board, are competent in the field of law to be covered by the specialty. Members shall hold office for three years, except those members initially appointed who shall serve as hereinafter designated. Members shall be appointed by the Board to staggered terms of office and the initial appointees shall serve as follows: three (or fewer) shall serve for one year after appointment; three (or fewer) shall serve for two years after appointment; and three (or fewer) shall serve for three years after appointment. Appointment by the Board to a vacancy shall be for the remaining term of the member leaving the Specialty Committee. All members shall be eligible for reappointment to not more than one additional consecutive three-year term after having served one full three-year term. Meetings of the Specialty Committee shall be held at regular intervals, at such times and places and upon such notice as the Specialty Committee may from time to time prescribe or upon direction of the Board.

Each Specialty Committee shall advise and assist the Board in carrying out the Board's objectives and in the implementation and regulation of the Plan in that specialty. Each Specialty Committee shall advise and make recommendations to the Board as to standards for the specialty and the certification of individual specialists in that specialty. Any individual plan in any field of law must establish standards which shall be no less strict than the minimum standards set out in this comprehensive "Plan". Each Specialty Committee shall be charged with actively administering the Plan in its specialty and, with respect to that specialty, shall:

6.1 After public hearing on due notice, recommend to the Board reasonable and nondiscriminatory standards applicable to that specialty;

6.2 Make recommendations to the Board for certification, continued certification, denial, suspension or revocation of certification of specialists and for procedures with respect thereto;

6.3 Administer procedures established by the Board for applications for certification and continued certification as a specialist and for denial, suspension or revocation of such certification;

6.4 Administer examinations and other testing procedures, investigate references of applicants and, if deemed advisable, seek additional information regarding applicants for certification or continued certification as specialists;

6.5 Make recommendations to the Board concerning the approval of and credit to be allowed for continuing legal education courses, or educational alternatives, in the specialty; and

6.6 Perform such other duties and make such other recommendations as may be requested of or delegated to the Specialty Committee by the Board.

7. LAY PARTICIPATION.

The input of lay persons and organizations is provided for through consultations provided in 3.4 and 3.11.

8. MINIMUM STANDARDS FOR CERTIFICATION OF SPECIALISTS

To qualify for certification as a specialist, a lawyer applicant must comply with the following minimum standards:

8.1 The applicant must be an active member of the Washington State Bar Association, currently in good standing to practice law in this state, have been engaged in the practice of law five (5) years, and supply a certificate of professional liability insurance coverage with limits and coverages established by the Specialty Committee and approved by the Board. Deductible amounts shall be left to the individual practitioner to determine;

8.2 The applicant must make a satisfactory showing, as determined by the Board after advice from the appropriate Specialty Committee, of substantial involvement in the specialty during the three years immediately preceding his or her certification according to objective and verifiable standards. Such substantial involvement shall be defined as to each specialty from a consideration of its nature, complexity and differences from other fields and from consideration of the kind and extent of effort and experience necessary to demonstrate competence in that specialty. It is a measurement of actual experience within the particular specialty according to any of several standards. It shall be measured by the time spent on legal work within the area of the specialty or, to the extent provided below, a combination of actual time spent and reasonable and uniform practice equivalents established by the appropriate Specialty Committee. However, within each specialty, experience requirements should be measured by objective standards. In no event should they be either so restrictive as to unduly limit certification of lawyers as specialists or so lax as to make the requirement of substantial involvement meaningless as a criterion of competence. Substantial involvement may vary from specialty to specialty, but measured on a time-spent basis, in no event shall the time spent in practice in the specialty be less than thirty percent (30%) of the total practice of a lawyer engaged in a normal full-time practice; however, the Specialty Committee with

the approval of the Board may establish reasonable and uniform practice equivalents as a substitute for part of the above thirty percent (30%) minimum so long as the applicant spent at least twenty percent (20%) of such total practice in the specialty.

8.3 C.L.E.

8.3.1 The applicant must make a satisfactory showing as determined by the Board after advice from the appropriate Specialty Committee, of continuing legal education accredited by the Board for the specialty, the minimum being forty-five (45) hours of credit for continuing legal education, or its equivalent, in the three years immediately preceding application. The forty-five (45) hours shall be in the specific area of specialization or in areas reasonably related thereto.

8.3.2 Upon the establishment of a specialty, the minimum standard for continuing legal education may be satisfied in such manner as the Board, upon advice from the Specialty Committee, may prescribe or it may be altered or waived if, and to the extent, suitable continuing education courses or their equivalent have not been available during the three years immediately preceding the establishment of the specialty.

8.3.3 Coordination with WSBCLE. There shall be coordination with the WSBCLE so that no lawyer is denied credit under APR 11 for hours taken in good faith and this Board and its Specialty Committees may only determine what hourly credit shall be allowed for "specialization" qualification and which course shall be required for specialization. The Board shall from time to time meet with the WSBCLE to adopt appropriate policy statements and agreements to coordinate the activities of the two which touch on or affect C.L.E.

8.4 Peer Review.

The applicant must make a satisfactory showing, as determined by the Board after advice from the appropriate Specialty Committee, of qualification in the specialty through peer review as follows:

8.4.1 The applicant shall disclose whether he or she has disciplinary action pending, and shall provide the names of at least five (5) lawyers/judges all of whom have had experience in the specialty field and are familiar with the competence and qualifications of the applicant in the specialty field. No reference may be a person related to the applicant or, at the time of application, regularly associated with the applicant in the practice of law.

8.4.2 The applicant by his or her application consents to the confidential inquiry by the Board and/or the appropriate Specialty Committee of all references provided by the applicant, the Washington State Bar

Association disciplinary body, and any other persons regarding the applicant's competence and qualifications. This section may not be enforced in such a manner as to conflict with the Rules of Lawyer Discipline nor to require disclosures prohibited by Board of Governors or the Executive Director in carrying out duties provided for in the Rules of Lawyer Discipline.

8.4.3 Following the successful completion by the applicant of the written examination and other required steps in the certification process, the Board shall cause the name of the applicant to be published in the Washington State Bar News together with a statement that written comments concerning the qualifications of the applicant for the specialty will be considered by the Board.

8.5 Written Examination.

The applicant shall pass a written examination and such other tests as may be required by the Board. The written examination and other tests shall be applied uniformly to all applicants. The written examination and other required tests, if any, shall be offered no less frequently than annually and shall evaluate the applicant's sufficient knowledge, proficiency and experience in the specialty area.

8.6 The applicant shall pay any fees established by the Board and approved by the Supreme Court.

9. MINIMUM STANDARDS FOR CONTINUED CERTIFICATION OF SPECIALISTS

9.1 The period of certification as a specialist shall be five years. During such period the Board or appropriate Specialty Committee may require evidence from the specialist of his or her continued qualification for certification as a specialist and the specialist must consent to inquiry by the Board, or appropriate Specialty Committee, of lawyers and judges, the appropriate disciplinary body or others in the community regarding the specialist's continued competence and qualification to be certified as a specialist. The Board shall have the power to deny recertification in the event the specialist has been subject to discipline proceedings during the preceding five-year period for a matter related to the specialty. Application for and approval of continued certification as a specialist shall be required prior to the end of each five-year period. To qualify for the continued certification as a specialist, a lawyer applicant must pay any required fee, must demonstrate to the Board with respect to the specialty both continued knowledge of the law of this state and other appropriate statutes, rules and regulations and continued competence and must comply with the following minimum standards:

9.1.1 The specialist must make a satisfactory show-

ing, as determined by the Board after advice from the appropriate Specialty Committee, of substantial involvement in the specialty during the entire period of certification as a specialist; in no event shall the time spent in a specialty be less than 30% of the total practice of a lawyer engaged in a normal full-time practice; however, the Specialty Committee with the approval of the Board may establish reasonable and uniform practice equivalents as a substitute for part of the 30% minimum so long as the applicant for recertification spent at least 20% of such total practice in the specialty.

9.1.2 The specialist must make a satisfactory showing, as determined by the Board after advice from the appropriate Specialty Committee, of continuing legal education accredited by the Board for the specialty during the period of recognition as a specialist, the minimum being fifteen hours of credit for continuing legal education or its equivalent at the intermediate or advanced level in the specific area of specialization or in areas reasonably related thereto for each calendar year during the entire period of certification as a specialist. There shall be a maximum of 30 hours carryover of credits from one year to another. Continuing legal education accredited by the Board of Specialization shall be accredited by the WSBCLE, pursuant to APR 11; and

9.1.3 The specialist must be licensed and currently in good standing to practice law in this state and must comply with the requirements of insurance and peer review as provided in Paragraphs 8.1, 8.4.2 and 8.4.3 above.

10. ESTABLISHMENT OF ADDITIONAL STANDARDS

The Specialty Committee for each specialty may recommend, and the Board may establish, additional or more stringent standards. The Specialty Committee may also recommend, and the Board may establish, requirements which further define or quantify with at least equal stringency the minimum standards set forth herein for certification or continued certification as a specialist. Additional standards or requirements established under this section need not be the same for initial certification and continued certification as a specialist.

11. SUSPENSION OR REVOCATION OF CERTIFICATION AS A SPECIALIST

The Board may revoke its certification of a lawyer as a specialist if the specialization program in the specialty is terminated or may suspend or revoke such certification if it is determined, upon the Board's own initiative or upon recommendation of the appro-

appropriate Specialty Committee and after hearing before the Board on appropriate notice, that:

11.1 The certification of the lawyer as a specialist was made contrary to the rules and regulations of the Board;

11.2 The lawyer certified as a specialist made a false representation, omission or misstatement of material fact to the Board or appropriate Specialty Committee;

11.3 The lawyer certified as a specialist has failed to meet minimum standards or failed to abide by all rules and regulations promulgated by the Board;

11.4 The lawyer certified as a specialist has failed to pay the fees required; or

11.5 The lawyer certified as a specialist has been disbarred or suspended from practice by the Supreme Court or any other state or federal court or agency. Such suspension or disbarment by agencies other than the WSBA for nonpayment of dues or for other matters not involving moral turpitude, shall not operate to disqualify a lawyer under this Plan.

The lawyer certified as a specialist has a duty to inform the Board promptly of any fact or circumstance described in Sections 11.1 through 11.5 above.

If the Board revokes its certification of a lawyer as a specialist, the lawyer cannot again be certified as a specialist unless he or she so qualifies upon application made as if for initial certification as a specialist and upon such other conditions as the Board may prescribe. If the Board suspends certification of a lawyer as a specialist, such certification cannot be reinstated except upon the lawyer's application therefor and compliance with such conditions and requirements as the Board may prescribe.

12. RIGHT OF HEARING AND APPEAL TO SUPREME COURT

A lawyer who is denied certification or refused recertification as a specialist or whose certification is suspended or revoked shall have the right to a hearing before the Board. The lawyer shall have the right to appeal the ruling made thereon by the Board to the Board of Governors and then to the Supreme Court under such rules and regulations as the Board of Governors and the Supreme Court may prescribe.

13. FINANCING THE PLAN

The Plan shall be self-supporting. The Board shall establish reasonable fees in each specialty field in such amounts as may be necessary to defray the expense of administering the Plan. The fees shall be approved by the Supreme Court as provided in Section 4.3, above.

Questionnaire on Proposed Plan of Legal Specialization

Members of the Washington State Bar Association are invited to assist the Board of Governors in evaluating the proposed Plan of Legal Specialization published in the January, 1985, issue of the Bar News by completing and submitting the following questionnaire on or before February 28, 1985.

GENERAL INFORMATION

1. Years of practice: _____
2. Type of practice (check all boxes that apply):
 government employee corporate employee private practice
 solo practitioner firm—number of lawyers: _____
3. Type and location of community of practice:
(indicate county): _____
 urban suburb of city small city or town rural
4. Have you read the proposed specialization plan? yes no
5. Have you heard the proposed specialization plan discussed at a local bar program?
 yes no
Elsewhere? yes no
6. If a specialization plan were adopted, would you be interested in becoming a certified specialist? yes no
7. Do you generally favor any form of certification of specialists?
 yes no

PROPOSED UMBRELLA PLAN

8. Please comment on the minimum standards set forth in the proposed plan of specialization as follows:
 - a. Would five years of practice before application be: about right, too long, or
 too short?
What change or equivalency would you prefer?

 - b. Would substantial involvement measured by 30% of a full-time practice be:
 about right, too much, or too little?
What change or equivalency would you suggest?

c. Do you favor peer review? yes no

d. Do you favor written examinations? yes no

If yes, do you favor the waiver of written examinations under stringent standards?

yes no

If yes, please indicate what those standards should be:

e. Would five years before recertification be: about right, too long, or too short?
What change would you suggest?

9. Additional comments:

Signature (optional)

PLEASE MAIL TO:

Board of Governors
Specialization Plan
Washington State Bar Association
505 Madison Street
Seattle, Washington 98104

WASHINGTON STATE BAR NEWSLINE

The Board's Work



by Steven A. Reisler

"RICO" RUMBLINGS

SEATTLE, WA, December 14-15 -- RICO, Washington's recently enacted State Racketeering Act, has been the subject of heated controversy since its passage by the legislature in 1984. The statute, to go into effect in July, 1985, provides extensive civil and criminal penalties aimed at racketeering and its proceeds. Among the remedies it provides are treble damages, attorney's fees, and property forfeiture. Many have voiced strong concern, however, about RICO's potential for abuse and its apparent minimal regard for traditional property and privacy rights.

In June, 1984, the Board of Governors appointed a special RICO Task Force to consider what, if anything, should be done about the new anti-racketeering statute. Chaired by Seattle attorney Jerome Whalen, the Task Force included representatives from the WSBA Administrative Law Section, the Corporation, Banking & Business Law Section, the Criminal Law Section, the Real Property, Probate and Trust Section, the Anti-Trust Law Section, the State Prosecutor's Association and the State Attorney General's Office. The Task Force ultimately presented an 8-2 majority/minority report containing proposals to significantly overhaul the statute. Many Board members, however, wondered aloud if the statute was simply too leaky to patch up.

Eighth District Governor Roy Mocerri asked, "What is the need for the statute? Could lawyers make a RICO claim in every single civil case? Could it be malpractice not to bring a RICO cause of action?"

Deputy A.G. Greg Canova, a member of the special Task Force, told the Board that although there is presently no evidence of organized crime in Washington, RICO is designed to be a prophylactic to prevent organized crime from taking root. RICO, he said, is specially aimed at the profits and proceeds of criminal activity.

Governor Betty Bracelin praised the statute's objectives, but nothing else. "The goal is laudable, but the means terrible," she said. "I think this is a terrible statute, and I would feel terrible supporting the report of the Task Force."

Governor Bill Dwyer also condemned the statute. "This Task Force has done a wonderful job," he said, "but the statute that it started with is nothing but a response to a political fad and it is a potentially dangerous law to liberty and property. In short, it's a bad law."

Governor Zylstra agreed with Dwyer and Bracelin, but he added, "The statute is on the books." Dwyer then moved that the Board authorize the report of the Task Force as the report of the Task Force itself, rather than as an official position of the WSBA. The motion carried 10-0.

NEW RULES OF PROFESSIONAL CONDUCT

By unanimous vote, the Board of Governors has recommended to the Supreme Court the adoption of new rules of professional conduct for the Washington Bar. In this, the second of two sessions with the Board of Governors [see Bar News, October, 1984, p. 26], Task Force members Dick Riddell, Kurt Bulmer and Mike Hemovich addressed rules of special concern to practicing lawyers.

Among the rules endorsed by the Board for Supreme Court consideration was RPC 3.6: "A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public

communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding."

The Board endorsed RPC 3.7, prohibiting a lawyer from acting as an advocate at trial in which that lawyer or another lawyer in the same firm is likely to testify. The Board also approved RPC 7.4, prohibiting a lawyer from stating that s/he is a specialist, except for patent/trademark law. Under the proposed rule (which may be amended if a specialization rule is adopted), a lawyer may state that s/he does or does not practice in particular legal fields.

OTHER WORK:

- **TODAY'S CONSTITUTION** -- Robin C. Anderson, Director of the "Today's Constitution and You" bicentennial project, reported to the Board that it is successfully achieving its goals of better educating the public about legal issues and developing a new leadership for the future. At present, 200-250 lawyers actively participate in the project's programs. Upon motion of Governor Joe Delay, the Board appropriated \$15,375 for the Today's Constitution project. The project's total 1985 budget is estimated at \$185,000.
- **JUDICIAL RECOMMENDATION COMMITTEE** -- By a 9-1 vote the Board approved the addition of three names to the approved list of candidates for WSBA recommendations to the Governor for judicial appointments. The list, currently 2-1/2 years old, is due for revision every three years.
- **LEGISLATION** -- By unanimous vote, the Board of Governors voted to sponsor the proposed Real Estate Contract Forfeiture Act. The proposed act (one of only four nationwide) attempts to create a uniform and balanced approach to due process and notice requirements in the field of real estate forfeitures.
- **BARPAC** -- Spokane attorney Jack Dean, Chairman of the independent political action committee BARPAC, advised the Board that it will again request a \$15/lawyer donation in 1985. In 1984 BARPAC received more than \$50,000 in contributions, of which it spent approximately \$40,000 in the November, 1984, election.

THE NEXT MEETINGS OF THE BOARD OF GOVERNORS WILL BE: JANUARY 11-12 AT THE WESTWATER INN IN OLYMPIA; AND FEBRUARY 8-9 AT THE TACOMA SHERATON.

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Caselaw Capsules

Notes from the Academy

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

ADMINISTRATIVE LAW. Employee's philosophical difference with employer over its management of prison system does not constitute good cause for resignation. Thus, employee is not qualified for unemployment compensation under RCW 50.20.050. *Johns v. Employment Sec. Dep't*, 38 Wn. App. 566, 686 P.2d 517 (1984).

—*J. M. Vaché*

CREDITOR-DEBTOR LAW. Bank (B) held perfected security interest in equipment inventory and general intangibles of restaurant business. Seller (S) held prior but unperfected purchase money security interest in equipment, inventory, and goodwill of same restaurant. Debtor abandoned restaurant premises after defaulting on obligations due B and S. S entered premises and arranged sale for \$57,000 with B's concurrence. In contest over proceeds of sale, equipment value found to be \$6,000 and inventory negligible. B argued that \$57,000 balance of price was therefore attributable to goodwill covered by its superior security interest. *Held: B's* security interest extended to goodwill as a general intangible, but there was no goodwill. Goodwill cannot exist where business is not going concern. B's security interest therefore extended only to value of equipment. In alternative, if B believed goodwill had value, it had burden to establish that fact. *Bank of Washington v. Burgraff*, 38 Wn. App. 492 (1984).

—*M. D. Rombauer*

CRIMINAL LAW AND PROCEDURE. (1) Sentence-enhancement provisions for use of deadly weapons apply to any felony, including those committed recklessly or with criminal negligence, such as manslaughter, and not just those committed "intentionally." *State v. Theilken*, 102 Wn.2d 271 (1984). (2) Co-conspirator statements may be admitted (whether or not conspiracy is charged) on showing of "substantial independent evidence [of], a prima facie case of conspiracy, and at least slight evidence of defendant's participation." *State v. Dictado*, 102 Wn.2d 277 (1984). (3) United States Supreme Court held in *Illinois v. Gates*, ___ U.S. ___, 103 S. Ct. 2317 (1983), that probable cause under fourth amendment is determined according to "totality of the circumstances," overruling its "Aguilar-Spinelli two-prong test" that showing of probable cause on basis of informant's statement requires showing of both informant's personal reliability and source of informant's knowledge. Washington Supreme Court refuses to adopt *Gates* and holds "Aguilar-Spinelli" is proper test under Washington constitution. *State v. Jackson*, 102 Wn.2d 432 (1984). (4) Aerial surveillance of marijuana field from altitude of 1,500 feet, without visual enhancement, is not violation of Washington

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constitution. Test for search under Washington's Art. I, § 7, is whether "State unreasonably intruded into the defendant's 'private affairs,' " which gives greater protection than does fourth amendment. Washington rejects holding of *Oliver v. United States*, ___ U.S. ___, 104 S. Ct. 1735 (1984), that open fields beyond curtilage are not entitled to protection from search and seizure. *State v. Myrick*, 102 Wn.2d 506 (1984).

—G. R. Nock

EVIDENCE. In personal injury action arising out of automobile accident: (a) Statement by defendant to investigator for defendant's insurer was not protected by attorney-client privilege, at least in absence of evidence that defendant believed he was consulting a lawyer, either directly or through agent. (b) Statement was likewise unprotected by work product rule. *Heidebrink v. Moriwaki*, 38 Wn. App. 388, 685 P.2d 1109 (1984).

—K. B. Tegland

LOCAL GOVERNMENT LAW. (1) (a) State auditor's authority to audit is limited to financial investigations, and he had no standing to challenge county's compliance with state law on nonfinancial matters. (b) County may exempt owner-built homes from state building code without violating preemptive provisions of the code or equal protection. (Court ruled on merits after allowing intervenor to test merits of

county's actions.) *State ex. rel. Graham v. San Juan County*, 102 Wn.2d 311(1984). (2) Trial court's de novo review of school board's dismissal of noncertified classified employee is limited to issue of whether sufficient cause for dismissal existed. RCW 28A.58.100. Trial court does not have discretion to impose lesser sanction, once it determines that there is evidence to support cause for discharge. *Clark v. Central Kitsap School Dist.*, 38 Wn. App. 560, 686 P.2d 514 (1984).

—J. M. Vaché

REAL PROPERTY. (1) (a) Two written documents, exchange of written, signed letters, taken together, may meet statute of frauds requirement of a written lease. (b) Agreement for renewal of lease upon "satisfactory" terms is enforceable against a party who makes no attempt to negotiate its terms. *Family Medical Bldg. v. State*, 37 Wn. App. 662, 684 P.2d 77 (1984). (2) (a) It is unauthorized practice of law for real estate broker who is not lawyer to prepare addendum to earnest money agreement, whereby parties agree to lease with purchase option instead of outright sale originally contemplated. (b) If broker engages in unauthorized practice of law, he is held to a lawyer's standard of care, to advise his client (seller here) about consequences of transaction broker has proposed. *Hogan v. Monroe*, 38 Wn. App. 60, 684 P.2d 757 (1984). (3) Landowner may not use the private condem-

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nation statute, RCW 8.24, to condemn right of way over land owned by State of Washington or by a city (Everett). *Jobe v. Weyerhaeuser Co.*, 37 Wn. App. 718, 684 P.2d 719 (1984). (4) Unpaid contractor who has installed sidewalks in a new subdivision may not recover upon completion bond subdivider executed for county. Such bonds, executed pursuant to RCW 58.17.130, are performance bonds running to municipality that approved subdivision plat, not payment bonds running to contractors who install improvements. *Hewson Constr. Co. v. Reintree Corp.*, 101 Wn.2d 819, 685 P.2d 1062 (1984). (5) *Held, inter alia*: In the sale of a new home by the builder-vendor, no implied warranty of habitability arises unless the vendor is a "commercial builder," i.e., "a person regularly engaged in building." *Boardman v. Dorsett*, 38 Wn. App. 338, 685 P.2d 615 (1984).

—W. B. Stoebuck

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<i>Defending DWI's: Challenging the New BAC Verifiers</i>	
February 15, 1985: Seattle	6.00

SEATTLE-KING COUNTY BAR ASSOCIATION (Trial Practice Committee of SKCBA Young Lawyers Section)

<i>Trial Practice Seminar</i>	
March 9 & 10, 1985: Seattle	14.00



YOUNG LAWYERS SECTION

This is the first in what the Young Lawyers Section (YLS) hopes will be a regular column in the *Bar News*. Our purpose is to keep Section members apprised of the activities of the YLS Board of Trustees.

The YLS Board of Trustees' November meeting was held in Seattle. The major topic of discussion was the YLS's response to the Umbrella Plan on Specialization now under consideration by the WSBA Board of Governors. The YLS Board was unanimous in opposition to the current plan. The YLS Specialization Subcommittee, which is chaired by Jim Degel of Pierce County, plans to issue a report based on its study of the results in other states which have adopted a specialization plan and the impact such a plan would have on young lawyers.

The YLS Board of Trustees is also conducting a study to determine the number of State Bar organizations which have a voting member of the Young Lawyers Section on their governing boards. The results of this study will be presented at the joint meeting of the YLS Board of Trustees and WSBA Board of Governors in February, 1985.

Vice President Chuck Snyder, of Bellingham, reported

that the YLS Law-Related Education Committee will apply for an ABA grant to sponsor a teacher-attorney pairing project for 1984-85. Newsletter Editor Jim Baker will present an ABA-funded Law School for Non-Lawyers in Yakima this year.

Other active committees of the YLS include the Legislative Committee, chaired by John McKay of Seattle, which is preparing a report on statutory privileges. The CLE Committee, chaired by Bill Buchanan, is gearing up for the presentation of the Update on the Law at the 1985 Bar Convention, in addition to a series of Red Flag seminars across the state.

Judy Endejan and Jose Gaitan of Seattle chair the YLS Entertainment Committee. Their plans include a 10K Fun Run, cocktail party and hospitality suite at the 1985 Bar Convention.

Jeff Tolman of Poulsbo, Washington has invited the YLS Board of Trustees to attend the Poulsbo Bar Convention in August, 1985. The special guest speaker will be U.S. Supreme Court Justice Stevens.

Lawyers under the age of 36, or who have been in practice five years or less, are encouraged to sign up for membership in the Young Lawyers Section. Check the appropriate column in connection with your payment of the 1985 WSBA Bar dues.

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PROFESSIONAL LIABILITY INSURANCE Who needs it?

Legal malpractice suits—like automobile accidents—always happen to "the other guy." Or do they? Perhaps it just seems that way because none of us wants that kind of publicity . . . so no one talks about it.

WHAT ARE YOUR ODDS OF BEING A DEFENDANT?

A sobering statistic arose at the American Bar Association's Standing Committee on Lawyer's Professional Liability this Spring:

"A young lawyer beginning private practice today, can expect two to four claims for legal malpractice during the course of his or her career, assuming a career span of thirty to forty years."

Lawyers being sued by clients is no longer conjecture . . . it is a fact of life. And, practicing law without sound professional liability insurance would seem like driving a car without insurance.

LOOK TO THE LEADER

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Around the State

PIERCE COUNTY

by ROBERT W. MARSDEN

Hats off to the newly-elected officers of the Young Lawyers Section of the Tacoma-Pierce County Bar Association. Named president of the Section is **Kathryn Nelson**; **John Graffe** was elected vice-president; **Mark Dynan** is the new Section secretary; and, for the second consecutive term, **Marilyn Mauer Wahlberg** has been named treasurer.

Also, congratulations to **Barbara Gelman**, wife of attorney **Herb Gelman**, who was recently elected to the Pierce County Council.

Word has it that **Chuck Robbins**, **Douglas Brown**, **Jay Boelter** and **Lilah Amos** have formed a new partnership, with offices in Sumner.

Another congratulatory item—**Rosanne Buckner**, a Superior Court Commissioner since 1980, has, as if you didn't know, been elected to the post of

Superior Court Judge, thus becoming the first woman ever to hold that position in Pierce County.

The Tacoma-Pierce County Bar Association is making a statewide plea for blood donors. The Association's Blood Bank account of 100 pints was completely depleted during the recent hospitalization of retired Supreme Court Justice **Hugh Rosellini**, who passed away November 27. Anyone desiring to donate blood to the account may do so by calling (206) 383-2553 in Tacoma.

MEMORANDA . . .

Stanley A. Carlson, a partner in the Seattle firm of Davis, Wright, Todd, Reise and Jones, has been appointed Senior Vice President, General Counsel and Corporate Secretary of Seafirst Corporation and Seattle-First National Bank. . .

Touche Ross and Co. in Anchorage has promoted **Janet L. Bolvin** to the

position of supervisor in its tax department. . .

Stanbery Foster, Jr., of the firm of Cullen, Holm and Foster in Olympia, has been elected to membership as a Fellow of the American College of Probate Counsel.

Credit Union committee slots

The WSBA Credit Union announces openings on several of its existing committees and the creation of several new committees. The committees include Marketing, Long-Range Planning, Education, and Field/Membership. Anyone interested in serving on a committee should contact **Brian E. Lawler**, (206) 682-3333.

Write about alternative dispute resolution

The ABA Special Committee on Dispute Resolution is now preparing a compendium of alternative dispute resolution techniques. It will be designed for use by judges who are interested in encouraging the use of alternative means of dispute resolution, and will consist of concise summaries describing the form and applicability of techniques such as mediation, arbitration, negotiation, mini-trials, settlement conferences, summary jury trials, and special masters.


Judges, lawyers, and others with particular expertise in these or other related areas are now being sought to write about their experiences. Contact **Lawrence Freedman** at the American Bar Association, Special Committee on Dispute Resolution, 1800 M St., N.W., Washington, DC 20036, (202) 331-2258.

Honorary Coif


Washington State Supreme Court Justice **Robert F. Utter** was named this year's honorary initiate of the Order of the Coif, legal honorary society, in ceremonies held in early November on the University of Washington campus.

Utter, who two years ago won the American Judicature Society's prestig-

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ious Harley Award, was given the honor by the national order's local chapter for his outstanding service to the legal profession. Selected by the University of Washington School of Law, honorees have been recognized since 1924 when the professional society's local chapter was founded. The order is the country's only national law honorary.

IN MEMORIAM

Seattle attorney **Elvin P. Carney**, in practice for over 50 years, died November 5 at the age of 80. A graduate of the University of Washington and Harvard Law School, Mr. Carney was admitted to the Washington Bar in 1944. He was associated with Holman, Mickelwait, Marion, Black & Perkins from 1944 to 1954, and a partner in the firms of Elliott, Lee, Carney & Thomas, and Lee, Carney, Smart & Bever, from 1954 to 1972. Mr. Carney helped found Carney, Stephenson, Badley, Smith & Mueller in Seattle in 1972. He was second president of the Mountaineers from 1936 to 1937, and had also served as president of the Municipal League of Seattle.

Florence Mayne Merrick, a retired Pasco attorney and one of the first women to practice law in the state, died November 5 at the age of 90. Ms. Merrick graduated from the University of Washington Law School and was admitted to practice in 1921. For her work as an advocate of equal rights for women, she was the first recipient of the Northwest Women's Law Center Award in 1982. Her other memberships included the Florence Merrick Women's Council, the Franklin County Democratic Saturday Club, Washington Women Lawyers, the Association of American University Women, the Soroptimists, Washington Women United, and the National Organization for Women.

Former King County Superior Court Judge **James W. Mifflin**, 78, died November 21. Judge Mifflin received undergraduate and law degrees from the University of Washington, and was

admitted to the Washington Bar in 1936. He served briefly as a deputy King County prosecutor, and practiced law for 17 years in Seattle before his appointment to the bench in 1960. Judge Mifflin is perhaps best known for having initiated the pre-trial settlement conference in King County. He retired from the bench in 1977.

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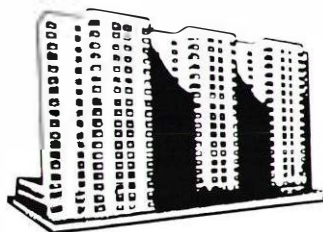
Spokane attorney **James R. Shively** has been ordered reprimanded, pursuant to a stipulation for discipline, based on his failure to cooperate with a Bar Association investigation of a client's complaint.

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STATE LAW LIBRARY Recent Acquisitions

Listed below are some of the new titles recently acquired by the State Law Library, and available for loan by calling (206) 753-6525, or mailing your request to: Washington State Law Library, Temple of Justice, Olympia, Washington 98504. A bi-monthly Selected Recent Acquisitions list, containing a more complete listing of the Library's new acquisitions, is also available. Copies of Selected Recent Acquisitions may be obtained by sending your request to the Washington State Law Library at the above address.

ARBITRATION

Folberg, Jay. *Mediation: a comprehensive guide to resolving conflicts without litigation*. San Francisco: Jossey-Bass, 1984. Pp. 392.

ATTORNEYS

Hartje, Jeffery H., and Mark E. Wilson. *Lawyers' work: counseling, problem solving, advocacy and conduct of litigation*. Seattle: Butterworth Legal Publishers, 1984. Pp. 490.

Sharpard, John E. *The influence of rules respecting recovery of attorneys' fees on*

settlement of civil cases. Washington: Federal Judicial Center, 1984. Pp. 72.

BANKRUPTCY

Bankruptcy litigation October 5, 1984 Sheraton Hotel downtown Seattle. Seattle: Washington State Trial Lawyers Association, 1984. 1 vol. (loose-leaf).

CIVIL PROCEDURE

Civil practice and procedure in King County. Seattle: Seattle-King County Bar Association Continuing Legal Education Committee, 1984. V.p.

COMMERCIAL LAW

The practical lawyer's manual of business forms and checklists. Philadelphia: American Law Institute-American Bar Association, 1984. Pp. 238.

COMPUTERS

Frost, Sidney W., and James C. Dunlap. *Automated law office systems: a survey of today's tools and techniques*. St. Paul: West, 1983. Pp. 422.

Luedtke, Peter, and Rainer Luedtke. *Computers for law offices*. San Diego: Harcourt Brace Jovanovich, 1984. 1 vol. (loose-leaf).

McClung, Christina J., John A. Guerrieri, and Kenneth A. McClung, Jr. *Microcomputers for legal professionals*. New York:

John Wiley & Sons, 1984. Pp. 141.

Personal computers for lawyers. Richmond: Virginia Law Foundations, 1984. Pp. 151.

CONFLICT OF LAWS

Hancock, Moffatt. *Studies in modern choice-of-law: torts, insurance, land title*. Buffalo: William S. Hein, 1984. Pp. 446.

CRIMINAL LAW AND PROCEDURE

Robinson, Paul H. *Criminal law defenses*. St. Paul: West, 1984. 2 vols.

FAMILY LAW

Joint custody and shared parenting. Washington: Bureau of National Affairs, 1984. Pp. 350.

Kiefer, Louis. *How to win custody*. New York: Cornerstone Library, 1982. Pp. 308.

LEGAL RESEARCH AND WRITING

Peck, Girvan. *Writing persuasive briefs*. Boston: Little, Brown, 1984. Pp. 289.

MEDICAL JURISPRUDENCE

Rozovsky, Fay. *Consent to treatment: a practical guide*. Boston: Little, Brown, 1984. Pp. 670.

MOTOR VEHICLES

McCahey, John P., and others. *Defense of speeding, reckless driving & vehicular homicide cases*. New York: Matthew Bender, 1984. 1 vol. (loose-leaf).



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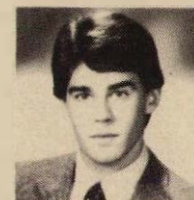
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