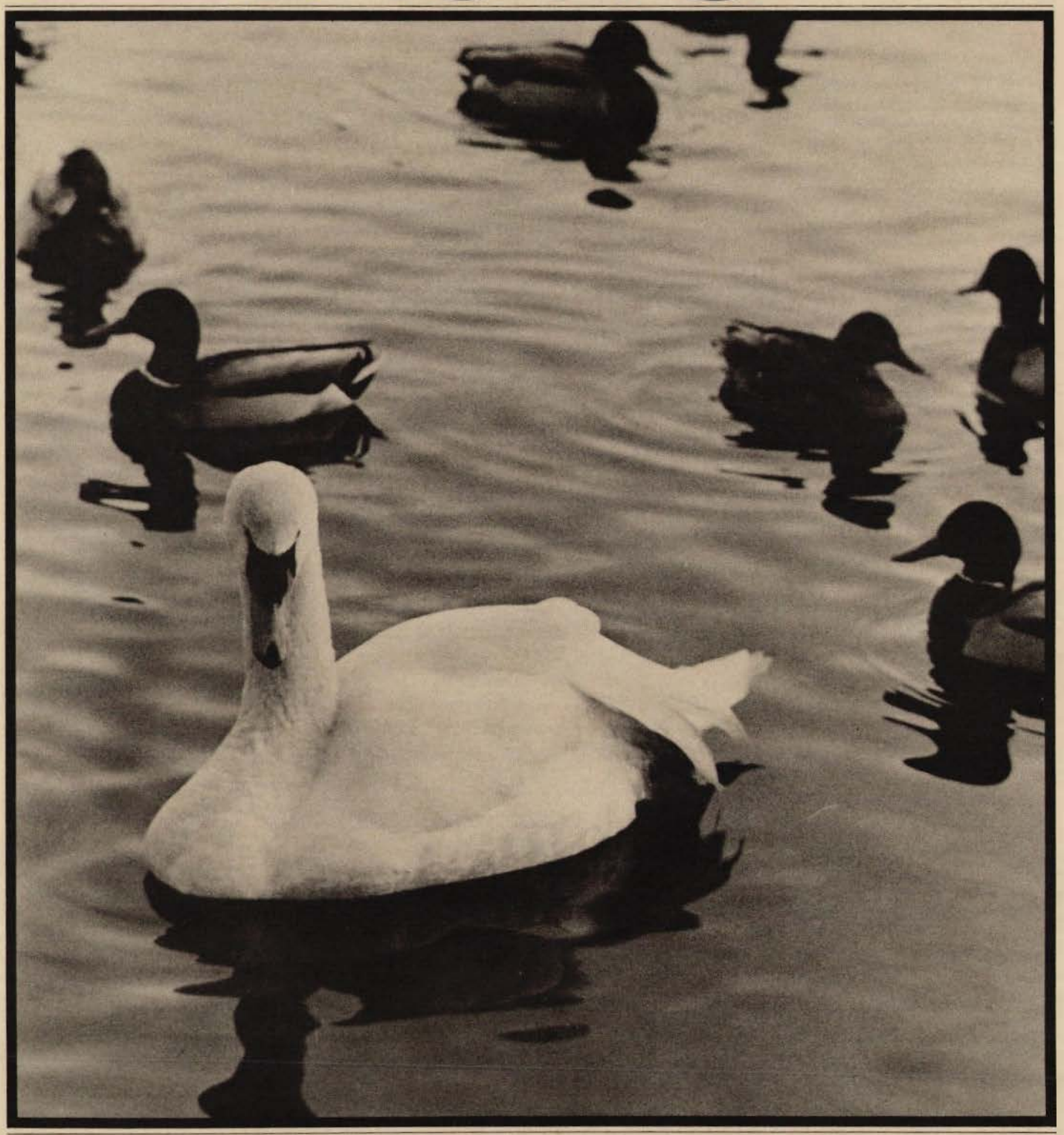
Washington State Bar News
Vol. 39, No. 2, February 1985



Inside: The Life of A Media Lawyer

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FEATURES

IN THE NEWS

DEPARTMENTS

Our Cover

"Greenlake Quackers" . . . Photograph by Seattle attorney ***Karen Ellentuck***

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.

A Change of Date

Editor:

Like many, perhaps most, of your subscribers, I file and keep monthly issues for future reference. The greatest annoyance associated with this usually fine publication comes when I have occasion to look for a back issue on my shelf.

In order to see whether the issue I have selected is the one I want (by the "Let's see, it should be about here" system), it is necessary to pull the issue *clear out*, or nearly so, in order to see the *date*, which you put in the top right corner. This often results in losing the issue's place in a tightly-packed shelf, and engenders an attitude toward the *Bar News* that you probably would not wish to encourage.

PROPOSAL: Why not put the date in the upper *left* corner of the front cover, where it could be easily checked, without pulling the whole issue out? Better yet, why not also put it in the top right corner of the back cover (just around the spine from the date on the front cover), to make it even more handy to quickly and conveniently find filed-away back issues? I think many subscribers would appreciate this convenience.

FRANK A. MORROW
Court Commissioner
Bellingham

The Editorial Advisory Board believes you have a good idea. We will see what we can do in the future.

Editor

An Apple a day

Editor:

Several Bellingham attorneys now use Apple Macintosh computers for legal applications. We would like to share our ideas and resources with any *Bar News* reader who is a Macintosh enthusiast. Contact us at 920 Bellingham Towers, Bellingham, WA 98225; phone (206) 671-4770.

EDWIN SIMMERS
Bellingham

Referendum for Specialization?

Editor:

Will the proposed Specialization Plan be submitted to a vote of the attorneys who comprise the association?

JOHN C. PATTERSON
Seattle

No arbitrary lines, please

Editor:

I am an attorney with five plus years of experience. I believe I could be certified as a general counselor under the new system. However, I could not qualify in two of my major areas as a specialist, because of the CLE requirements. As a

general counselor. I am required to keep up with a wide variety of areas. Examples would be the recent bankruptcy amendments and mandatory arbitration in Snohomish County effective in August. These seminars I felt required the attendance of myself or my partner. Seminars pertaining to my areas of specialization which I have been to in prior years, did not. Therefore, by keeping up on my general practice, I am prevented from qualifying in my two major areas for specialization. This is unfair to the small practitioner, who must carefully pick and choose his seminars, from the perspective of both time and money. Although he keeps up his education on his own time, you penalize him by requiring CLE credits he cannot complete while keeping up in other areas, and taking care of his clients.

Also, why five years of practice before certification? This would prevent my partner from being certified. I trained him out of law school in my areas of the law, and he trains me in his now. I will use real estate as an example. My partner worked for a title company for some time, and developed an interest in real estate law which he has pursued vigorously. We have an escrow department in our Seattle office and real estate law comprises a large portion of his business. He belongs to the Real Estate, Probate and Trust sections of both the Seattle-King County Bar Association and the Washington State Bar Association.

The only deterrent to being certified for him is that it has been less than five years since he passed the bar exam. This is unfair, and discriminates against the younger practitioner.

These limitations should not be used. Test us to measure our qualifications, but do not presume to tell us how long it should take us, or by what methods we must acquire our knowledge.

I know you must draw lines somewhere, but please do not draw them arbitrarily.

WILLIAM C. RIES
Lynnwood

Accept the challenge

by **Claude M. Pearson**

The editorial on Specialization in the *Bar News* ["Specialization is the answer: But what is the question?" December, 1984, p.7] is silent on a critical issue: public interest. This program would be of enormous help to the public who may in certain cases want to hire a specialist.

When the editorial asks, has the public ever stated that this was a problem in need of a solution, it begs the question. Doesn't the public have a right to know? Doesn't the public have the right to expect the State Bar to identify its "unknown experts"?

Our Bar Referral Offices tell us that most of the clients who call them do so because of their yellow page ads. Look closely at the yellow page ads. Who are the de facto specialists? Do any of the true de facto specialists advertise? Obviously, true de facto specialists assume a low profile vis-a-vis the yellow pages or any other advertising medium. The Canadian Bar Foundation calls its non-advertising de facto specialists the "unknown experts." Does the public have to ask for such identification? The truth is that the public has not defined the problem and the individual user of services doesn't know about the problem until she starts looking for a specialist.

A great many of the lawyers who are currently criticizing the specialization plan may simply choose not to participate. This group should not be able to deny the program to those who do want to participate. The perceived difficulties of young lawyers and small town practitioners may not be any greater than that of the 55 year old city "de facto specialist" in a large firm asked to take a written examination. Of course the program is a challenge! What worthwhile program doesn't challenge its participants to excel? My opinion is that a great many lawyers will accept the challenge!

For those who choose not to participate I think the Plan will have only minimal impact. If the program produces some lawyer participation, the public will be benefited! That seems to me to be a very good reason to adopt the program. I suggest that the public's right to know is at least 50% of the equation.

Claude M. Pearson is a Tacoma lawyer and chairperson of the WSBA Specialization Board.

Editor's notebook

The Goldmark Case, the recently published book by Seattle attorney Bill Dwyer, is an inspiration to all lawyers. Subtitled "An American Libel Trial," the book is about the 1963 libel case brought by Okanogan County lawyer-legislator John Goldmark against reactionaries who had branded Goldmark a left-wing legislative mole and communist flunky.

In that lawsuit, the book's flyleaf tells us, "[W]itnesses of national reputation crossed the country to testify, the eastern press covered the case, and issues of civil liberties, the communist challenge to the values of American society, and the radical right movement were fought out before a rural jury."

The Goldmark Case is particularly interesting to the Northwest practitioner. Its pages are filled with local history and personalities who comprise our present legal culture: Dick Riddell, Slade Gorton, Charles Goldmark, R. E. Mansfield, Judge Ted Turner, Judge Robert Winsor, to name a few.

Although this book is principally about the clash of ideologies and the triumph of the Anglo-American legal system, it is also a model for how lawyers can find purpose in their profession. Any lawyer who finds that his practice consists of too many greedy plaintiffs, too many stingy defendants, too much boilerplate and too much boredom should read this book.

Dwyer was in his thirties when he tried the Goldmark libel case. Though the jury award was ultimately vacated, The Goldmark Case shows how a lawyer can serve his client and society well. In a day when the public perceives lawyers more as grave-robbers-in-India than as guardians of freedom and liberty, it is gratifying to read a publication which shows how the practice of law can and should be.

* * *

This is the time of year when counties put into effect their new local rules. Lawyers who must practice in "foreign" counties should be aware that several counties have recently adopted arbitration programs for many types of cases; other jurisdictions have adopted significant changes in their rules of procedure.

King County, for example, has thoroughly revamped its procedures regarding the processing of interrogatories and the method by which one notes and prepares a motion for summary judgment. In King County a lawyer must henceforth also specifically identify those pleadings which require specific action by the court clerk.

* * *

Having recently survived a high-speed automobile collision in a foreign country, I am pleased to report that there are significant differences between the way the legal system works in this country and in other countries.

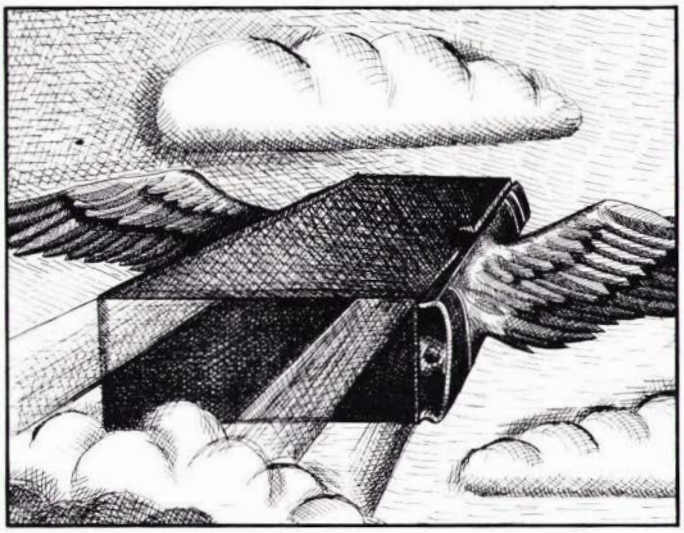
After discharge from the provincial hospital, the local constabulary advised me that the matter of civil and criminal liability for the automobile accident would be resolved as expeditiously as possible---certainly in no more than four months. When I protested that I needed to return to the United States somewhat sooner than that, they calmly advised me this would be possible . . . if only I would sign a prepared statement. In a foreign language, of course.

I protested that I could not honestly sign a statement I could neither read nor understand. The local constabulary said they understood; but in that case I would simply need to remain overseas for at least four months until the matters could be settled.

So I signed. With gusto.

And then I committed the faux pas of asking for a copy of my signed statement (whatever it said). Not a chance, I was told. Even though it was "my" statement, I was not allowed to keep a copy. It was an official, *secret* government document and it could not be disclosed until after everything had been resolved.

AMERICA, WE'RE COMING ON FAST.



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The President's Corner

A Positive Public Image Depends on Good Communications

When I was notified last April that I had been selected to serve as President during the 1984-85 year, one of my first thoughts was that perhaps I had been given an opportunity to do something about a concern which has troubled me for a number of years. It involves the public image of lawyers and our judicial system. Over a long period of time and particularly since the Watergate debacle, the attitude of the average citizen toward lawyers, judges and courts has become much more critical and suspect. Whether or not this is justified or deserved, we must be honest with ourselves and admit that our profession has lost a great amount of the dignity and respect which was given it by the public years ago. Although it remains among the most learned of professions, it is now far from the most honored.

What has caused this significant decline in popularity? I suppose we can rationalize by saying that our legal system naturally lends itself to public criticism and "it's just the nature of the beast"—that as our society expands and becomes more complex, our system of justice is allowed to suffer through such problems as an overpopulation of lawyers and inadequate methods of dispute resolution. There are obviously many factors which have contributed to our loss of image but, being the ultimate optimist, I am convinced that there is not one which cannot be overcome.

I have always felt that lawyers do not receive sufficient credit for the many good things they do, both within the profession and for their community. Literally thousands of hours are given by lawyers to *pro bono* work each year. Rarely do we see a Board of Directors related to a charitable activity that does not include one or more lawyers or judges. The leadership of civic organizations in virtually every city and town of this state includes lawyers. Free legal seminars and clinics are being constantly presented to the public. Political leadership and public elective offices frequently involve members of the bar. Unfortunately, however, the public has very little knowledge of all of this activity. It simply isn't newsworthy. The public image of lawyers, judges and courts seems to be largely based upon media reporting of lawyer defalcations and judicial decisions which are either misunderstood or misinterpreted. We obviously need to do something to draw attention to the other side of the ledger—and there is no better time to begin than now.

I have requested our Public Relations Committee to formulate a plan for educating the lawyers of this state on how to go about improving our image with the public. Each local bar association will be involved through presentation of one or more special programs to their members. Emphasis will be given to improved relations with the media, increased participation by lawyers in community and charitable activities and the need for educating the public as to the merits of our legal system. The committee will also be providing articles related to this subject (as it has in the past) in issues of the *Bar News*. I am hoping that we can have this plan in effect and implemented before my term of office ends next September.

You may have doubts about the effectiveness of such a plan. I somewhat share those doubts but I am confident that an effort such as this will at least make the average Washington lawyer more aware of the problem and hopefully more interested in doing something about it. I know that a great number of you are also optimists. I hope you will join with me in working toward a significantly improved public image of our great profession within the very near future.

Lee Campbell

Point Man for Genghis Khan: **The Life of a Media Lawyer**

by **Duane M. Swinton**

Opinion polls indicate that in the eyes of the public journalists are held in quite low esteem, ranking almost as far down the totem pole as those ne'er-do-wells, politicians. Lawyers do not fare much better.

So, what does all of this mean for an attorney who spends a considerable portion of his time representing the news media? What it means is that, on at least some occasions, a media attorney feels like the point man for what the public apparently perceives as a bunch of pen-pushing, camera-toting, journalistic Genghis Khans.

Unfortunately, this perception of the media and media attorneys is not peculiar to the public, but is shared by other attorneys, government officials and many trial court judges, especially when their clients, records and meetings, or courtrooms are "threatened" by an invasion of the media.

Thomas Jefferson once wrote,

> Were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter.[1]

Sadly, were that proposition put to a popular vote of the public today, Jefferson would probably be taken aback by the number of persons who would prefer the former—government without the media.

It is apparent that some media "excesses" have undermined the standing of the media in general. For example, there is considerable debate, even among the media, whether a local ABC affiliate in Los Angeles committed an excess by televising purloined tapes prior to the selection of a jury in the trial of John DeLorean. Criticism of the media is fed by such excesses, and the underlying principles that are, of necessity, broad enough to protect all of us are lost in the shuffle. These principles protect not only the occasional excesses of the media, but also the important day-to-day insights offered by such media organs as the *New York Times* and the *Wall Street Journal*, and the homespun "trivia" of the local *Jones County Weekly*.

In the final analysis, these broad principles guard not only the "rights" of the media but also the rights of John Q. Public. The basic notion of the free flow of information in a free society does not just apply to the ability of *The Wall Street Journal* to publish, or that of CBS News to broadcast. *All* citizens have the right to speak their minds freely, and to obtain access to information and data upon which to base their opinions and conclusions.

In access cases, the tools of a media attorney's trade are the First Amendment and its guarantees of free speech and free press, common-law rights of access, statutory provisions such as the Open Public Records Act and the Open Public Meetings Act in the State of Washington, and the particularly strong freedom-of-speech language of the Washington State Constitution.[2] A popular misconception is that these tools are somehow uniquely those of the media.

Duane Swinton practices in Spokane with Witherspoon, Kelley, Davenport & Toole. P.S. He also serves on our Editorial Advisory Board.

[1]Quoted in William Grosvenor Bleyer's *Main Currents in the History of American Journalism*, 1927, p. 103.

[2]Open Records, RCW Ch 42 17 and Open Meetings 42 30. For instance, Article 1, Section 5 of the State Constitution provides: "Every person may speak, write and publish on all subjects, being responsible for the abuse of that right."

RIGHTS FOR ALL

Both the Open Public Records Act and the Open Public Meetings Act are designed to give *all citizens* the right of access to public records and public hearings. Nowhere in either of these statutes is the right of access limited to the media. Moreover, courts have recognized that the right of the press to access is only co-extensive with that of the public.[3] There is no special common-law right of access that pertains solely to the media. When media rights are infringed upon, public rights are also denied.

Likewise, while a portion of the First Amendment is couched in terms of "freedom of the press," that freedom is not, in the words of a Florida Court, "a private property right granted to those who own the news media."[4] The exercise of that freedom is meant to serve a larger societal purpose. Supreme Court Justice Lewis F. Powell, Jr., wrote:

frequently seeking to exercise its commonly-shared rights of access. This hostility is shown when the media asks to attend a suppression hearing or obtain a copy of a search warrant, and is founded in part on a misperception that the media is somehow seeking favored treatment. Occasionally, this misperception burrows its way into judicial opinions, but more often it is evidenced in the attitudes of opponents to access—be they government officials or lawyers—and even of the judiciary when questions of access are raised by the media.

As a result, it is sometimes tempting to consider initiating an access issue or lawsuit not in the name of *The Daily Express* or XYZ Television Station, but in the name of John Q. Public. This would immediately take the wind out of any preconceived anti-media bias, and challenge two frequently asserted, yet irrelevant, arguments raised by opponents to media access.

> An informed public depends on accurate and effective reporting by the news media. No individual can obtain for himself the information needed for the intelligent discharge of his political responsibilities. For most citizens, the prospect of personal familiarity with newsworthy events is hopelessly unrealistic.
>
> In seeking out the news, the press, therefore, acts as an agent of the public at large. It is the means by which the people receive that free flow of information and ideas essential to intelligent self government. By enabling the public to assert meaningful control over the political process, the press performs a crucial function in affecting the societal purpose of the First Amendment.[5]

In reality, the nature of its business affords the media a greater opportunity to seek vindication of the access rights it shares in common with the public. The press also has more resources, both financial and otherwise, to insure that such rights are protected and enforced.

Because the media stands on common ground with the public concerning access to public meetings and records and court proceedings, it should not be treated with hostility for

THE SCOOP

One common argument in response to the media's request for access is that the only reason the media wants access to a particular record or hearing is to improve ratings or to increase readership, and thereby reap more in revenue. This may very well be *one* of the motivating factors behind the reporting of a story—scooping the competition and improving the image of a newspaper or radio/tv station is the goal of any energetic reporter. However, it has no more bearing upon whether the media may obtain a copy of a search warrant than it does up on whether John Q. Public may obtain tax information about a particular piece of property. Generally speaking, it has consistently been held that access to hearings and records is not contingent upon the motivation of the person seeking access.[6]

THE MEDIA MOTIVE

A second frequently heard argument is that the media continually demands access to hearings or records, yet regularly asserts reporter's privilege and confidentiality when there is an attempt by the government or litigants to take testimony from a reporter or obtain copies of a reporter's notes. This "what-is-sauce-for-the-goose-is-sauce-for-the-gander" argument merely obfuscates the issue of access. Moreover, it ignores the basic distinction between a privately-employed, non-public reporter and his notes, and a public, tax-paid governmental employee and records in his possession, or meetings at which such an employee takes action. If the public has the right to attend a meeting of the City Council, then why John Q. Public wants to attend the meeting is irrelevant.

MUCH ADO ABOUT NOTHING?

Perhaps more important, the media frequently wants access to a particular hearing or document not only because of some particular news value, but also to insure that the right of access is protected. After all, a right which is not exercised, or which the media or the public at large is hesitant to exercise, is no right at all. Therefore, it is not uncommon for the press to make minimal use of information gathered at an open hearing or from public records to which it demanded access. It may be that the particular records or meeting rendered little or nothing in the way of newsworthy information.

Is such an exercise then "much ado about nothing"? No, because what has been protected and asserted is the right to gain access to information contained in documents or divulged at a meeting, regardless of the newsworthy value of such information. What is done with the information garnered from the public record or obtained at the public hearing is simply not relevant to the issue of right of access.

Often opponents of access by the media fail to realize that by

[3] *See, e.g., Bell v. Procunier*, 417 U.S. 817, 94 S.Ct. 2800 (1974).

[4] *ex. rel Miami Herald v. McIntosh*, 340 So.2d 904 §916 (1977).

[5] *Saxbe v. Washington Post*, 417 U.S. 843, 94 S.Ct. 2811, 2821 (1974).

[6] *See, e.g., N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 145 95 S.Ct. 1504 (1975).

seeking to deny access to records or meetings, they actually create more interest in the very information that they are trying to keep out of the public sector. An inquiring reporter, upon being denied access to a hearing or to public documents, immediately wonders, "Methinks he doth protest too much." The very attempt by a government official or participant in litigation to restrain the dissemination of information may focus greater attention on information which, in and of itself, may be rather insignificant.

TIMING

When access to a court proceeding becomes an issue, judges, defense attorneys and prosecutors can make a media attorney feel like an uninvited guest crashing a private party at the eleventh hour, just when things are starting to hop. The issues relating to the court proceedings have been nicely framed, and now here comes the media trying to barge in and argue about totally different, "foreign" issues.

The media is frequently criticized for wanting access immediately—*right now*—and the question is posed, "Why can't the media just wait a week or so?" Admittedly, the media's interest in gaining access to a particular proceeding or record may disrupt the timing of the proceeding and may raise issues that the prosecutor, defense counsel, and even the Court are not immediately prepared to address. That does not, however, mean that access may be denied or even delayed. Timing is a crucial issue for the media. In effect, delaying access may constitute denying access. Said one Court:

> News delayed is news denied. To be useful to the public, news events must be reported when they occur.[7]

There is simply no form of pre-or post-judgment "interest" that can be paid to compensate the media and the public where access has been unjustly delayed. Society's needs are not served by a public announcement that "after a four-week trial, John Doe Defendant has been convicted of murder," when none of the intervening details and occurrences leading up to the conviction were reported at the time they occurred. Merely to report that a conviction has been obtained or a meeting has been held is not the only right protected. Also protected is the right to report how that conviction was obtained, how the meeting was conducted, and how the various public officials—judges, prosecutors, defense attorneys, city councilpersons—performed their designated duties relating to the trial or meeting.

Justice Brachtenbach of the Washington State Supreme Court cogently summarized the rationale behind the right of access:

> The common-law presumption of open judicial records is grounded in the generalized belief that maximum public access to all governmental information provides the people, the governed, with the information to understand the functioning of their government and to evaluate the performance of public

[7] *State ex. rel Miami Herald v. McIntosh*, 340 So.2d 904, 910 (Fla. 1977).

servants. Furthermore, an informed public is in a better position to exercise the freedom to choose intelligently those who will govern.[8]

The public's interest in the particular event is at its peak as the event is occurring and not at some distant time in the future. The media's function and societal purpose is to bring information about matters of public concern to the public in a timely fashion. Chief Justice Burger once wrote,

> As a practical matter, moreover, the element of time is not unimportant if press coverage is to fulfill its traditional function of bringing news to the public promptly.[9]

Thus, federal courts have ruled that copies of tapes introduced into evidence at the ABSCAM trials must be made available to the media for copying as they are introduced into evidence, and not after trial has concluded.[10] Said one court in so ruling,

> [A]nd there is a significant public interest in affording that opportunity contemporaneously with the introduction of the tapes into evidence in the courtroom, when public opinion is alerted to the on-going trial.[11]

[8]*Cowles v. Murphy*, 96 Wn.2d 584, 589, 637 P.2d 966 (1981).

[9]*Nebraska Press Association v. Stuart*, 437 U.S. 539, 98 S.Ct. 2791, 2808 (1976).

[10]*See, e.g., In re National Broadcasting Company, Inc.*, 635 F.2d 945 (2nd Cir. 1980).

[11]*Id.* at 952.

Moreover, that a trial court may be put "on the spot" by a demand for an immediate ruling does not justify delaying a decision or making an erroneous decision. Justice Utter recently wrote:

> An order which would otherwise be invalid cannot be sustained merely because the trial judge and counsel were pressed for time.[12]

ACCOMMODATION

Trial court judges rightfully have the authority to control what occurs in their courtrooms, and defense attorneys and prosecutors should strive to have criminal matters decided in as "antiseptic" an atmosphere as possible. However, as a member of the public, the media must be accommodated so that it can perform its societal function to convey information to the public in a timely manner. It would benefit everyone if the media were treated less like Typhoid Mary and more like a necessary participant in the party it is attempting to "crash."

The First Amendment is couched in absolute terms: "Congress shall make no law . . . abridging freedom of the press." Yet, with the exceptions of late Supreme Court Justices Douglas and Black, there have been very few proponents of an absolutist viewpoint. It is recognized even among the media that compelling countervailing interests may override the right of access.[13]

Thus, the objective, black-and-white language of the First Amendment, when applied to access issues, may in some instances be supplemented by a subjective analysis and interpretation of competing interests. However, this subjective treatment should in no manner relate to the nature of the person or entity seeking access. The media gives up no rights in access issues by being treated, in the eyes of the law, as *only* a member of the public. An access issue should not be subjectively analyzed based either upon who seeks access or (generally) for what purpose.

When such subjectivity enters into access issues, the dividing line between the *legal* right of the media and the public to access to information, and the *ethical* question facing the media as to whether to publish or broadcast the information, has been wrongly crossed.

It is not infrequent that government officials, lawyers, and even some judges assume the rightful role of reporters and base their analyses not on the legal right of access to information, but on their own subjective perceptions of what ought to be printed in a newspaper or broadcast by a radio or television station. That is not *their* prerogative. That "close-the-door" attitude is why the First Amendment, common-law rights of access, and open record and open meetings laws exist. They serve not only as tools of the "point man" media attorney, but also to ensure that the public reaps the benefits of the free flow of information in a free society.

[12]*State v. Coe*, 101 Wn.2d 364, 383, ___ P.2d ___ (1984).

[13]*See, e.g., Seattle Times v. Ishihawa*, 97 Wn.2d 30, 640 P.2d 716 (1982).

The Media Point of View

by **Curt Pierson**

After four years of covering courts as a reporter for *The Day* of New London, Connecticut, I figured that with just a little bit of luck, I would not see the inside of a courtroom again.

So where did I go wrong?

I graduated from reporter to editor. And editors, if they are doing their jobs correctly and diligently, are finding that they have to go to court more often than they would like. Or if not actually go to court, then spend too much time with their newspapers' attorneys.

Before you take that as a criticism, let me explain this way: Newspaper editors (even those who can say with a straight face, "Some of my best friends are lawyers"), must acknowledge that they have better ways of expending time, effort and money than by bringing suit or threatening to bring suit. The fact remains, however, that any editor worth his salt realizes that time with attorneys and in court is a necessary part of the job these days. Because if we don't oppose assaults on press freedom, access, the public's right to know, and a number of other causes we hold dear, then who will?

WHO LOSES?

We editors stand to lose a lot if we do not stand up and fight. But the public stands to lose even more. It is not always easy, however, to persuade that public that we are really fighting on its behalf.

Spokane's newspapers had to go to court recently to get access to death certificates. What we wanted, specifically, were the certificates of premature babies who had died reportedly after having received a Vitamin E supplement which was subsequently recalled by the Federal Food and Drug Administration.

Officials denied us access to the certificates, first on privacy grounds, later contending that the staff lacked the time which would be required to get us the information we sought. We had been as specific as we could be in our request. We sought the certificates only of those babies under three months of age which had died at a specific hospital during four specific months. Still, we were told it would be far too time-consuming to dig out that information. So we had to go to court.

This was not an action so easily explained to the public. To many, it appeared that the newspapers were seeking the certificates so that they could harass the parents of the dead babies. That was not our intention.

We wanted, first, to establish once and for all that vital statistics—birth, death and marriage records—were public documents. It had never occurred to us that they were not, and now we had the opportunity to establish a precedent of substance.

***Curt Pierson** is editor of the* Spokane Chronicle *and* Spokesman Review.

Second, we wanted information that was available only through viewing the death certificates, including the causes of death as stated by the coroner, the ages of the babies, and the identities of the attending physicians.

We got that information. And we paved the way for others to get similar information in the future.

WHAT YOU NEED TO KNOW

In the recent Coe case, Spokane's newspapers were less successful in their attempts to gain access to information they believed the public had a right to have. When that file was returned to the Superior Court by the Supreme Court, our reporters sought access to it. We were turned down, and defense attorneys moved to seal the file because information in it could jeopardize the appeal of the conviction. That request was granted.

Again, in this instance there was a good chance that our motives would be misunderstood. Some of the public was ready to accuse us of wanting to print more sensational rape allegations, to keep a dramatic case on the front pages. Not true. To be honest, most of us in the newspaper business would dearly *love* for the Coe case to go away. It won't do that. But not because of the *press.*

We think that the public ought to know what the sentencing judge and the Supreme Court who considered the appeal saw in that file. More than likely, there is nothing in that file that would lead to any inference of conflict of either interest or emotion. And that is precisely what the public deserves to know. It wants to be reassured that its court system is above reproach, and it expects the press to tell it just that.

Not long ago, we sought access, too, to a probable cause affidavit filed by police to support a request for a warrant to search the house of a man suspected of murdering his missing wife. The prosecutor moved immediately to seal the affidavit, arguing that disclosure would:

1) pose a threat to an ongoing investigation, and
2) compromise an informant in the case.

It was patently ridiculous to believe that the investigation could be harmed when everyone in the community knew that the husband was the suspect in the case. The husband certainly knew it, because he had talked with reporters about it. His lawyer had discussed the case with the press and had provided reporters with a copy of the search warrant. Even the police had acknowledged that they believed they had a homicide on their hands, even though a body had not yet been found.

We were not going to reveal the informant's name. In fact, as we told the court, the identity was unimportant to us.

So what were we after? Again, we think the public has the right to know what caused the police to zero in on the husband in this case to the exclusion of any other possible suspect. The normal avenues of a murder investigation were ignored as police concentrated on the one suspect. What information was so persuasive as to cause them to do that?

The press has an obligation, as does the law enforcement community, to provide the public with as much information as it can. Only then can the public decide whether its state of nervousness is justified or not.

BATTING .333

Of the three cases I have cited, the newspapers were successful only once. But .333 is a major league average. And it is good enough to keep us working for what we honestly believe to be the rights of the public.

Taking an adversarial stance against the police, prosecutor, judges and others is not all that enjoyable. And it is not what most of us got into journalism to do. But there is a great sense of accomplishment connected with keeping the public informed about what is happening in its community, its region, its state, its nation and its world.

More than ever, society expects the press to fulfill its role as watchdog. It is a large responsibility. It is fraught with all kinds of potential danger. However, it is not something we editors look upon as a terrible chore, or a service above and beyond the call of duty.

Someday, I hope that the public—as well as those with whom we do battle in court—will look upon our meeting this responsibility as an obligation of the free press, rather than as some terrible side-effect of democratic government. □

Deciphering Good Clients

by **Jeff Tolman**

A few mornings ago I read my latest yarn, "Effective Voir Dire of Potential Spouses," to my wife, Laurie. As always, she listened intently and patiently, and when I was finished, made some insightful suggestions. That morning though, she popped an unexpected question: "Why don't you write something *serious* for a change?"

"I don't know," I responded. "It never crossed my mind. Like what?"

"Like how to get paid by your clients. Or how to keep a law office's overhead down. Or how to keep from throwing up the night before a trial."

Those were good ideas. Certainly important topics. The more I contemplated Laurie's suggestion, the better it seemed.

Over coffee I asked my partners what information they'd really like to see in an article. What "truths" are most lawyers looking for? After some discussion we agreed that one key to success in our profession is how well, and how fast, a lawyer can decipher the good client from the bad.

Worry no longer. Several definable ways to tell a good client from a bad client follow.

The good, the bad, and the bankrupt

A *bad* client has a close friend or relative who is a lawyer. The two of them will critique and second-guess every decision you make, and, in the end, your bill.

A *good* client does not blanch or leave when you mention the word 'retainer.' He pulls out his checkbook and asks to borrow your pen.

A *bad* client tells you the truth less than half of the time. A *good* client more than half.

A *good* client understands that people are seldom totally satisfied at the end of a lawsuit.

A *bad* client calls your spouse at home for legal advice knowing that she won't send a bill for her time.

A *good* client takes your advice. A *bad* client takes his friends' advice.

A *bad* client refers every undesirable, penniless person he knows to you. A *good* client discusses a referral with you prior to making it.

A *good* client is someone that you like to see in your office. A *bad* client is someone that you would rather not see anywhere.

A *bad* client is someone who misses Court and doesn't call you, and, when he (finally) does appear for sentencing, tells the Court that you *guaranteed* that he would be found "not guilty."

A *bad* client doesn't pay his bill. A *good* client does, and leaves a *tip.*

Court personnel know *bad* clients by their first name.

A *good* client realizes when you win. A *bad* client realizes when you lose.

A *bad* client has the State Bar Association's phone number memorized.

A *bad* client thinks he is in legal trouble because of his lawyer. A *good* client knows that often he will get out of legal trouble because of his lawyer.

When you think you have found a good client, remember: One bad lawyer can make ten good clients miserable. Ten good clients can make one lawyer very happy.

Jeff Tolman *is a partner in the largest law firm in Poulsbo. He has numerous good clients.*

UPDATE ON IOLTA:
The Legal Foundation of Washington

by **Rita L. Bender,**
Treasurer

The Legal Foundation of Washington was created by the Washington Supreme Court rule change to CPR 9, which established interest-bearing trust accounts—IOLTA accounts. The members of the Board of Trustees of the Legal Foundation were designated, three by the Governor, three by the Supreme Court, and three by the WSBA Board of Governors. The members of the Board of Trustees are: **Lowell K. Halverson**—President; **Charles A. Goldmark**—Vice-President; **Jack R. Dean**—Secretary; **Rita L. Bender**—Treasurer; **The Honorable J. Ben McInturff; John R. Hough; Senator George Clarke; W. Jane Noland;** and **Father J. Alfred Carroll**.

The Legal Foundation Board has been engaged in the work of establishing the Foundation procedures for receiving the funds which will be transmitted by each attorney's pooled trust account to the Foundation. As members of the Bar are aware, the change to CPR 9 provides that attorneys shall maintain client trust funds in one or more interest-bearing accounts, and the funds from the pooled trust account, wherein is deposited monies which are to be held for short periods of time and of nominal amounts, will be transmitted to the Legal Foundation of Washington, for law-related charitable purposes, as established by the Board of Trustees.

The Foundation Board of Trustees has named an interim administrator, **Barbara C. Clark**. The offices of the Legal Foundation of Washington are located at 505 Madison Street, in space provided by the Washington State Bar Association. The telephone number of the Legal Foundation is (206) 624-2536.

The rule change requires that all attorneys have established their interest-bearing trust accounts by March 1, 1985. The work in transition has been underway for some time now and attorneys throughout the state should find their banking institutions now able to establish the appropriate accounts and arrange for transfers to the Legal Foundation of Washington. The Foundation Board members urge all attorneys to make arrangements for establishment of the pooled IOLTA accounts as soon as possible. In January, a mailing was sent to all attorneys in the state providing information for the conversion of attorney trust accounts to IOLTA accounts. Most banking institutions are knowledgeable about the IOLTA rule and have been able to make the account conversion with the information provided. Should any firm encounter difficulty with the conversion process, Ms. Clark at the Legal Founda-

tion of Washington is available to answer questions and to help smooth difficulties regarding the account conversion process.

Serving on the Board of Trustees for the Legal Foundation of Washington are *(front row, l. to r.)* **Hon. J. Ben McInturff, W. Jane Noland, Rita L. Bender,** *(back row, l. to r.)* **John R. Hough, Father J. Alfred Caroll, Charles A. Goldmark** and **Lowell K. Halverson.** Not pictured: **Senator George Clarke** and **Jack R. Dean.**

When the IOLTA account is established, the banking institution will begin to credit the law firm's pooled trust account with interest and will transmit that interest, net service charges of the bank, to the Legal Foundation of Washington on a monthly or quarterly basis. The law firm will not be billed for service charges on the IOLTA account, those charges having been deducted by the bank from the interest accrued prior to transmittal of the interest to the Foundation.

Upon receipt of the interest funds by the Legal Foundation of Washington, the monies will be invested upon a relatively short-term basis, until distribution to recipient organizations, as provided by the Supreme Court opinion and rule change. The Board of Trustees will be working during the course of the next several months to establish criteria for grant recipients, and the grant-making process itself. The Board of Trustees expects to keep the WSBA membership advised in the coming months, through a series of articles in the *Bar News*, of the progress of the Legal Foundation of Washington. As the Foundation Board members go about the work of insuring responsible collection practices and investment policy, and developing the criteria for distribution of funds, we look forward to suggestions by the members of the Bar. We are all firmly of the belief that we have embarked upon a new and exciting program. We are hopeful that we can establish the workings of the program, as directed by the Supreme Court, without disruption to any law firm existing practices. We are excited about the prospect for developing a mechanism for furthering the enhancement of the judicial system in Washington state, and are honored by the trust which has been placed in us by our fellow attorneys, the members of the Supreme Court and the Governor. □

WASHINGTON STATE BAR NEWSLINE

The Board's Work

by **Steven A. Reisler**

TASK FORCE TO REWRITE JCrR'S

Olympia, January 11 -- By unanimous vote the Board of Governors adopted Governors Paul Gibbs' and Ed Lane's motions to create and staff a Special Task Force to undertake a complete rewriting of the Justice Court Criminal Rules. The Task Force, operating within the jurisdiction of the Court Rules and Procedures Committee, will consist of 10-12 prosecutors, defense lawyers and judges, and is expected to complete its work within 18-24 months.

*COMMITTEE REPORTS -- WSBA President Lee Campbell has suggested that WSBA committees be required to submit mid-year reports to the Board of Governors. Governors Angelo Petruss and Ed Lane endorsed the proposal and recommended that the mid-year reports could either be circulated among all WSBA standing committees, or that the chairpersons of the various committees meet once each year to advise one another about their committee activities.

*IOLTA -- 1st Interstate Bank has extended a $50,000 line of credit to the fledgling Legal Foundation of Washington. The so-called IOLTA rule, effective March 1, 1985, will require that lawyers deposit all nominal or short-term trust monies into an interest bearing account which will generate funds to be distributed by the Foundation. Upon inquiry by Governors Ted Zylstra and Betty Bracelin, WSBA Bar Counsel will report on attempts to create "safe harbors" for the IOLTA rule by defining what constitutes short-term or nominal funds.

*WWL LUNCHEON -- The Board met with representatives of Washington Women Lawyers, a non-profit lawyers' organization with eight local chapters throughout the state. The basic goals of WWL, its leadership told the Board, are to further the interests of women professionals and to prevent discrimination against women. WWL has, and will continue to endorse candidates for governmental and judicial positions.

*SPECIALIZATION -- Mary Alice Theiler and Clair Cordon, representatives of the Seattle-King County Young Lawyers and the WSBA Young Lawyers Section, reported to the Board that their respective organizations had taken official positions opposing the proposed "Umbrella Plan" of specialization. Stew Cogan, representing the Seattle-King County Board of Trustees, advised that the plan is still being considered by his organization and a report will later be submitted. Jim Watt, representing Governmental Lawyers, reported that his organization has taken no position on specialization.

THE NEXT MEETINGS OF THE BOARD OF GOVERNORS WILL BE: February 8-9, Tacoma (Sheraton); March 22-23, Kelso (Thunderbird); April 19-20, Victoria, B.C. (Oak Bay Beach Hotel).

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PARTIAL LIST OF OFFICIAL WSBA LEGISLATIVE POSITIONS AS OF 1/11/85

1. Oppose no-fault insurance.
2. Oppose extension of sales tax to attorney fees.
3. Oppose legislation which would require Washington to issue an occupational or professional license to any person so licensed by another state.
4. Oppose the elimination of jury trials in industrial insurance appeals and reducing attorney's fees.
5. Oppose extending privileged communications to nurses, professional counselors and social workers.
6. Oppose constitutional amendments which would allow the legislature to regulate the practice of law.
7. No position on "3-Way" Workers' Compensation Insurance.
8. Oppose limitation of general damages in tort actions.
9. Oppose repeal of attorneys' exemption from licensing of escrow agents.
10. No position on child joint custody in dissolution proceedings.
11. Oppose an increase of jury demand fees.
12. Oppose providing civil immunity for police officers for certain torts.

13. MEDICAL MALPRACTICE PROPOSALS:
    (1) Oppose reducing statute of limitations.
    (2) Oppose the prohibition of per diem evidence and argument.
    (3) Oppose a requirement that verdicts and judgments be itemized into categories of damage.
    (4) Oppose a requirement that verdict be reduced by the amount of collateral source payments and that subrogation be prohibited.
    (5) Oppose a requirement that requires payment of judgments for future economic losses be paid periodically and terminated on death.
    (6) Oppose advising jury of existence of releases and covenants not to sue or enforce judgments.
    (7) Oppose the relaxation of the standard of care from skilled possessed to practiced.
    (8) Oppose revisions of elements of informed consent so as to permit a showing of benefits and generally recognized rather than possible forms of treatment.
    (9) Support in principle the codification of items allowed as costs on judgments.
    (10) Oppose the abrogation of common law requirement of proof in malicious prosecution actions.
    (11) Oppose relaxation of doctor-patient testimony privilege.

14. Sponsor revisions to Deed of Trust forfeiture procedures.

15. Oppose capping Attorney's contingent fees.

16. Oppose the validation of will before death of testator.

17. No position on prejudgment interest.

18. Oppose shield law providing absolute testimonial privilege for newspapers and journalists.

19. Oppose immunity of governments and employees from civil liability on actions arising from issuance of permits, inspection and highway design.

20. Sponsor certain Corporate Act Revisions.

21. Oppose change of sales tax statute relating to title and escrow businesses.

22. Oppose attorney fees in District Court of 20% of principal and interest.

23. Sponsor revisions to the Arbitration statute.

24. Sponsor Real Estate Contract Forfeiture Act.

25. Sponsor Common Law Lien Bill.

WHEN YOUR REPUTATION IS ON THE LINE, IT'S NO TIME TO RELY ON SECOND BEST.

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Northwest Securities Institute in Seattle

by **John M. Redenbaugh**
Assistant Director of CLE

The FIFTH ANNUAL NORTHWEST SECURITIES INSTITUTE will be held in Seattle at the Sheraton Hotel on February 22 and 23, 1985. It has been approved for 11.50 hours of continuing legal education credit by the Washington State Board of Continuing Legal Education.

The Northwest Securities Institute has consistently been designed to inform registrants about developments at the state and federal level in the field of securities law—and this year is no exception! The 1985 Institute will feature a distinguished faculty comprised of speakers and panelists from Washington, D.C., New York, Washington, Oregon, and the province of British Columbia, who will provide insights to current developments, and suggestions for grappling with significant problem areas in the areas of securities practice and regulation.

The sponsors of the 1985 Northwest Securities Institute are pleased to announce that the Saturday luncheon for faculty and registrants will feature SEC Commissioner **Aulana L. Peters** as the guest luncheon speaker.

Program co-chairpersons **Stephen M. Graham** (Perkins, Coie, Stone, Olsen & Williams, Seattle), **Jack H. Bookey** (SEC Regional Administrator, Seattle), and **Margaret Hill Noto** (Stoel, Rives, Boley, Fraser & Wyse, Portland) have assembled an excellent faculty for this two-day program.

Other faculty members who will appear on the program schedule in addition to the three co-chairpersons are: **Daniel L. Goelzer** (SEC General Counsel, Washington, D.C.), **Kevin C. McMahon** (Jones, Grey & Bayley, P.S., Seattle), **Ronald L. Greenman** (Tonkon, Torp, Galen, Marmaduke & Booth, Portland), **Michael E. Stansbury** (Foster, Pepper & Riviera, Seattle), **Kenneth W. Hergenhan** (Miller, Nash, Wiener, Hager & Carlsen, Portland), **Nobi Kawasaki** (SEC Assistant Regional Administrator, Seattle), **Tom A. Alberg** (Perkins, Coie, Stone, Olsen & Williams, Seattle), **Henry H. Hewitt** (Stoel, Rives, Boley, Fraser & Wyse, Portland), **John J. Huber** (Director of the Division of Corporation Finance, SEC, Washington, D.C.), **Karl J. Ege** (Bogle & Gates, Seattle), **Peter Stafford** (Russell & DuMoulin, Vancouver, B.C.), **Lawrence L. Kiser** (SEC Regional Trial Counsel, Seattle), **Donald N. Malawsky** (Senior Vice-President, New York Stock Exchange, Inc., New York), **Steven E. Wynne** (Lindsay, Hart, Neil & Weigler, Portland) **Jane E. Edwards** (Oregon Corporation Commissioner, Salem), **John M. Steel** (Garvey, Schubert, Adams & Barer, Seattle), and **Jack L. Beyers** (Washington Securities Administrator, Olympia).

Arrangements have been made to offer tuition at a *special* rate of only *$155.00 if registration is received by no later than 5:00 p.m. on February 15, 1985* in the offices of the Washington State Bar Association CLE Department. Regular tuition for this course is *$170.00 if received after February 15, 1985*. Payment of tuition entitles a registrant to admission to the Institute sessions on Friday, February 22, and Saturday, February 23, 1985, coffee service, the luncheon on Saturday, February 23, admission to the Hosted Wine Tasting Reception on Friday, February 22, admission to the No-Host Cocktail Reception on Thursday, February 21, 1985, and a copy of the course manual prepared especially for this Institute.

For further information regarding this two-day program, or to obtain a copy of the seminar brochure, please contact Program Coordinator Debbie Kirchhauser, Washington State Bar Association, 505 Madison Street, Seattle, WA 98104, telephone (206) 622-6021.

APPROVED COURSES

WASHINGTON STATE BAR ASSOCIATION

Witnesses: How To Use Them and Not To Abuse Them
February 8, 1985: Spokane 6.00
February 22, 1985: Seattle 6.00

Fifth Annual Northwest Securities Institute
February 22 & 23, 1985: Seattle 11.50

Non-Profit and Tax Exempt Organizations
March 8, 1985: Seattle 7.00

Office Practice Tips

Pacific Rim Federal Tax Conference V:
Tax Planning for the Individual
March 25, 26, 27 & 28, 1985: Maui 15.00

WASHINGTON STATE TRIAL LAWYERS ASSOCIATION
Defending DWI's
February 15, 1985: Seattle 7.00

SEATTLE-KING COUNTY BAR ASSOCIATION
Trial Practice Committee of SKCBA Young Lawyers Section
Trial Practice Seminar
March 9 & 10, 1985: Seattle 14.00

Destroying old files

The Law Office Economics and Management Committee receives more inquiries on the subject of destroying old files than on any other. One recent inquiry from one of the ten largest firms in the state would indicate that a policy should be established and placed in the office manual. The Committee has prepared an office manual which is for sale through the Bar Association offices for $10.00.

A natural correlary to destroying old files is transferring inactive files to dead file storage. Many attorneys now recognize that the once common practice of never throwing anything away is no longer practical. Storage space is neither infinite nor cheap for most of us, to say nothing of the burden we are placing on our successors to go through the files upon our demise or departure.

The micro solution

Some attorneys suggest that the solution to the file retention problem is to put some or all items on microfilm. This does not solve the problem, but rather begs the question. The question is, how long should the file be retained, and what material should be retained in the file?

For some of us, microfilming is a very efficient way of addressing the problem of file retention. On the other hand, those who microfilm should keep in mind that the law does not allow certain documents to be microfilmed, *e.g.*, naturalization records and certificates of citizenship.

In addressing the problem, we should remember what our experience tells us, that the attorney's need to retrieve information from old files is minimal. In many cases, such files are more helpful to another attorney outside the firm or to a former client. All of us should agree that it is not the attorney's duty to serve as a depository for current or former clients.

Self destruction

Various procedures have been developed by attorneys over

the years in establishing a policy for file retention. Some firms mail a letter to the last known address of a client after a period of years (*e.g.*, six) and advise the client or former client that the file will be destroyed after five months if the client does not come to the office and pick up or otherwise take possession of the file. Another alternative often advocated is for the responsible attorney to analyze the contents of the file and reach a decision as to what should be retained, for how long, and then ultimately destroyed.

Ideally, the file should be constructed in such a way that it "self destructs"; that is to say, as each document is filed its destruction is predetermined at that time. Obviously, this is an ideal situation and, as a practical matter, likely never or almost never happens.

Some items can be destroyed as the file evolves. For example, some cover letters asking for information can be destroyed when the information is received. Letters notifying the client of the time and place of a deposition, for example, serve no purpose once the deposition has taken place.

FIGURE 1
Retention Schedule

Probate Claims & Estates	Excluding tax, 10 years after final judgment. Tax basis information—permanent.
Tort Claims (Plaintiff)	6 years after final judgment or dismissal, except when minor involved.
Tort Claims (Defense)	6 years after final judgment or dismissal.
Contract Action	3 years after satisfaction of judgment, dismissal, or settlement.
Bankruptcy Claims & Filings	6 years after discharge or payment.
Dissolution	6 years after entry of decree or dismissal, except when minor child-custody involved.
Real Estate Transactions	Subject to guidelines and tax needs, otherwise 6 years after termination of sale, foreclosure, or other completion of matter. Surveys and legal descriptions not of record are retained.
Leases	6 years after termination of lease.

Stripping

At the time the file is closed, the file should be stripped. All duplicate copies of materials in the file can be destroyed and many original documents returned to the client. Copies of depositions and other documents can be given to the client, obviating the need for the client to retain those items in the file.

Obviously, memoranda of authority may be valuable, but more appropriately belong in the attorney's brief bank. The object of stripping the file at closing is to rid the file of all nonessential and duplicate material, and to transfer all possible essential material to the client. There is no need to retain documents which the Court files contain.

On the other hand, the file should contain a record of the materials delivered to the client. In many instances, the attorney will want to keep a copy of the transmittal letter to the client advising the client of the duty of safekeeping.

At the time the file is being closed, the responsible attorney should determine how long the file is going to be kept before it is destroyed. The attorney will want to consider the following factors:

(1) applicable statute of limitations;
(2) age of majority of any minors;
(3) need for information in the future, *i.e.*, 706 tax return in order to determine income tax basis in future years and real estate legal descriptions which are not recorded;
(4) malpractice and business concerns, *i.e.*, recommendations to clients, warning letters and opinion letters;
(5) legally imposed requirements for record retention; and
(6) time requirements for appeal.

Set a schedule

Some firms destroy certain categories of files at the end of a fixed number of years, while others obviously retain stripped-down files permanently. Some firms establish categories plus permanent retention, *i.e.*, ten years, fifteen years, and permanent.

Depending upon your practice, variety of work (and, obviously), personal opinion and storage availability, the schedule will differ.

An illustrative schedule is provided in **Figure 1.** Once the attorney has determined how long a file should be kept, the file should be reviewed again at the time it is destined for destruction to make sure there has been no intervening event which would change its status.

Each file marked for permanent retention should be reviewed every ten to twenty years to again be sure that intervening events have not changed the retention need. Some attorneys think that if a file is to be retained permanently, the attorney should reduce to writing the justification for that fact and have that writing placed in the file.

Caselaw Capsules

Notes from the Academy

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

ADMINISTRATIVE LAW. Person who fails to request administrative hearing on order of revocation of driver's license based upon Habitual Traffic Offender's Act may not later collaterally challenge the action by seeking writ of mandamus. *Upward v. Department of Licensing*, 38 Wn. App. 747 (10/5/84).

—J. M. Vaché

COMMUNITY PROPERTY. (a) Ownership of group term life insurance is determined by character of most recently paid premium; *i.e.*, "risk-payment" theory applies. Inconsistent decisions overruled. (b) Ownership of proceeds, controlled by designation of beneficiary, is separate question from ownership of policy. Thus, allocation of all life insurance policies to husband in marriage dissolution did not itself affect designation of his former wife as named beneficiary, who therefore took half of the proceeds on his death. Other half went to surviving second wife, who took half because of her half ownership of the source asset (the policy) as community property. Rule established is that beneficiary designation will control, to extent it does not interfere with noninsured spouse's rights, unless [1] there is in the dissolution a clear indication that beneficiary designation of the then spouse is terminated *and* [2] there is actual change of beneficiary on policy within reasonable time that expires after one year, at which point there arises a conclusive presumption that insured intends named person to continue as beneficiary. *Practice note:* Counsel in dissolution action will now need to provide adequately not only for insurance policy but also for beneficiary designation and to follow up to be sure that consistent action is subsequently taken actually to change (or not to change) beneficiary designation. *Aetna Life Insurance Co. v. Wadsworth*, 102 Wn.2d 652 (10/4/84).

—H. M. Cross

CONTRACTS. In construction case in which contractor has partially failed to perform and has done defective work: (a) Appropriate measure of damages is cost of completion and replacement of defective items unless such cost is "clearly disproportionate" to value of benefit conferred. This measure is used in preference to difference between market value of land with performance as promised and performance as rendered. Restatement of Contracts (2nd) § 348 is approved. (b) Lower courts erred in holding that "public interest" requirement of Consumer Protection Act, RCW 19.86, excluded

application of the Act in such case. Suggestion on remand is that Act will apply in this private contract litigation if "inducement" and "potential for repetition" elements are present. *Eastlake Constr. Co. v. Hess*, 102 Wn.2d 30, 686 P.2d 465 (6/21/84).

—*L. V. Rieke*

EVIDENCE. In prosecution for statutory rape of 2½-year-old girl: (a) child's statements in response to question by her mother morning after alleged rape were not admissible under hearsay exception for excited utterances. (b) Same statements were admissible under RCW 9A.44.120. (c) This statute is proper exercise of legislative authority and does not infringe upon supreme court's power to govern admissibility of evidence by court rules. (d) Admission of these statements under that statute did not violate defendant's 6th-amendment right to confront witnesses, because child's inability to recall rape incident rendered her unavailable as a witness, and combination of circumstances showed her statements were likely to be reliable. *State v. Slider*, 38 Wn. App. 689 (9/24/84).

—*K. B. Tegland*

INSURANCE. Family-exclusion clause in homeowner's policy is not contrary to public policy. *Cf. Mutual of Enumclaw Ins. Co. v. Wiscomb*, 97 Wn.2d 203, 643 P.2d 441 (1982), which holds that family-exclusion clause in automobile policy violates public policy implied by financial responsibility act, RCW 46.29, which does not apply to homeowner's insurance. *State Farm Gen. Ins. Co. v. Emerson*, 102 Wn.2d 477, 687 P.2d 1139 (9/6/84).

—*W. B. Stoebuck*

LOCAL GOVERNMENT. (1) (a) Neither appointed hearing examiner nor administrative appeal bodies (here, a county council) has jurisdiction to consider claims of equitable estoppel in county's application of subdivision standards to particular parcels. (b) Due to inadequate record, trial court could not properly decide issue of equitable estoppel in certiorari proceeding. (*Comment.* A parallel proceeding on estoppel and tort claims is pending in Snohomish County.) *Chausee v. Snohomish County Council*, 38 Wn. App. 630 (7/16/84). (2) None of exceptions to public duty doctrine apply to police officer's failure to detain obviously intoxicated person, which failure allegedly caused serious injury to plaintiff, victim of intoxicated person's negligence. Thus, no legal duty was owed, and judgment on pleadings was properly entered. *Bailey v. Town of Forks*, 38 Wn. App. 656 (9/10/84). (3) (a) City may expand defenses available to tenant under Unlawful Detainer Act, and such defenses may be treated as affirmative defenses. (b) However, the particular defense here (that landlord may evict only if his reason is to make premises his personal residence) is an unconstitutional "taking." *Lee v. Sauvage*, 38 Wn. App. 699 (9/24/84).

—*J. M. Vaché*

REAL PROPERTY. (1) RCW 58.17.210 provides in part that purchaser of land that is sold in violation of platting requirements, or purchaser from that purchaser, may "rescind the sale or transfer and recover costs of investigation, suit, and reasonable attorneys' fees occasioned thereby." When a purchaser invokes this statutory rescission, court should apply equity's usual principles of rescission, so as to fashion tailor-made decree designed to restore parties to relative positions they would have occupied if no contract had ever been made. *Busch v. Nervik (Nervik v. Transamerica Title Ins. Co.)*, 38 Wn. App. 541, 687 P.2d 872 (8/14/84). (2) Easement of access across parcel *A*, appurtenant to parcel *B*, may not be used to gain access to non-appurtenant parcel *C* that adjoins parcel *B*, nor to serve a home that sits astride the *B-C* property line. An appurtenant easement may serve only the land to which it is appurtenant. Therefore, injunction will issue to prevent use of easement to reach parcel *C* or the home. *Comment.* This decision seems to be the first appellate decision in Washington on a fundamental question of easement law. The decision is sound and in accord with decisions in other jurisdictions. *Brown v. Voss*, 38 Wn. App. 777 (10/15/84).

—*W. B. Stoebuck*

Briefly Noted

Board of Governors elections due

Lawyers residing in the First and Fifth Congressional Districts, and in King County, please note:

Members of the Board of Governors of the State Bar to represent those districts, for three-year terms ending in 1988, are due to be elected this year. Expiring in September, 1985, are the current Board terms of Paul C. Gibbs (First District), Joseph P. Delay (Fifth District) and William L. Dwyer (King County at Large).

Article III of the Association By-Laws provides that any active member in good standing, except a member previously elected to the Board of Governors, may be nominated for the office of Governor from the district in which he or she resides upon petition signed by at least twenty but not more than thirty active members also residing in the district.

Nominating petitions may be obtained from the State Bar Office, 505 Madison Street, Seattle, WA 98104. The petitions must be filed with the Executive Director at the State Bar Office by 5:00 p.m. on Tuesday, April 30, 1985.

Justice Stevens and "Racehorse" Haynes in Poulsbo

U.S. Supreme Court Justice John Paul Stevens and Richard "Racehorse" Haynes in *Poulsbo*? That and more at the 1985 Convention of the Poulsbo Bar Association August 1.

"Voir Dire" is the theme of this year's program, approved for six CLE credits. The morning session will feature Paul N. Luvera, Jr., of Mount Vernon and Richard Johnson of Everett in a discussion and actual demonstration of voir dire of a civil jury. During lunch, Justice Stevens will speak. In the afternoon, well-known Houston defense attorney Richard "Racehorse" Haynes and a prosecuting attorney (name not yet available) will discuss and demonstrate voir dire of a criminal jury.

Justice Stevens will be presented the 1985 "Small Town Lawyer Made Good" award at a prime rib dinner that evening at the Sons of Norway Hall. Past recipients of this award are Washington State Supreme Court Justice Robert Brachtenbach, Paul Luvera, and Gerry Spence of Jackson, Wyoming. Remarks will be made by Jay Roof of Poulsbo, Mr. Haynes, U.S. District Judge Robert Bryan and Justice Stevens.

Class fees are $95.00 for attorneys and $25.00 for full-time judges. Dinner is $20.00 per person. To register, or for more information, contact Jeff Tolman, Jay Roof, or Mike Kirk at P.O. Box 851, Poulsbo, WA 98370, telephone (206) 779-5561.

Trial practice guide available for King County

A recent Seattle-King County Bar Association publication, *Guide to Trial Practice in King County* is now available. It features information about, and practice pointers from, most King County superior, district, and municipal court commissioners. Also included are the local rules for those courts and practice guidelines for preassignments and the ex parte, family law, and motions calendars.

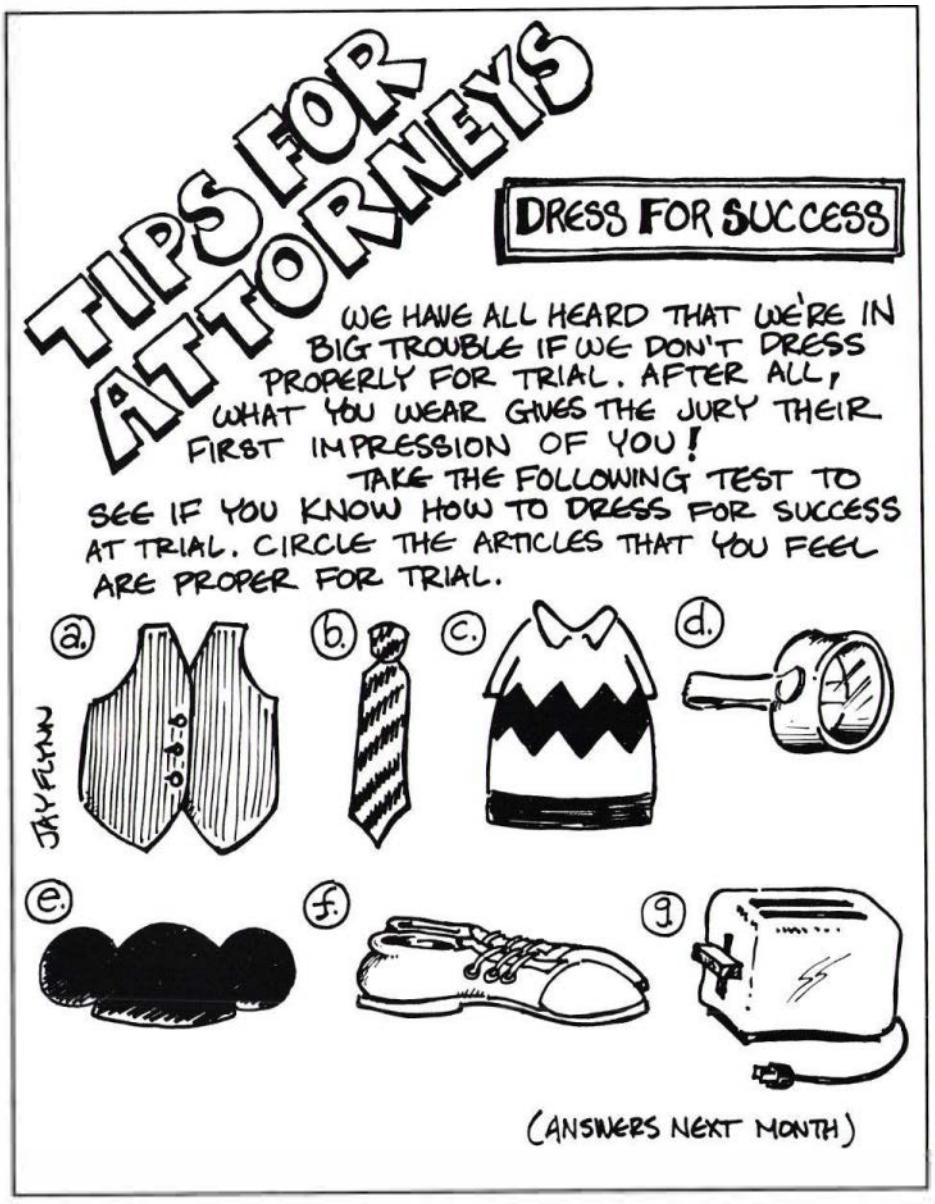
Presented in a three-ring binder for easy addition of amended court rules and other supplemental information, the book is priced at $20.00 plus tax and shipping. To order, or for more information, contact Cassie Short at the SKCBA office, telephone (206) 624-9365.

SKCBA Bankruptcy Section

Meetings of the Bankruptcy Section of the Seattle-King County Bar Association are held at noon on the second Tuesday of each month at the SKCBA Offices, 310 Central Building, Seattle. Interested persons are invited to attend.

The hour-long brown-bag lunch meetings feature speakers of interest to the insolvency bar, and many have been approved for CLE credit. Section membership dues are nominal, in addition to local bar association dues.

For more information, contact A. Stevens Quigley in Seattle, (206) 783-4100.



IN MEMORIAM

Retired attorney **Eugene O. Forest**, of Sequim, died November 27 at age 87. A 1928 graduate of Georgetown University School of Law, Mr. Forest was admitted to the Washington Bar in 1936.

DISCIPLINE

Suspended

Seattle attorney **R. Bruce McFarlane** has been ordered suspended from the practice of law for a period of 10 months, following dismissal of his appeal to the Supreme Court. The suspension was made effective June 22, 1984, by order of the Supreme Court. The suspension was based upon findings of neglect of a client's case, misrepresenting what he had done to the client, and failing to cooperate with investigations of two complaints against him.

CORRECTION

The December, 1984, *Bar News* included a notice of memoriam for the late Orland M. Christensen of Seattle. In that notice, Mr. Christensen's age at death was mistakenly given as 84, instead of 63. We apologize for our error.

Notices

NOTICES ADVERTISING

Professional: *WSBA Members only.* $35 per inch. Billed at publication.

Classified: Members—$20 for 25 words, each add'l 50¢. Nonmembers —$35 for 25 words, each add'l 75¢. Box number service—$5. Prepaid.

- Deadline 25th of each month for second issue following. No cancellations after deadline.
- Submit double-spaced typed copy (no phone orders) to Lorraine Wall, *Bar News*, 505 Madison, Seattle, WA 98104.

PROFESSIONAL

Matt L. Alexander welcomes your Workers' Comp. referrals. Many years experience as practicing attorney and former hearing officer in this field.

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

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The Interurban Building
157 Yesler Way
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Patrick McIntyre and Gerald R. Tarutis announce their availability for referral, consultation, or association in the representation of clients before the Washington State Office of Child Support Enforcement (OSE), or in related judicial proceedings.

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1928 One Union Square
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Douglass A. North announces his availability for referral, consultation, or association on appellate arguments and briefs.

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NOTICE TO ATTORNEYS

The State of Washington, Department of Corrections, intends to issue a request for proposal (RFP No. CORFP890) to those law firms or legal service associations interested in providing legal services to felony offenders committed to the custody of the Department of Corrections. Individual proposals may be submitted to provide services for any or all of the following three service areas:

1. Western Washington – North Area
   a. Washington State Reformatory
   b. Special Offender Center
   c. Twin Rivers Corrections Center
2. Western Washington – South Area
   a. Washington Corrections Center
   b. McNeil Island Corrections Center
   c. Purdy Treatment Center for Women
3. Eastern Washington – Mountain Area
   a. Washington State Penitentiary

Contractors will provide legal services to eligible inmates in the contracted service area. Representation will be for civil matters only. All attorneys that will provide legal services under these contracts must be active members of the Washington State Bar. Contracts shall be for the period of July 1, 1985, through June 30, 1987, and will contain an option of the Department of Corrections to renew for an additional two-year period. Contract awards are contingent upon funding by the state legislature.

Copies of the request for proposal may be obtained on or after February 15, 1985, by mail or in person, from the Department of Corrections, Office of Contracts and Regulations, at the following address:

Department of Corrections
Office of Contracts and Regulations, 410 West 5th, P.O. Box 9699, MS/FN-61, Olympia, WA 98504
(206) 753-5770

FOR SALE/WANTED

Books, furniture and stuff—Wn Reports 1&2; Wn Appellate; Wn Digest; Wn Shepard; AmJur 2d; ALR 1&2; 2 Designer Secretarial Desks; IBM Copier II; 4 Custom Design Filing Cabinets (4′ × 8′); Conference Table (8′), Chairs; 4 Reception Chairs, Table, Lamp—some or everything. (206)623-8390.

For sale: IBM/Westlaw 3101 Display Unit and 3102 Printer. Price—$2,300 or offer. Used very little. Call Jo Maedke at (509)754-2471.

Wanted immediately: One set of Federal Reporter 2nd. Please contact Terri or Nissa at (206)467-6709.

Digital word processor and printer. Model WS78-DE and LQP-78 120/60. For sale. Call Karen or Judy at (206) 842-5681 days.

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Prestige office available in new First Interstate Center for one to four attorneys in an 11-attorney suite. (206) 621-1103.

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

Office available: Watch the boats go by in this beautiful, Lake Union waterfront office. Secretarial service and reception available. Modern building, free parking. Call (206)323-1976.

Office space available—Pacific Building—720 3rd Avenue—Sound View—

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Bellevue: Two-person firm seeks two experienced attorneys to share beautiful suite. View of lake/Olympics. Must have established practice, preferably real estate, tax, business or civil litigation. Across from One Bellevue Center. Parking, secretarial space, receptionist, library, copier, and conference room. Available March 1. Non-smokers preferred. (206)828-6794.

POSITION AVAILABLE

Defense firm seeks trial attorney with three to four years experience. Compensation based on experience and qualifications. Many fringe benefits. Please send resume to Box 25, WSBA.

Yakima firm with practice limited to labor and employment law on behalf of management seeks associate to join growing practice. Experience would be helpful, but will also consider those with litigation experience. Send resume to Wilson & Lofland, 9 North 11th Avenue, Yakima, WA 98902.

Research attorney position: Active and intense Olympia litigation firm seeks part-time research attorney. No active litigation responsibilities are involved in this position and someone with an excellent writing and research background in the field of personal injury or professional liability law is encouraged. Law Review experience or qualification is preferred. Mimimum two years post-bar admission is required. Although a part-time position, office space and support personnel will be provided. Contractual negotiation preferred. Apply at P. O. Box 2009, Olympia, Washington 98507.

Experienced worker's compensation attorney for claimants' firm. All inquiries confidential. Resume or letter of introduction to Box 27, WSBA.

Anchorage office of Bradbury, Bliss & Riordan, Inc., seeks lawyer with two to five years litigation experience for employment with medium-size general litigation firm with emphasis in admiralty and fisheries law. All inquiries confidential. Please reply to Hiring Partner, Bradbury, Bliss & Riordan, Inc. 431 West

7th, Suite 201, Anchorage, AK 99501.

Deputy Prosecuting Attorney: Seeking felony trial attorney, three years experience, including felony trial work. Member of Washington State Bar Association. Salary: $30,288/yr, plus benefits. Send resumes to Clark County Prosecuting Attorney, P. O. Box 5000, Vancouver, Washington 98668.

Personal injury trial attorney for plaintiff law firm. You must be a winner. Resume only to 4905 Woodland Park North, #4, Seattle 98103. Inquiries treated confidentially.

Theodore M. Rosenblume, Charles Z. Smith & Associates, P.S., will be moving into larger quarters, and is seeking to expand the firm either by merger with a small firm or the addition of attorneys with at least five years experience in the following areas of practice: personal injury litigation, civil litigation, real estate and tax. Other areas of law will be considered. Reply to Box 28, WSBA.

POSITION WANTED

Successful solo practitioner with practice emphasizing bankruptcy, real estate and commercial transactions wishes to join or start small firm in Seattle area. All replies confidential. Please reply to Box 26, WSBA.

Former Navy Judge Advocate with 5½ years experience as general counsel and at trial and appellate levels, seeks position with Western Washington general practice firm. Admitted in Washington. Please reply to Box 29, WSBA.

Attorney, 3½ years experience, licensed in Alaska & Washington, presently living in Alaska, desires position in growth-oriented Seattle law firm. Broad range of experience including bankruptcy, commercial litigation, insurance defense. Reply to Box 30, WSBA.

WILL SEARCH

Anyone knowing location of will of Ellen E. Davies, please contact Paul Alvestad in Tacoma, (206)627-1181.

Will of Audra Pearl Cox sought by W. L. Delbridge, Attorney, 148-C S.W. 153, Seattle, WA 98166. (206)244-4200.

MISCELLANEOUS

Hayden Lake, Idaho, waterfront home. House plus bunkhouse sleeps ten. Available May through September. Two week minimum. Includes Century ski boat. May and September $500/week. June, July, August $750/week. A great vacation! Phone (714)644-2119.

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