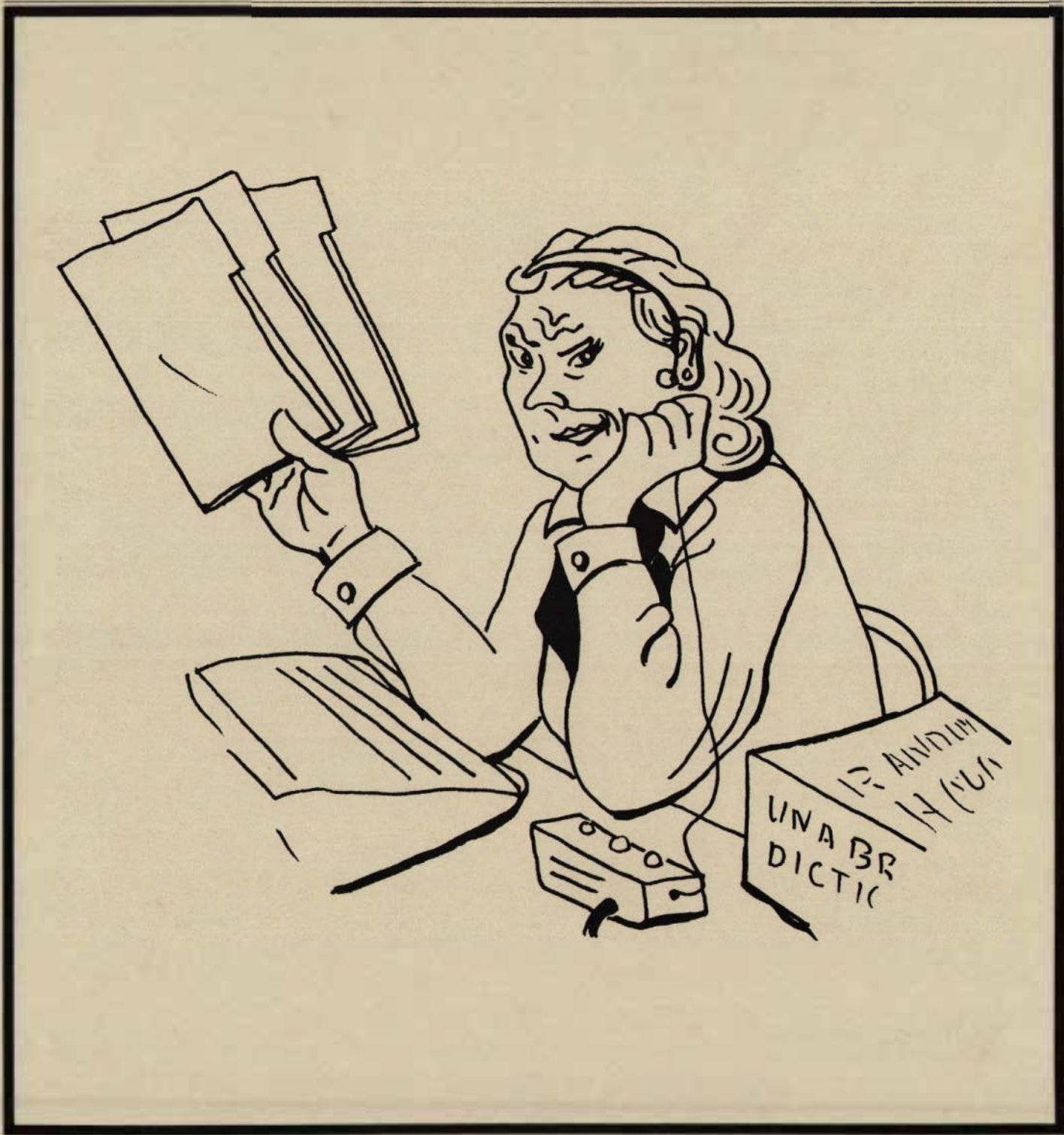


Washington State **Bar News**

Vol. 39, No. 6, June 1985



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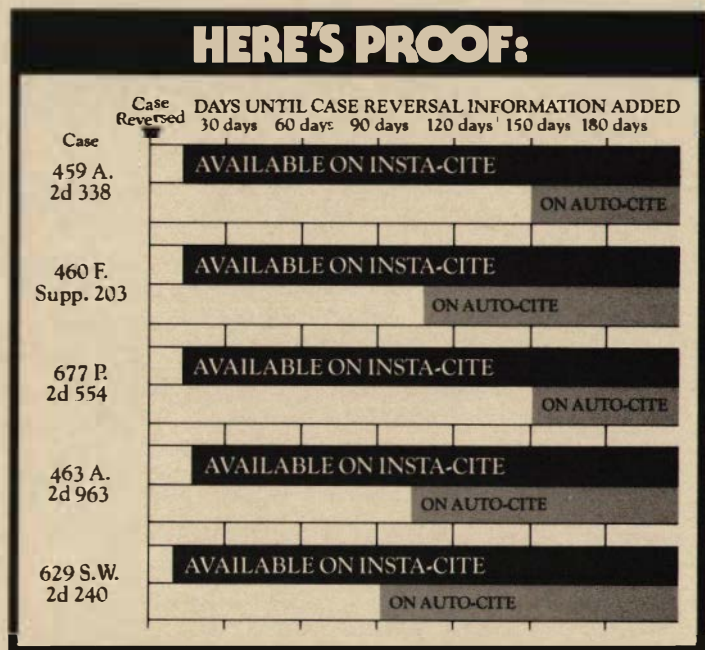
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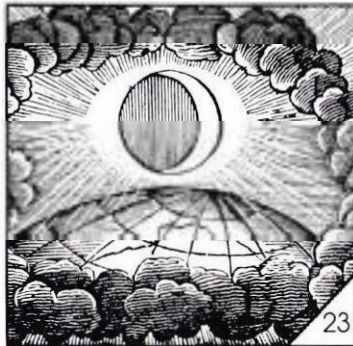
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ART CREDITS

COVER: Artist Rosalie Barreca of Friday Harbor and Seattle knows the frustrations of law. Her father Joseph and brother Mark are lawyers, brother Jeff is WSBA auditor.

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

### Credit for Jurisprudential Communications

Editor:

I work for the direct mailing bureau that mails the *Bar News*. I find the *Bar News* a truly educational publication. I learned more about my divorce from it than I did from my lawyer.

I'm sorry to see editor Steve Reisler go. I doubt that you as his successor can adequately replace him, even with your language qualifications and similarity of hair style.

I noted, however, an apparent lack of applicants for the job of editor. I infer this from the fact that Steve edited an additional four issues after the initial announcement, from the plea for applicants in the January issue, and from the Board's "upping the ante" by raising the monthly stipend.

Since this may be a problem for future editors and Boards, and since specialization is currently under much discussion, I have a suggestion to increase the future applicant pool.

Give the *Bar News* editor, in lieu of financial honorarium, fifteen CLE credits for each quarter she serves as editor. These credits would only be received after finishing one full year in the position.

Forty-five of these CLE credits would be in the specialized field of "jurisprudential communications." This is admittedly a field with infrequent litigation. But who would be more qualified as a specialist in matters arising from articles in the *Bar News* than a past editor?

The final fifteen CLE credits would be "wild cards," applied to any specialty the editor chose.

This means that a (young) attorney could become a specialist in *any* field of her choosing (meeting the proposed 45 CLE credit minimum) merely by serving three years as *Bar News* editor.

Since young lawyers have expressed concern that they may not be able to

meet the specialization requirements under normal circumstances, the Board should have a flood of applicants from which to choose.

NOEL NYMAN  
Seattle

### Peculiar Practice

Editor:

The Superior Court of King County needs to be congratulated! Its rules are obviously designed to discourage those who don't know the special King County game plan or are too poor to afford the added costs of litigation from asserting their rights. This works a special hardship on sole practitioners and small firms, but the bar association and court administrators don't worry about them anyway.

Recently, I requested a two-month continuance of a divorce trial so the parties could get counseling and see if the marriage could be saved. Since continuances cost \$60,000 a year, it was denied. Isn't one marriage worth a mere \$60,000? Not to our court administrators.

On April 9, I was set for a Summary

Judgement Motion. Due to court congestion, it was not heard and was continued to April 22. Again, I was refused a hearing due to court congestion. I was also informed that the information copies I had prepared for the April 9 hearing (required by King County rules) had been destroyed and that I would have to submit a new set at least 14 days before the hearing date.

For 15 years, I have attempted to defend this court's practices, which seem to be aimed at out-of-county attorneys and out-of-state witnesses. King County does publish its court rules in the West's Court Rules manual annually, and its employees are always helpful and willing to go the extra mile for attorneys and *pro ses*; unfortunately, the administration is not.

I'm sorry, but I can no longer justify the "peculiar practice" in King County to fellow attorneys. To the many court employees who have helped me and others, I hope that the courts can be made useful again so that your good services are not in vain.

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## Outside Counsel for the Public Interest

The time has come for the Board of Governors to adopt a rule authorizing appointment of special counsel to represent "the public interest" in reinstatement matters. Without appointment of an outside attorney to represent an interest adverse to the petitioner's, the truthfulness of evidence cannot be meaningfully tested or fully aired at hearings before the Board of Governors or the Supreme Court. Fortunately, such a proposal is currently before the Board of Governors for discussion.

The Rules for Lawyer Discipline, effective January 21, 1983, made admissions proceedings open to the public. The first case to fall under the new rules was Gordon Walgren's petition for reinstatement. Lay and law,

preteens and pensioners, a blind man and dozens of sighted persons crowded into the Temple of Justice on April 16, 1985, to hear oral argument before the Supreme Court. The first speaker was the petitioner's attorney. He expounded on his client's character and integrity. The second and final speaker was Bar counsel. He recited that the Board of Governors, after a full, open hearing which had included the presentation of witnesses and documentary evidence, had voted 7-2 in favor of readmission.

That was it. But, something was missing. *There had been no one at the hearing to represent any adverse position.* For those of us raised on the adversary process, this was a clear deficiency. Why was it missing? Be-

cause no procedure provides for it.

The Supreme Court asked blunt questions. It seemed that the justices had taken upon themselves the responsibility of advocating this opposing or adverse position. How should the public interest be defined, they wondered. Who speaks for it? How should public sentiment be measured? Are 150 letters produced by petitioner an accurate indication of public opinion? Should letters to the editor appearing in Washington newspapers be tallied?

Appointing outside counsel to act in opposition to a petitioner—to cross-examine witnesses and test the evidence—makes sense. Before another reinstatement matter casts a shadow on the appearance of fairness of the process, the Board of Governors should adopt a rule authorizing appointment of special counsel.

## Intercircuit Panel in the Works?

"Why don't we realize that just as we need more police and courts to deal with automobile traffic than we did 75 years ago, we need an Intercircuit Panel to deal with the avalanche of cases coming to the Supreme Court?"

The speaker is no less than the Chief Justice of the U.S. Supreme Court, and he wants to know what we think. In the April 1985 issue of the *ABA Journal*, Warren Burger calls for the creation of an Intercircuit Panel for a five year experimental period. The panel would have far-reaching implications for the practice of law, as it would significantly reduce the number of cases which reach the Supreme Court.

The panel would be composed of nine judges—one from each of the 13 courts of appeal, with four sitting in reserve. Designed to assist the Supreme Court with its burgeoning caseload, the panel, which would use senior judges and presently sitting judges, would sit in Washington, D.C., for two-week sessions twice a

year. Cases involving inter- and intra-circuit conflicts and interpretation of federal statutes could be referred by the Supreme Court to the Intercircuit Panel.

Is it needed? When Chief Justice Earl Warren's first term began in 1953, says Burger, there were 1,463 cases on the docket. For the term ending July, 1984: 5,100 cases. Written opinions during Warren's first term: 65. More than 150 written opinions for each of the two most recent terms. (Interestingly, this means that 50% fewer cases today receive a written opinion than in the days of the Warren Court: 3 percent today vs. 4½ percent then.)

When Grover Cleveland was elected president, there were 55 U.S. district court judges, nine U.S. circuit judges, and 39 state supreme courts. Today 758 district judges, 226 circuit judges and 27,000 state court judges decide cases subject to possible review by the Supreme Court.

From 1960 to 1983, civil cases filed in the U.S. district courts increased

from 60,000 to 240,000. And federal appellate decisions increased from 3,713 to 28,660.

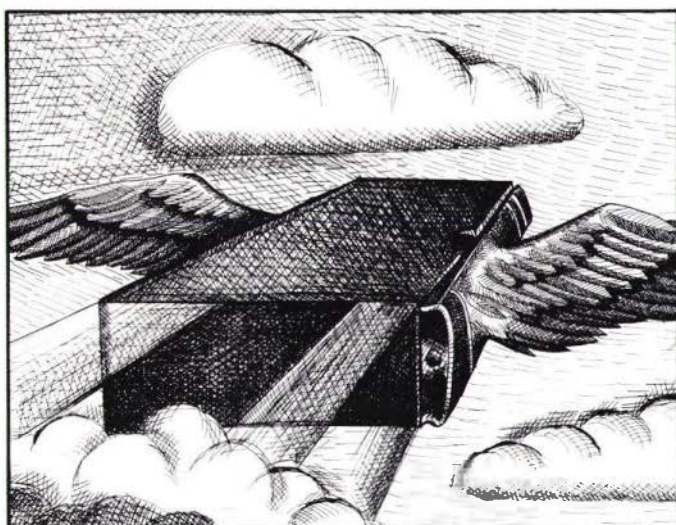
To allay the fears of the fiscally anxious, Burger says that the panel would create no new bureaucracy or costs except for the judges' travel expenses. No new courthouse or courtroom. No permanent clerk.

Special panels are nothing novel, says Burger. He mentions special prosecutors, the Temporary Emergency Court of Appeals, Multi-District Litigation Panel, and two Foreign Intelligence Surveillance Courts. And the Supreme Court's long use of special masters.

"The Intercircuit Panel is of such great importance to the work of the Supreme Court—and to the country—that I urge you to let your views be known to the Congress," says Burger. Earning our livings as lawyers depends on our speaking up. Read the April issue of the *ABA Journal*. Let Congress know your view—whatever it is.

Carole Grayson

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## An Invitation to The Best of Annual Meetings

This month I would like to do a little selling—a "pitch," so to speak. In September the 1985 Annual Meeting of the Washington State Bar Association will be held in Seattle. If you are not yet planning to attend, please let me talk you into doing so.

We have not had an Annual Meeting in Seattle since 1971. The Board of Governors, in selecting sites five to six years in advance, has shied away from Seattle because a great many Washington lawyers practice in the greater Seattle area and having such an affair on home ground would perhaps present little appeal. Vancouver, B.C., and Spokane have been quite popular as most lawyers attending in those cities are away from their offices and are able to concentrate on meeting activities. There has always been a fear that the typical Seattle lawyer would end up spending most of his or her time in the office and many would simply not even register for the meeting.

Times have changed—and so has Seattle. It no longer provides first class accommodations through only two or three hotels. There are many new, luxurious hotels in town, as well as excellent restaurants and meeting

facilities. Since 1971 Seattle has become a beautiful, tourist-oriented city and it is now considered a top-choice site for meetings such as ours. Many interesting and exciting activities are available. Simply stated, it is a great place to live and also to visit.

John Michalik and his crew have put together a great program for the 1985 meeting. The initial brochure on this event was sent to all of you in mid-April. That included a registration form and a review of the planned activities. Each of the three luncheon speakers, Merlin Olsen, Charles Renfrew and Frank Cappiello, will be both entertaining and informative. Steve Landesberg, who will top the Friday evening show, is one of the most popular comedians on the scene today. The CLE programs will be of the highest quality and there will be plenty for everyone. The runners, golfers and tennis players will find the competition great and the facilities excellent. This should be one of the best Annual Meetings ever—if not the best.

My "pitch" is mainly directed to the many lawyers who practice in the greater Seattle area. I assume that those who practice outside of that area



and who frequently (or regularly) attend Annual Meetings will be on the scene again this year. I hope that everyone, regardless of where he or she is situated, will remember that these meetings afford each member of our Association not only an opportunity to participate in the business meeting portion of the program but also to renew old friendships, to establish new ones and to "really get the feeling" of belonging to one of the finest professional organizations in existence. The principal emphasis of the meeting this year will be Professionalism. From one professional to another, how about joining me at the Seattle Sheraton between September 11th and 14th? Send that registration form in now!

*Lee Laughlin*



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# Coming Attraction:

by Daniel M. Caine  
and D. Gordon Willhite

The Greek mythological figure Sisyphus was destined for eternity to roll a heavy stone up a steep hill and never reach the top, for the stone invariably rolled back to the bottom. Perhaps a similar fate awaits bankruptcy judges and practitioners who are again destined to push the increasingly burdensome rock of jurisdiction up a hill strewn with historic, emerging and (often) conflicting concepts. It seems appropriate that the genesis of this latest bankruptcy jurisdictional problem should have been named after a Greek town.

Perhaps no bankruptcy case has achieved such notoriety as the United States Supreme Court's *Marathon*<sup>1</sup> decision. The basic issue involved the expanded jurisdiction given bankruptcy judges under the Bankruptcy Code enacted in 1978 as Public Law 95-598 ("Public Law"), effective October 1, 1979. *Marathon* declared the expanded jurisdiction granted to the new bankruptcy judges to be unconstitutional. These Article I judicial officers did not possess lifetime tenure and were not free from possible salary diminution during their appointed terms. Accordingly, the Supreme Court held that such judges could not decide cases involving purely state law issues related to the bankruptcy proceeding only because one of the parties was the debtor.

---

*Daniel M. Caine practices law in Seattle with Merkel, Caine, Jory & Donohue. D. Gordon Willhite is a resident of Mercer Island.*

---

<sup>1</sup>*Northern Pipeline Construction Co. v. Marathon Pipe Line Company*, 458 U.S. 50 (1982).



The ultimate crisis had been foretold by some scholars and commentators before the enactment of the new Code. They urged that the bankruptcy referees be given the status of judges under Article III of the U.S. Constitution in order to avoid jurisdictional infirmity. However, the new judges were only accorded the status of Article I judicial officers, a fact not changed by the recent Bankruptcy Amendments and Federal Judgeship Act of 1984 ("1984 Act").

Mindful of the sweeping implication of its action, the U.S. Supreme Court stayed the effective date of *Marathon* until October 4, 1982. This is significant, for a basic grant of subject matter jurisdiction was struck down. The Supreme Court later extended the stay through December 24, 1982, but declined to extend it further while Congress vainly wrestled with a resolution to the *Marathon* decision.

The bankruptcy courts were kept in business by the federal district courts' adoption of an Emergency Rule by which district judges automatically re-

ferred pending and future bankruptcy proceedings, and cases arising in or related to those proceedings, to the bankruptcy judges in each of their districts. The constitutionality of the Emergency Rule, attacked as an improper delegation of the powers of the Article III judges, has been upheld by every circuit which has considered it.<sup>2</sup> The Emergency Rule expired on July 9, 1984, just as the 1984 Act became effective.

The issue of whether the bankruptcy judges should be elevated to Article III status was widely reported in the press.<sup>3</sup> Congress was caught up

---

<sup>2</sup>*In Re White Motor Corp.*, 704 F.2d 254, 263 (6th Cir. 1983); *In Re Braniff Airways*, 27 B.R. 231 (N.D. Tex. 1983), *aff'd per curiam* 700 F.2d 214 (5th Cir. 1983), *cert. denied* \_\_\_ U.S. \_\_\_, 103 S. Ct. 2122 (1983); *In Re Kaiser*, 722 F.2d 1574, 1581 (2d Cir. 1983); *In Re Hansen*, 702 F.2d 728 (8th Cir. 1983), *cert. denied* \_\_\_ U.S. \_\_\_, 103 S. Ct. 3539 (1983); *In Re Landmark Capital Company*, 742 F.2d 1166 (9th Cir. 1984), *op. withdrawn* 745 F.2d 1266 (1984).

<sup>3</sup>Alice had never been in a court of justice before, but she had read about them in books.

# MARATHON II

in the debate, and, in characteristic fashion, took an inordinately long period of time to formulate a non-resolution of the issue. The 1984 Act retains Article I status for the bankruptcy judges and purports to enumerate the specific matters which are within their "core proceeding" jurisdiction, *i.e.*, matters which are basic to the administration of the bankrupt estate.

Cases are now flooding the advance sheets with interpretations of the phrases "arising under," "arising in" and "related to," and with applications of the concepts of mandatory and permissive abstention. Threshold questions dealing with the nature of proceedings, scope of jurisdiction, and proper venue again abound. One case has even included a helpful chart to assist in separating the terms and issues.<sup>4</sup> Suffice it to note that the "shape of the table" which consumed enormous judicial time and legal energy and expense under the former Bankruptcy Act has returned.

## Establishment of the United States Bankruptcy Court

Title II, Section 201, of the Public Law created a new "court of record to be known as the United States Bankruptcy Court. . . ." (Codified as Title 28, Section 151(a), U.S.C.)

Section 404(a) of the Public Law continued the existence of the "courts of bankruptcy" under the former Bankruptcy Act,

... through March 31, 1984, to be the courts of bankruptcy for the purposes of this Act. . . .

and she was quite pleased to find that she knew the name of nearly everything there. "That's the judge," she said to herself, "because of his great wig." *The Annotated Alice*, p. 144, Bramhall House, New York, 1960.

<sup>4</sup>*In re Loren*, 45 B.R. 584, 588 (N.D. Ala. 1984).

Each of the courts of bankruptcy so continued shall constitute a separate department of the district court that is such court of bankruptcy under the Bankruptcy Act.

Section 405(a)(1) of the Public Law is the omnibus reference provision for "[a]ll cases commenced under title 11

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***Are we destined to forever push this burdensome rock of jurisdiction up a hill strewn with conflicting concepts?***

---

of the United States Code during the transition period. . . ." It also provides that the bankruptcy judges may exercise the jurisdiction and powers conferred "on the courts of bankruptcy" by subsection (b) of section 405. This subsection incorporates the jurisdictional amendments made to Title 28 (including infamous § 1471) by Section 241 of the Public Law. This would encompass the "arising in or related to" jurisdictional basis which was under attack in *Marathon*.

## The Judicial Appointment Process

Section 152 of Title 28, U.S.C., originally to have been effective as of April 1, 1984, called for Presidential appointment of bankruptcy judges. However, due to fallout from *Marathon*, this presidential appointment process never occurred.

The amendment to section 152 of Title 28 made by the 1984 Act now calls for appointment of bankruptcy judges by the United States court of appeals for each circuit (§ 104(a)(1) of the 1984 Act). This section of the 1984 Act did not become effective until July 10, 1984.

The appointment process includes consideration of recommendations of the Judicial Conference and of the Director of the Administrative Office of the United States Courts. *See* Title 28, § 152(a)(1) and (b)(1). However, as far as the authors are aware, the newspaper "tombstone ad" soliciting applications for certain vacant bankruptcy judgeships did not appear until substantially after the effective date of the 1984 Act.<sup>5</sup> There is speculation that the permanent appointments for all bankruptcy judges will be accelerated, perhaps to minimize the time frame of any uncertain status.

Section 121(e) of the 1984 Act extended the terms of judges serving on June 27, 1984 (the end of the transition period), until the end of the day the 1984 Act was enacted, July 10, 1984. Section 106(a) seems to extend, at least until October 1, 1986, the terms of those bankruptcy judges "serving" on July 10, 1984. It is imperative to the viability of the entire scheme that § 121(e) be valid, and that it permit the extension, *nunc pro tunc*, not just of the judges whose terms had expired June 27, 1984, but of the judges whose very court had ceased to exist on that date.

The transition period was not extended beyond June 27, 1984. Accordingly, the new United States Bankruptcy Courts were fully effective as of June 28, 1984, *i.e.*, after the end of the transition period . . . but this new court had no judges.

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<sup>5</sup>*See The National Law Journal*, October 8, 1984, p. 34.

President Reagan signed the 1984 Act, passed by Congress June 29, on July 10, 1984. Bankruptcy lawyers will remember that the bankruptcy courts in Western Washington were dark for several days in July, 1984. At that time, the Administrative Office of the U.S. Courts had suspended the salaries of the bankruptcy judges,<sup>6</sup> in

the belief that the 1984 Act was unconstitutional.

It is entirely possible to read the amendments made by the 1984 Act to section 404(b) of the Public Law and miss the real flavor of the facts existing when amendments were enacted. Section 121(b) of the 1984 Act apparently "continues" the courts of bankruptcy to

July 9, 1984, the day before enactment of the 1984 Act. For this provision to have any meaning, it must be implicit that the "courts of bankruptcy" did not terminate on June 27, 1984, when the transition period under the Public Law expired. It would be difficult to find congressional intent for the former "courts of bankruptcy" to co-exist with the new "court of record"; yet this fiction is precisely the basis for the present power of the sitting bankruptcy judges. The new U.S. Bankruptcy Court has been recognized to be a "separate court" from the U.S. District Court.<sup>7</sup>

The U.S. Bankruptcy Court was short-lived. It expired when the 1984 Act was enacted. One may contend that the 1984 Act validly "continued" the "courts of bankruptcy . . . existing on September 30, 1979 . . ."; but this is made neater if the hiatus occurring between June 27, 1984, and July 9, 1984, is conveniently avoided. In fact, this is a complicating factor that the 1984 Act drafters as well as Congress itself seemed pleased to sidestep.

#### Follow the Shifting Courts

Section 104(a) of the 1984 Act provides in part that "(i)n each judicial district, the bankruptcy judges in *regular active service* shall constitute a unit of the district court to be known as the bankruptcy court of that district." (Codified at 28 U.S.C. 151). (Emphasis added.) Does this refer to those sitting in fact, or those to be appointed pursuant to the statutory procedure previously discussed?

If the amendments made by the 1984 Act are sufficient to breathe new life into the "courts of bankruptcy" which should have expired as of June 27, 1984, then perhaps the continued referees from those courts could serve until their successors are duly appointed. However, even as amended by the 1984 Act, the courts of bankruptcy were to continue only "through the day before the date of enactment of the [1984 Act] . . ." (See section

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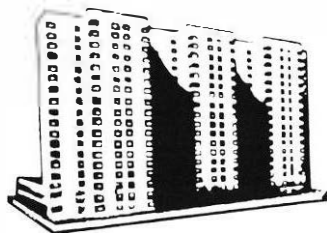
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<sup>6</sup>See *The Wall Street Journal*, July 12, 1984, p. 26.

<sup>7</sup>*In re Long*, 43 B.R. 692, at 694 and 696 (N.D. Ohio 1984).

404(a) of the Public Law as amended by section 121(b) of the 1984 Act.)

A line of cases is now developing dealing with claims that the 1984 Act's provisions are themselves unconstitutional under *Marathon* and other standards.<sup>8</sup>

---

**A line of cases is now developing dealing with claims that the 1984 Act's provisions are themselves unconstitutional.**

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*In re Benny* reviewed the legislative history of the Bankruptcy Code and the *Marathon* decision and its congressional aftermath. The debtors in the proceeding had challenged the constitutionality of the 1984 Act. The *Benny* court noted that the debtors' "sole ally" is the Department of Justice of the United States. . . . The "proponents" of constitutionality were the trustee, the United States Senate and the Speaker and leadership group of the House. The debtors contended that the term of all bankruptcy judges expired on June 27, 1984. The District Court for the Northern District of California disagreed:

The holdover provisions of the 1978 Act (herein the Public Law) expressly authorized bankruptcy judges to serve beyond the expiration of the transition. As *offic holders* on July 10, 1984, pursuant to the holdover provisions of prior law, the bankruptcy judges were properly continued in office, by Section

106(a), without reliance on any retroactive application of Section 121(c) of the 1984 Act. (Emphasis added.)

(The reference to the holdover provision was to subsections 404(b) and (d) of the Public Law, as amended.) *Benny* determined the clause in section 404(b) ("or when his successor takes office") to be the real limit on the judicial terms. Section 404(b) of the Public Law "manifests Congressional intention to incorporate a holdover provision to insure continuity of service at the expiration of the transition period," said the court.

The opinion goes further to hold that even if the terms of offices of bankruptcy judges did expire on June 27, 1984, "the legislation is nonetheless valid as a permissible retroactive extension of bankruptcy judges' terms, and is not an invalid legislative appointment." (Emphasis in original.) *Benny* also makes a policy statement:

Certainly, Mr. Justice Jackson's formulation confirms that the need for "a workable government" justifies the retention of interim or transitional bankruptcy judges to preserve the bankruptcy system despite the passage of less than two weeks

from the expiration of the 1978 Act until the enactment and effectiveness of the 1984 Act.

The court seems to be saying that the consequences of finding that the judges are not validly appointed are too terrible even to contemplate. Ironically, the United States Supreme Court was not of a similar persuasion when it declined to extend its stay of the effectiveness of *Marathon* beyond December 24, 1982. Neither *Benny* nor any other case to date has focused upon the nature of the bankruptcy court, but only upon the various provisions dealing with the judges' terms.

#### Conclusion

Great tolerance has been shown by the courts for the bankruptcy system. Although the U.S. Supreme Court finally ran out of patience, the district and circuit courts allowed the system to continue with emergency rules which were seriously suspect.<sup>9</sup> We can expect no less effort to preserve the existing system until the issues again reach the Supreme Court. Only then will we know whether *Marathon* will be revisited. □

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<sup>9</sup>Countryman, "Emergency Rule Compounds Emergency," 57 Am. Bankr. L.J. 1 (1983).

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<sup>8</sup>*In re Benny*, 44 B.R. 581 (N.D. Cal. 1984); *In re Long*, *supra*, n. 7; *In re Smith-Douglas, Inc.*, 43 B.R. 616 (E.D.N.C. 1984); *In re Mitco, Inc.*, 44 B.R. 35 (E.D. Wis. 1984).

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# Why the CLE Board Should Allow Credit for Self-Study

by Douglas Shaw Palmer

Lawyers licensed to practice in Washington State must complete at least 15 credit hours per year of continuing legal education (CLE), as approved by a CLE Board, on pain of losing their licenses. So ordered our Supreme Court eight years ago in Rule 11 of its Admission to Practice Rules.

CLE Regulation 104 allows lawyers to earn CLE credits only by sitting in a captive audience listening to a lecture or watching a movie of which the Board approves, and for which the lawyers usually have to pay a substantial fee.

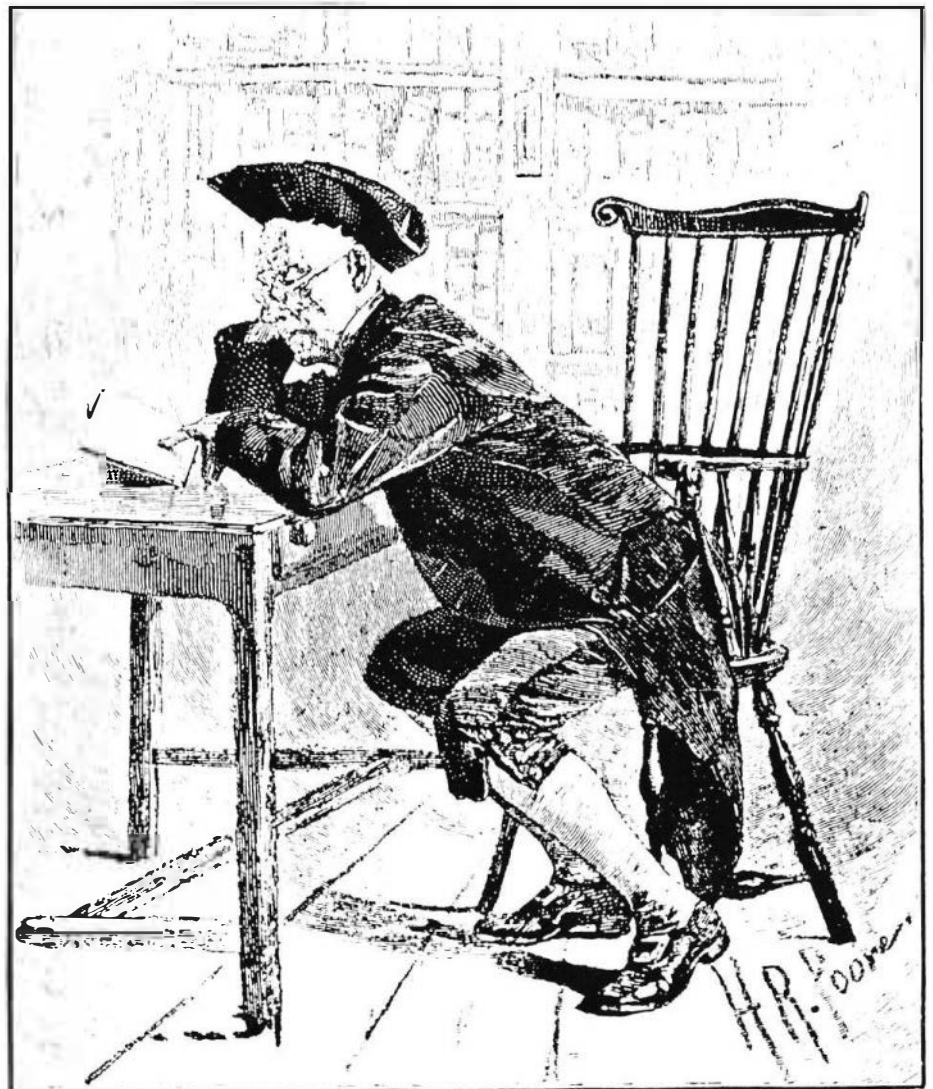
Although it seems incredible, the CLE Board refuses to give credit to lawyers for the most effective and least expensive kind of continuing legal education: self-study with printed materials such as court reports, treatises, periodicals, *etc.* These are the life blood of legal education in law school and thereafter through one's career. When a lawyer has a legal question in his practice, he *may* go to a lecture but he *always* goes to his books. Lectures may provide emotional uplift and mental stimulation, but the speaker's words and the details of his ideas are usually lost before the listener leaves the hall. In contrast, the printed word is available to be checked and reviewed whenever the lawyer wishes.

It would be easier to maintain a high standard for the printed legal material that might be approved for CLE self-study credit than it is to maintain a high standard for lectures. Examina-

tion of published materials by lawyers could separate wheat from chaff. With lectures, on the other hand, approval is always given in advance. This means that the approvers are always buying "a pig in a poke." This shows up in the uneven caliber of the lectures, which range from outstanding to embarrassing. Approval has even been given to

lectures not even billed as educational but as humorous.

The case for awarding CLE credit for self-study is so compelling that one wonders why our CLE Board has clung to its Regulation 104 outlawing credits for self-study. We must remember that the impulse behind mandatory CLE was not to improve the competence of the Bar, or else mandatory CLE would have been adopted long before. The force behind mandatory CLE was fear—fear that the legislature might impose its own brand of continuing legal education on the Bar. To head off this horror, the Board of Governors, encouraged by the Bar's CLE staff, proposed that the Bar run its own mandatory CLE under the wing of the Supreme Court. This matter was discussed for a year and a half



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Seattle attorney Douglas Shaw Palmer has been in practice since 1954.

before the Supreme Court adopted mandatory CLE in its Rule 11 on November 29, 1976. The decision proceeded at full speed: Rule 11 and mandatory CLE went into effect on January 1, 1977, and lawyers had to start earning their required CLE credits in 1977.

The members of the new CLE Board who assumed office in January, 1977, were under enormous pressure to produce a regulation spelling out what education would receive CLE credit.

The CLE staff happened to have in its file Regulation 104, all ready to go. It allowed CLE credit only for attending lectures or movies with a teacher present, and denied credit for self-study. The Board members, acting within three weeks of their appointments, and in a haste unusual for such an important matter, received Regulation 104 gratefully, and adopted it.

The Bar was not told that the CLE Board had decided on credit-only-for-lectures until long after both the CLE Board and the Governors had endorsed Regulation 104 and lodged it

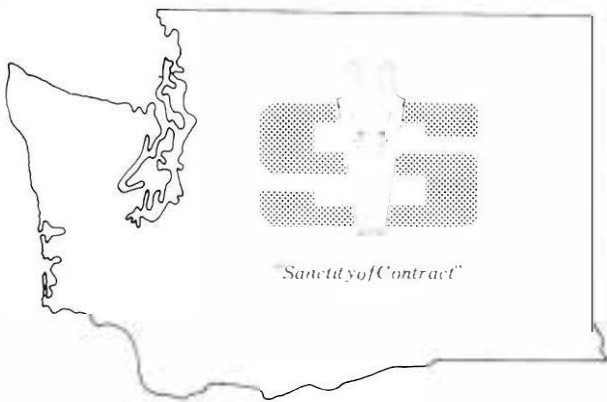
with the Supreme Court for the final seal. By then it was too late to ask for credit for self-study. The Court said the matter was in the hands of the CLE Board, which would be open to change. The Board said its credit-only-for-lectures regulation had already been approved by the Court.

The 13,000 Washington lawyers probably average \$180 each to attend Board-approved lectures and movies during the year. That means a CLE revenue of some two million dollars a year. If CLE credit were awarded to lawyers for self-study—for reading court reports, treatises, periodicals, *etc.*, and for viewing and listening to video and audio tapes on their own—CLE revenue would be sharply curtailed. Moreover, non-lawyer CLE staff would be left with little to do in connection with self-study. Volunteer committees of lawyers could assess the legal caliber of the material that would qualify for self-study credit.

The sums we pay to attend CLE lectures, and the impressive attendance and course figures, may give the illusion of an effective legal education

program. We lawyers know the truth. Because lectures are now the only way to earn CLE credits, most of us, at one time or another, attend lectures in which we have no interest. At the lecture hall, one can see boredom, drowsiness, doodling or writing on non-CLE matters, and "outside" reading. Small wonder that CLE lecture halls are scarcely the arenas of educational energy that one sees at the medical school or the law school. Small wonder, when lawyers are deprived of the right to earn credit by the most natural and effective method. Self-study would allow us to go directly to treatment of a problem that matters to our practice.

Does the CLE Board deny CLE credit for self-study because it mistrusts us? If lawyers were free to earn CLE credits in independent study, some of the annual affidavits we send in each January might be make-believe. By confining credits to sitting in a hall listening to a speaker or watching a movie, it is possible to take attendance and to check on what lawyers put in their affidavits of attendance.



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Yet, as we all know, this check is rarely if ever made, and lawyers take advantage of it. Some turn in affidavits claiming attendance at lectures without having gone to them. A sign-up sheet at lectures is supposed to prevent that. Some lawyers pay the fee to attend a lecture and fail to appear, or do appear but leave after signing the attendance sheet. Who hasn't seen how the audience at a lecture dwindles as the hours go by?

The present system of CLE credit by affidavit allows lawyers to cheat, if they are so disposed, without any greater penalty than a guilty conscience. The perjury would be no greater if lawyers were allowed credit, on their affidavits, for self-study.

There is, of course, one benefit that captive CLE provides that self-study does not, at least for more affluent lawyers. Going to lectures and movies can bring a tax break for a holiday: a deduction on their income tax returns for their travel expenses to, and hotel bill in, an exotic setting—a CLE program in Mexico, perhaps, or cruising down the Danube. Less affluent lawyers have a difficult time paying the fees for lectures given in a hotel a block away from the office.

Rumor has it that the CLE Board has some concern for the plight of small-town lawyers who have to travel considerable distances to attend CLE lectures. Some small-town lawyers asked for the right to earn CLE credits by watching video tapes. This solution works well in Montana, where lawyers can earn all 15 credits required annually by watching approved video films, and up to five hours of CLE credits by listening to approved audio tapes. The Montana Bar office and the State Library mail such tapes to lawyers for a handling fee of \$5 per tape. Montana lawyers file the same type of annual affidavit as we do in Washington. Montana lawyers list video and audio tapes on the affidavit just as they would a lecture.

Montana does not restrict CLE credit because of where the lawyer views or listens to a tape, at home, in the office, or anywhere else. Washington regulation 104(f), in contrast, does not allow credit if the viewing takes place at home.

Allowing CLE credit for audio and video tapes viewed or listened to in a program of self-study—wherever conducted and without having anyone else present—is sensible and long overdue. But credit-earning self-study should not be confined to use of new-fangled screens and earphones. It should include the reading of legal materials that are the structure and

content of the world of law.

The Board should review its policy and allow CLE credit for the solo self-study of legal materials—written, audio and video—approved by the Board. After eight years of experience, the Board ought to be able to amend Regulation 104 as swiftly as it was adopted. I propose that Regulation 104(f) be amended to read as follows:

**AMENDED REGULATION 104**

(f) One hour of credit shall be awarded for each hour of self-study consisting solely of reading judicial reports published in the *West National Reporter* or *Federal Reporter Systems*; or reading works or parts of works by any of the approved authors, or issues of any of the approved periodicals, or looseleaf services, listed in Appendix I to this regulation; or reading parts of other materials approved by the Board or written by other authors approved by the Board; or reading looseleaf services approved by the Board; or viewing video tapes, or listening to audio tapes, approved by the Board or sponsored by or-

ganizations accredited by the Board.

**APPENDIX I**

*Approved authors: (e.g.)* Aronson, Bittker, Bromberg, Corbin, Gilmore & Black, Moore, Pomeroy, Prosser, Scott, Wigmore, Williston, Wright, etc.

*Approved periodicals: (e.g.)* 1 *Business Lawyer*, 2 *Gonzaga L. R.*, 3 *Yale L. J.*, 4 *Washington L. R.*, etc.

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# DICTATION PROTOCOL

## for the Upwardly-Mobile Attorney



*As anyone who has worked on the staff of a law firm knows, when an associate becomes a partner, mysterious rites take place which transform a hard-working, polite, willing-to-learn associate into a typical attorney. Recently, a few sheets carelessly left in our office photocopier revealed a handbook presented to initiates at these ceremonies—a handbook law office staff have long suspected existed.*

by **Claudia Palmer, PLS**

**T**he demise of the classic art of shorthand in the modern-day work force is regrettable. No longer is it possible to tie up a secretary for a full morning by saying, "Miss Jones, bring in your book." However,

---

*Claudia Welch Palmer, PLS, a past president of the Greater Seattle Legal Secretaries Association, has worked with the Seattle firm of Longfelder, Tinker, Kidman and Flora for over nine years. She stopped taking shorthand the day she learned that the attorney she worked for took better shorthand than she did.*

diligent research has revealed compensating factors in the use of dictation equipment. The rules given here are only highlights.

**1** Dictation of all urgent correspondence should be your last project in a day. Ascertain when the last mail pickup is made and work accordingly.

**2** When beginning a new cassette for dictation, do not first test for volume. The transcriber will know immediately if it is too loud. This rule assumes, as is proper, that you do not review your work during the progress of dictation.

**3** After you say "take a letter" slowly and distinctly, turn your head and quickly mumble the name of the recipient.

**4** Spelling unusual names or uncommon words leaves no room for inventiveness or research on the part of the transcriber.

**5** If you feel compelled to provide file materials along with a cassette for the transcriber's reference, do so. However, include several immaterial documents and make no reference to them in your dictation.

**6** Do not give client names or other references when dictating on more than one matter. Any good secretary or typist will be able to determine the subjects after transcribing all the material. See Rule 5 for guidelines on providing material with dictation.

**7** Do not dictate addresses for correspondence unless you provide material with the dictation which sets each address forth clearly so the transcriber can read along with you. See Rule 5.

**8** Dictating the actions you want your staff to take is unnecessary once you learn to incorporate these in your correspondence. Begin with the straightforward, "Dear Client: Enclosed with this letter is

[document you want prepared].” You can, with practice, work up to, “Dear Client: We have this day prepared, filed and served the Summons and Complaint and all other documents necessary to initiate the class action suit against Multi-Tentacled Industries, International. Copies are enclosed for your files. By copy of this letter I am providing all other participants in the class action with these materials.”

**9** “By the way . . . .” These three little words are the most versatile weapons in your dictation arsenal. They can be placed at the beginning of a new cassette: “By the way, in that letter to Jones I dictated recently, I want copies of all pleadings in his case enclosed.” They can be placed at the end of any cassette: “In that Doaks letter back near the beginning, by the way, add . . . .” Or with instructions: “By the way, in that Complaint against Multi-Tentacled Industries I dictated [sic!], check to see if I included a cause of action for . . . .”

**10** Every day, use as many similar-sounding words as you can in your correspondence. (Incorporate this with your slurred monotone exercises for maximum effectiveness.) “Al-lusion/illusion” and “formerly/formally” are obvious examples.

**11** Batteries in portable dictation equipment should not be changed until absolutely necessary. This is more than good, thrifty office management: transcribers appreciate the novelty of hearing you sound alternately like Donald Duck and a 78 rpm record played at 33 1/3.

**12** Practice before a mirror, if necessary, until you have perfected the “I never make an error in grammar” expression you will need if your secretary should have the temerity to question your sentence structure or word usage.

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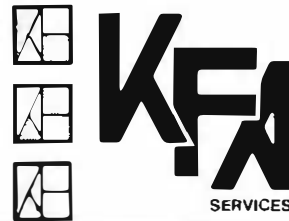
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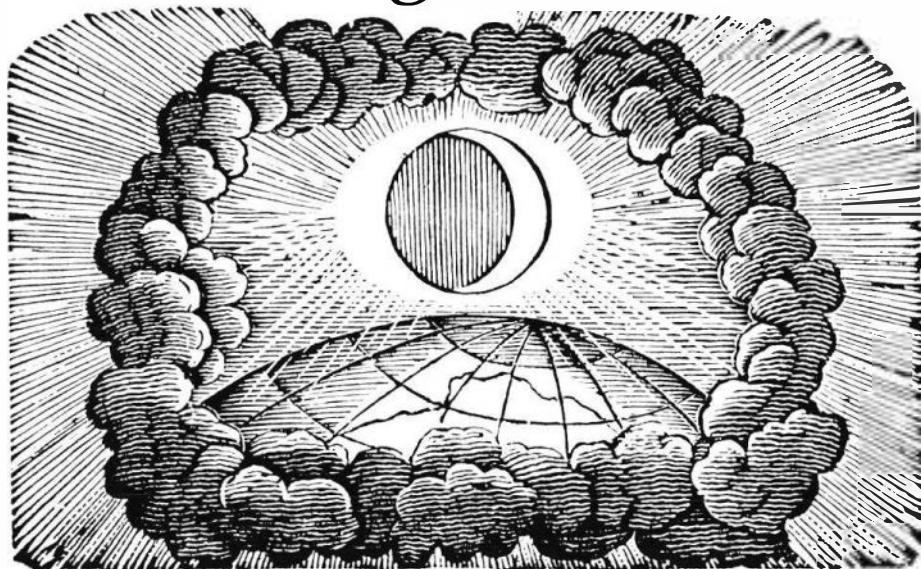
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# Advancing the Rule



# of Law in the World

by Robert Mussehl  
and Claire Thomas

**D**wight Eisenhower, U.S. President and Allied commander in the 1944 invasion of Europe, warned in a 1958 Law Day speech, "If civilization is to survive, it must choose the rule of law."

Believing that lawyers have a professional responsibility to further the rule of law in the world, David R. Brink recommended in his farewell address as president of the American Bar Association in 1982 that the ABA adopt a

---

*Robert Mussehl (also of ABA House of Delegates and ABA World Order Under Law Standing Committee) is a partner in Mussehl, Rosenberg, Grieff, Mussehl & Cotter in Seattle. Claire Thomas (also of Lawyers Alliance for Nuclear Arms Control, Inc., and Lawyers Committee on Nuclear Policy) teaches in the Women Studies Program at the University of Washington.*

goal of world order under law. In 1983, the ABA responded by adopting Goal VIII: To Advance the Rule of Law in the World.

## Law Day Petition on Latin America

May 1, Law Day, marked the kick-off of a petition campaign by 200 Washington attorneys who seek their colleagues' support in condemning alleged violations of U.S. and international law in Central America by the Reagan Administration.

"We demand that the U.S. halt all military aid or involvement there, end the deportation of Central American refugees and dismiss the prosecution of those people who provide sanctuary," states part of the petition, which cites the U.S. Constitution and statutes, charters of the U.N. and the Organization of American States, and other inter-

The ABA House of Delegates next month in Washington, D.C., considers a resolution cosponsored by the 175-member World Peace through Law Section of the WSBA and the ABA World Order Under Law Standing Committee. The resolution concerns the American commitment to respond to non-nuclear assault with nuclear weapons. It reads:

**BE IT RESOLVED** that the American Bar Association recommends that the United States Government immediately pursue negotiations with the Union of Soviet Socialist Republics to conclude a treaty relative to prohibiting the first use of nuclear weapons, such treaty to be open for signature by the remaining nuclear powers.

Fred Noland of Seattle chairs the World Peace Through Law Section. The resolution does not ask that the U.S. unilaterally adopt a no-first-nuclear-use position, he says. Rather, it recommends that the U.S. negotiate with the USSR with a view to reaching, but not mandating, a treaty allowing no first use of nuclear weapons, an

national conventions.

On July 4, the petitions will be presented to the Washington State congressional delegation and to the White House. The Lawyers Committee Against U.S. Intervention in Central America is sponsoring the drive, joined by the National Lawyers Guild.

Volunteer lawyers to collect signatures of lawyers in a particular firm, building or area are sought. For a copy of the petition or more information, contact Jim Douglas, 1613 Smith Tower, Seattle, WA 98104, phone (206) 623-0900, or David "Mac" Shelton, 1500 Hoge Bldg., Seattle, WA 98104, phone (206) 622-1604.

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issue on which the Soviet Union has indicated its willingness to negotiate.

Many Americans incorrectly assume that U.S. nuclear weapons are deployed solely to enable us to retaliate if nuclear weapons are used against us or our allies. In fact, our present American policy of deterrence includes a commitment to *initiate* use of nuclear weapons if deemed necessary to prevent conventional defeat abroad.<sup>1</sup> This commitment, alternately called the first use policy, the nuclear option, or simply the deterrent, was adopted by the West after World War II and remains integral to our defense strategy, although the reality which gave rise to the policy is long since gone. Such superexperts as McGeorge Bundy, George Kennan, Robert McNamara and Gerard Smith now warn against continued reliance on the nuclear option.<sup>2</sup>

Activities of the World Peace Through Law Section are diverse. Speakers at meetings (normally held the fourth Monday each month at the Seattle-King County Bar Association, 320 Central Bldg., 810 Third Avenue, Seattle) have addressed the law of the sea treaty, the international status of human rights, ratification of human rights covenants by the U.S., arms control treaties, International Court of Justice, and a proposed international criminal court with the right of habeas corpus. The section has offered CLEs. Its Ralph Bunche Award, given annually, honors individuals who have made outstanding contributions to world peace through law. Recipients have included Charles S. Rhyne, a former president of the ABA.

Two resolutions cosponsored by the WSBA section were adopted by the ABA House of Delegates in January. The resolutions seek to strengthen the Treaty on the Non-Proliferation of Nuclear Weapons and promote the full participation of South American and Caribbean countries in the Treaty of Tlatelolco, which establishes a nuclear weapons free zone in Latin America. □



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<sup>1</sup>Yankelovich, Daniel, and John Doble, "The Public Mood: Nuclear Weapons and the U.S.S.R.," *Foreign Affairs*, 63:133 (Fall, 1984).

<sup>2</sup>"Nuclear Weapons and the Atlantic Alliance," *Foreign Affairs*, 60:4:753 (Spring, 1982).

# WONDERFUL WRAPAROUNDS

by Lorelei Stevens

**W**raparounds are common real estate transactions. They are usually beneficial to both parties. They are convenient, as they are private between seller and buyer, and the time, red-tape, and high cost of a new lender are avoided. For the seller, the effective yield is usually greater than the interest rate evidenced by the wraparound note or real estate contract, because most often the interest rate required in the wraparound is greater than the interest rate on the underlying.

A seller-financed wraparound note and trust deed or real estate contract (sometimes called an "all-inclusive") is created when a seller with a debt (commonly called an "underlying") sells to a buyer. This creates a debt due to the seller by the buyer for a larger amount including the underlying.

	Bal.	\$/Mo.	Rate
<b>WRAPAROUND</b>			
Buyer owes seller	\$50M	\$600	12%
<b>UNDERLYING</b>			
Seller owes underlying	30M	400	9.5%
<b>SELLER'S EQUITY</b>	\$20M	\$200	14%

In the example shown, the seller actually makes an effective yield of



14% on a \$20,000 equity, even though the buyer is only paying 12% on \$50,000, because the seller is paying 9.5% on the underlying.

The first step in constructing a wraparound is to **review the underlying**. Obtain copies of all underlying documents (including unrecorded instruments such as notes) from the seller and the underlying to determine whether any discrepancies exist. Verify the current balance, interest rate, and monthly payment. Is there a variable interest rate? Are reserves required for real estate taxes, fire insurance, life insurance, PMI (private mortgage insurance) or FIA premiums? Any balloon payments? Is there a cash out due? Late charge provisions? Prepayment penalty? Where are the payments collected? Is a due on sale clause enforceable? Get an amortization schedule.

**The Basic Rule:**  
Obtain equal or better terms on the wraparound than is required by the underlying.

For example, if the underlying requires a pre-payment penalty or late charge provision, then so should the wraparound.

**Variable Interest Rate:** A most common oversight in the wraparound documents concerns variable interest rates. Fancy language is used to describe when and how the interest rate will be changed, but the drafter declines to mention a corresponding change in the payment! Later, disputes arise when the buyer wants to maintain the identical payment, and it is difficult to convince the buyer to pay more than anticipated. If the payment remains identical, it is possible that the wraparound debt will never pay off, as the payments are not even enough to cover the new interest rate! The seller's underlying payment may be increased to an amount greater than the wraparound's unchanged payment.

**1/12th Clause:** The 1/12th clause—a monthly reserve payment—is a necessary nuisance when there is a 1/12th clause required by the underlying.

Standard confusion is "How do you figure how much the monthly payment for 1/12th is?" The clause intends for the seller to require the buyer to pay an amount identical to

*Lorelei Stevens, president of Wall Street Brokers, Inc., has been purchasing and selling real estate notes and trust deeds and contracts for 12 years.*

the amount the seller is required to pay to the underlying. To avoid disputes, define 1/12 in the wraparound to be the exact monthly amount charged to the seller by the underlying plus any adjustments for shortages in the event of underpayment. Further, in the event of an overpayment

in the reserve account causing a refund to the seller from the underlying, the seller shall pay this to the buyer.

*1/12th of what?* Underlyings collect for such items as: real estate taxes, fire insurance, life insurance, PMI (Pri-

vate Mortgage Insurance) and/or FIIA premiums. Unfortunately, most wraparound documents only require payment for 1/12th of real estate taxes and fire insurance. This means that the buyer is paying the seller for fewer items than the seller is paying the underlying. This is a special point for the seller's lawyer to consider.

**Double Insurance:** The seller should cancel the old insurance policy, and the buyer should provide a new policy to the seller naming the underlying as an additional insured. When the underlying requires a reserve payment, the buyer's insurance agent should be required to bill the premium cost to the *underlying*, who has already collected these funds. In about 90% of the cases I've seen, there are two duplicate insurance policies.

**Payment Due Dates:** Since the seller wants to wait until receipt of the wraparound payment from the buyer before making the payment to the underlying, the wraparound monthly payment should be due earlier than the underlying. Unhappy is the seller whose payment is due from the buyer on the 15th, when there is a payment due from the seller to the underlying 15 days earlier. Unless the seller has paid out-of-pocket one advance payment on the underlying, the underlying payment will always be late, and late charges will be charged by the underlying, but the seller cannot charge the buyer because the buyer is current!

**Ghost Wraparound:** A "ghost" wraparound is a debt owing by the buyer to the seller. It is identical to the debt the seller owes to the underlying. "Ghosts" are excellent replacements for "assumptions." The seller has more protection in the event of default. The rigmarole of a lengthy and costly assumption process is eliminated for the purchaser. Most important in creating a ghost wraparound is to be sure the balance, payment due dates, interest rate, payments, and all other terms of the

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underlying are included. Remember, be EXACT.

**Seller's Equity in Full:** Why force the buyer to cash out his entire balance due? "Seller's equity in full" clauses are valuable. The buyer agrees to pay the amount owing to the seller on the wraparound LESS the amount owing by the seller to the underlying, and further agrees, upon full payment of the seller's equity, to pay the underlying according to its terms. After the seller's equity has

## Remember, BE EXACT.

been paid in full, the wraparound document should not be released, but should remain as a ghost wraparound in order to protect the seller in the event of the buyer's failure to pay. Insert in the wraparound a clause stating that until the seller's equity has been paid in full, the seller may not make any extra payments to the underlying, because the seller's equity would be increasing and as a corollary, so would the buyer's obligation.

**Window Period Expires 10-15-85:** A sale on a wraparound to the buyer before the expiration of a loan that qualifies for the window period protection (October 15, 1985) means that the underlying cannot enforce the due on sale clause. The seller continues paying the underlying and is unconcerned. However, if the buyer re-sells the property after the window period expires, the underlying may enforce its due on sale clause! If so, the seller may have to pay off the underlying or pay an increased interest rate and payment, and will have no way of recovering losses from the buyer. To avoid this trap, be sure that a due on sale clause is included in the wrap-around document.

**Income Tax Consequences:** The seller has to claim the interest received on the wraparound and may write off the interest paid to the underlying. Usually, the net amount of taxable interest is greater than the monthly cash flow the seller receives (payment on wraparound LESS payment on underlying). Sellers always wonder why they are taxed on more than they receive. This is due to "equity-build-up": the wraparound balance does not diminish as fast as the underlying balance. Thus the debt due the underlying decreases faster than the debt due to the seller on the wraparound obligation. An additional principal payment every April would be helpful to include in the wrap-around.

**Deficiency Wraparound Balance:** Occasionally, the terms of the wrap-around will reduce the balance on the wraparound to less than the balance owing on the underlying. This is a disaster. This especially happens when the buyer pays more on the

wraparound to the seller than originally required. To safeguard, always check amortization schedules on both the wraparound and the underlying. The drafter of the wraparound should include a clause stating that if the wraparound balance equals the balance owing on the underlying, the seller agrees to pay the entire payment received on the wraparound to the underlying until the underlying is paid in full (at which time there will usually still be a small balance owed to the seller if the interest rate on the wraparound exceeds the underlying interest rate).

**Collection and Payoff:** It is good business to have the wraparound collected by the same collection agent that collects the underlying. If this is not the case, the location of the release document on the underlying should be known and should be available locally. A "true escrow" of the wraparound may not be effective unless the underlying documents are also contained in the "true escrow".

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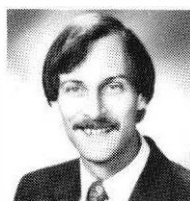
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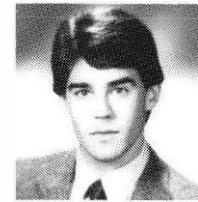
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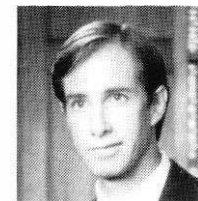
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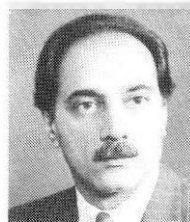
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# WASHINGTON STATE BAR NEWSLINE

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## The Board's Work



by Carole Grayson

May 16, 1985, SPOKANE -- Present: All Governors except Dwyer. Also present: Dale Green (Court of Appeals Judges Assn.), Fred Butterworth (SKCBA Board of Trustees), Claire Cordon (WSBA Young Lawyers), Robert J. Roberts (Spokane County Bar Young Lawyers), Mary Prevost (Government Lawyers), Mary Alice Theiler (SKCBA Young Lawyers), Fred Diamondstone (SKCBA Young Lawyers), John Riley (WSBA Young Lawyers), Donald Brockett (Spokane County Prosecutor), Phillip Borst (WA Assn. of Prosecuting Attorneys), Robert Farrell (WSBA Counsel), Richard Wrenn (District Court Judges Assn.), Willard Zellmer (Superior Court Judges Assn.)

### UMBRELLA SPECIALIZATION PLAN ALL WET

With a sense of anti-climax, the controversial proposed Umbrella Specialization Plan was voted down 8-1 by the Board of Governors. The plan would have required lawyers to satisfy seven require-

ments: malpractice insurance, local bar membership, five years in the Bar plus 30 percent of one's practice in the specialty, 45 hours of CLE credits in the three previous years and 15 hours annually of CLE in the specialty, a written exam, peer review, and recertification after five years.

The more than 300 pages of materials reviewed by the governors indicated:

- 1) The sixteen local bars which voted on the plan overwhelmingly urged its rejection. (Cowlitz-Wahkiakum, San Juan, Pacific, Chelan-Douglas, Whitman, Spokane, Kittitas, Benton-Franklin, Clark, Grays Harbor, Snohomish, Lewis, East King, Tacoma-Pierce, Island, Kitsap, and Grant)
- 2) Major affiliated bar groups opposed the plan. (Loren Miller Bar Association, Washington State Association of Municipal Attorneys and Washington Women Lawyers)
- 3) The Trustees of the WSBA Young Lawyers Section, the Seattle-King County Bar Association, and its Young Lawyers Section all opposed the plan.
- 5) Also on the "con" side were 63 letters and the names of 175 lawyers whose letters were not included. (Responses to the earlier Bar News questionnaire were not counted among these 238 nay voices.)
- 6) On the "pro" side were 78 letters and the names of 25 lawyers whose letters were not included.

Claude Pearson, Frederic Fancher, and David Thorner of the WSBA Specialization Committee urged adoption of the plan. "The issue is not whether or not there is specialization (there is), but whether the organized bar will have any input in it or will delegate it to the Yellow Pages and TV," said Fancher.

"Vocal constituents against the plan are wrong," said committee member Pearson. He claimed that Rule 7.4, prohibiting lawyers (except patent lawyers) from identifying themselves as specialists, is "absolutely unenforceable" without the plan.

"The plan would give the public the opportunity to effectively and properly select lawyers based on demonstrated ability, not on the basis of self-designation and misleading advertising," said committee member Thorner.

The nearly unanimous vote reflected the Governors' concern that the plan would not necessarily improve or prove the competence of lawyers.

The plan would place the WSBA ". . . in danger of being joined in a suit where peer review (e.g., had resulted in the) recertification of a specialist," worried Governor Gibbs. Pearson

commiserated: "You've got to worry about the guy who slips between the cracks. This (plan) is not a panacea; it is one positive thing."

Governor Bond asked, "The problem is, will it really do the job you say it will?"

"I wonder if we wouldn't be misleading the public with these labels, said Governor Petruss. "To become specialists, doctors go through very extensive training; 3-5 years of their lives are devoted to a specific field. I don't feel I'd be more competent if I sat through 45 hours of CLE."

Governor Lane felt that the plan would drive up legal costs and contribute to the "over-specialization" of the legal profession.

As the governors' sentiments became clear, committee member Pearson urged them to "widen the forum. . . [to] let the Supreme Court set a hearing and have the public attend" and express its views. Governor Lane responded that the Supreme Court was becoming "very concerned," especially in disciplinary questions, with the Governors "passing the buck." He felt that the Governors would be remiss if they passed specialization on to the Supreme Court.

Claire Cordon of the WSBA Young Lawyers Section, Bob Roberts of the Young Lawyers Section of the Spokane County Bar, and Fred Diamondstone of the SKCHA Young Lawyers Section also spoke against the plan.

Governor Vhugen's motion that the Board not adopt the plan passed 8-1. Governor Mocerri, who dissented, said that until recently he would have followed his constituency's wishes, but he felt that the plan would improve the practice of law. Specialization is another step forward in the progression of the Bar, he said, and "the restriction of practice and repetition (of types of cases) are what makes expertise."

**62% PASS BAR EXAM**

245 of 398 persons passed the February bar exam. 75 percent passed the two-day essay portion and 75 percent passed the ethics section. Where does the 62 percent come from? "A lot of people passed one section but not the other," explained Executive Director Michalik. 82 per cent of first-time test takers passed the

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exam. 61 per cent of the 113 attorney applicants passed the exam; and only 54 per cent of them passed the ethics section. 63 per cent of persons who had previously taken the exam passed this time around.

**CLE APPEAL**

Without dissent, the Governors granted the appeal of Spokane lawyer James S. Craven for 11 hours of CLE credit for a two-day seminar on construction scheduling and cost control which he had attended in Nevada in 1984. Craven, who represents architects and engineers in litigation, told the Governors that his appeal was the result of "a bureaucratic loss of sight of what continuing legal education is really about."

The Washington State Board of Continuing Legal Education had denied Craven credit for the seminar under Regulation 104(a), "The course's 'primary objective' . . . shall be to increase the attendee's professional competence as a lawyer," and 104(b), "The course shall constitute an organized program of learning dealing with matter directly relating to the practice of law. . . ."

The Board approved 6-3 (Zylstra, Lane, Delay dissenting) Governor Perruss' motion that the seminar fell within 104(g), "Activities which involve the crossing of disciplinary lines, such as a medicolegal symposium or an accounting-tax law seminar, may be approved."

**OTHER WORK:**

CITIZENS RIGHTS PAMPHLETS -- 90,000 of WSBA's Totem-Award-winning pamphlets have been distributed, 2/3 of them to individuals.

WSBA \$\$\$\$\$ As of 4/30/85: One of the Bar's twenty \$100,000 certificates of deposit has been cashed in. Client Security fund balance is \$359,478.36. 58 per cent of \$48,000 allocated for deferred compensation has been disbursed. (See p. 15 of Annual Report, May, 1985, Bar News.)

PUBLIC DEFENDER - Janet Rice of Seattle was unanimously appointed to the Board of Directors of the Seattle-King County Public Defender Association. Governor Vhugen abstained.

The next meeting of the Board of Governors will be June 21-22 at Ocean Shores.

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## Distribution of Microcomputer Software

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

Mark your calendars now for the 1985 COMPUTER LAW INSTITUTE. Site of this year's program is the Westin Hotel in downtown Seattle on June 19-21, 1985.

The Institute is divided into major areas: the optional Wednesday evening session is the introductory technical component; international and domestic issues are covered next; finally, the contracts component covers the: (1) developer/publisher relationship, (2) publisher/distributor relationship for mass market software, (3) publisher/distributor relationship for vertical industry package software and (4) end-user relationship. The final

day of the Institute includes a discussion of shrink wrap license agreements.

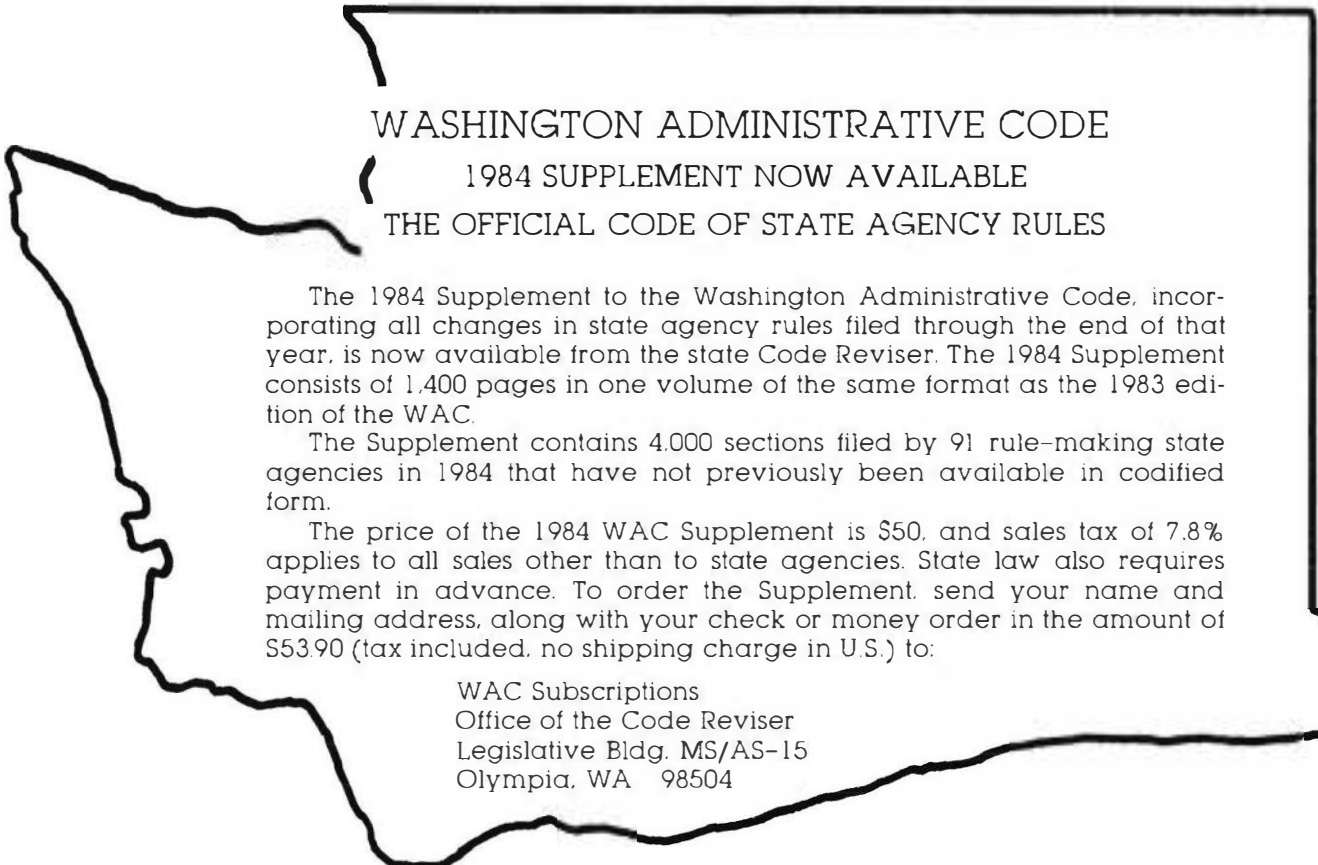
The Wednesday evening session, taught by **Leigh C. Webber** (CLE Society of British Columbia, Vancouver) is designed to be an "Introduction to Computer Technology and Terminology" and to bridge the gap between novice and expert in the computer field. Although not intended for the sophisticated practitioner, the talk should prove instructive and entertaining for even the most advanced computer law lawyer.

The first full day of the Institute will kick off with a presentation by **Shigeru Miki** (Miki Law Office, Tokyo), addressing software protection in Japan. This will include the new Copyright Amendments and the proposed Semiconductor Chip Law, to be considered by the Diet of Japan; contractual patterns; and distribution practices. The Thursday morning session will cover using software as colla-

teral and an analysis of the Semiconductor Chip Protection Act of 1984.

The two luncheons feature addresses by senior executives of microcomputer software firms. Thursday's speaker is **Bruce D. Milne**, founder and President of Accountants Microsystems, Inc., of Bellevue. An authority on high technology marketing and channels of distribution, he will talk on "Microcomputer Software Distribution Today: The Key to Survival." Friday's luncheon speaker is **Francis J. Gaudette**, Vice-President of Finance and Administration for Microsoft Corporation of Bellevue. Gaudette will offer "Comments on the Future of the Microcomputer Software Industry."

All the faculty are experienced continuing legal education speakers and leading scholars and lawyers in the emerging area of computer law. Also featured are: **James W. Anable** (Christensen, O'Connor, Johnson & Kindness, Seattle); **Hugh F. Bangas-**



### WASHINGTON ADMINISTRATIVE CODE 1984 SUPPLEMENT NOW AVAILABLE THE OFFICIAL CODE OF STATE AGENCY RULES

The 1984 Supplement to the Washington Administrative Code, incorporating all changes in state agency rules filed through the end of that year, is now available from the state Code Reviser. The 1984 Supplement consists of 1,400 pages in one volume of the same format as the 1983 edition of the WAC.

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The price of the 1984 WAC Supplement is \$50, and sales tax of 7.8% applies to all sales other than to state agencies. State law also requires payment in advance. To order the Supplement, send your name and mailing address, along with your check or money order in the amount of \$53.90 (tax included, no shipping charge in U.S.) to:

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ser (Preston, Thorgrimson, Ellis & Holman, Seattle); **Randall H. Brook** (Federal Trade Commission, Seattle Regional Office); **Professor Donald S. Chisum** (University of Washington School of Law); **Robert A. Eshelman** (Shidler, McBroom & Gates, Seattle); **William O. Ferron, Jr.** (Seed & Berry, Seattle); **Michael J. Garrison** (Kimball & Garrison, Seattle); **G. Scott Greenburg** (Shidler, McBroom & Gates, Seattle); **Joel R. Junker** (Bogle & Gates, Seattle); **Robert A. Kreiss** (Feinstein & McAulay, Seattle); **Marshall J. Nelson** (Davis, Wright, Todd, Riese & Jones, Seattle); **William H. Neukom** (Shidler, McBroom & Gates, Seattle); **Ivan Orton** (King County Prosecuting Attorney, Senior Deputy, Fraud Division, Seattle); **Richard R. Rohde** (Perkins Coie, Bellevue); **Dieter G. Struzyna** (Perkins Coie, Bellevue); **David W. Thorne** (Davis, Wright, Todd, Riese & Jones, Seattle); **Roger M. Tolbert** (Bogle & Gates, Bellevue); and **Jere M. Webb** (Stoel, Rives, Boley, Fraser & Wyse, Portland).

The Institute, which costs \$195.00, is accredited by the Washington State Board of Continuing Legal Education for 16.50 hours of CLE credit. For further information, please contact **Debbie Kirchhauser**, Washington State Bar Association, 505 Madison Street, Seattle, WA 98104 or telephone (206) 622-6021.

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## Checklist—Duties of Personal Representatives

by Harry E. Hennessey

For those in probate practice, one of the most convenient forms is the checklist of duties for the Personal Representative. When the Personal Representative calls to indicate the testator is deceased and asks what needs to be done, the attorney can refer to the checklist and give her an idea of the duties involved. Afterwards, a copy of the checklist can be mailed to the Personal Representative so that she can better understand the need for not delaying initiation of probate proceedings. The Personal Representative will then be prepared to sign the necessary pleadings and

will have checked off those things done before arriving in the office, such as reviewing the will for burial instructions, checking insurance, etc.

The checklist can be part of the initial letter to the Personal Representative which should accompany copies of all pleadings initially filed in the probate. The letter can simply state that items 1, 2, 3, etc., have been taken care of at this time, that the inventory is the next step, and that certain specified information will be required to assist in preparing the inventory.

Enclose the checklist with the initial letter to heirs so that all of the heirs can be apprised of the duties and responsibilities of the Personal Representative. The best practice is to send the normal notice of probate proceedings with a copy of the Will, a letter of explanation of the proceedings, and a copy of the checklist.

### CHECKLIST—DUTIES OF PERSONAL REPRESENTATIVE

Name: \_\_\_\_\_ Date of Death: \_\_\_\_\_  
 Other variations of decedent's name appearing on securities \_\_\_\_\_

Personal Representative should check each item off as done, either by herself or with her attorney.

- 1. Check for burial instructions.
- 2. Retain attorneys to file Will within 30 days, Petition for Probate of Will, Order Admitting Will to Probate, Oath of Personal Representative, Petition and Order of Solvency, Mail Notice of appointment of Personal Representative, & copy of Will to heirs (20 days).
- 3. Publish Notice to Creditors once a week for three successive weeks. Date of First publication \_\_\_\_\_, Date of filing \_\_\_\_\_, Period for filing Claims will expire \_\_\_\_\_.
- 4. Secure buildings from break-ins; secure plumbing, etc., if necessary; remove all valuables.
- 5. Inventory contents of safe deposit box.
- 6. Present certified copy of Letters to banks transferring accounts and executing signature cards.
- 7. Collect rents.
- 8. Notify public utilities to change names on accounts or discontinue services.
- 9. Discontinue telephone service and return leased telephone.

- 10. Arrange for building maintenance, lawn care, etc.
- 11. Notify all corporations in which decedent had stock of change of address.
- 12. Apply for and collect all life insurance.
- 13. Establish estate checking and savings account and set up cash account ledger reflecting all receipts and disbursements in the estate—make all disbursements by check.
- 14. Copy of Letters Testamentary to Postmaster with request for change of mailing address.
- 15. Apply for Internal Revenue Identification Number for estate, if income tax return required.
- 16. Apply for Veterans Administration Death Benefit.
- 17. Apply for benefits from Social Security.
- 18. Prepare a General Inventory of all estate assets and file within 90 days of appointment.
- 19. Appraise estate assets.
- 20. Check fire, casualty and liability coverage on properties of decedent.

<i>Address of Property</i>	<i>Amount of Coverage</i>	<i>Expiration Date</i>
_____	_____	_____
_____	_____	_____

- 21. Correspond with creditors requesting filing of creditor's claims; approve, file and pay creditors claims.
- 22. Submit personal income tax return to date of death.
- 23. Submit any necessary fiduciary income tax return to date of death.
- 24. Pay personal property taxes before April 30th.
- 25. Pay real property taxes, 1/2 by April 30 and 1/2 by October 31.
- 26. Notify IRS of fiduciary relationship if necessary. Submit Federal Estate Tax Return within 9 months of death, if estate exceeds exemption equivalent for the current year:
  - 1984 separate estate of \$325,000; community \$650,000; or
  - 1985 separate estate of \$400,000; community \$800,000; or
  - 1986 separate estate of \$500,000; community \$1,000,000; or
  - 1987 separate estate of \$600,000; community \$1,200,000.
- 27. Submit State Estate Tax Report within 9 months of death, only if Federal Estate Tax Return is required. (Pick-up tax).
- 28. File Interim Report at end of first year if estate is not closed.
- 29. Liquidate or transfer stock and other assets.
- 30. Pay court costs, attorney's fees and Personal Representative.
- 31. Draft & file Declaration of Completion, reviewing probate proceedings, setting forth receipts and disbursements.
- 32. Notice of Filing Declaration of Completion of Probate and Affidavit of Mailing of Notice.

*Alternate Closing Procedure*

- 33. Draft and file Final Report and Petition for Distribution.
- 34. Set time for hearing on Final Report, mailing notice to heirs and publishing notice as required.
- 35. Attend Court hearing on Final Report and secure Decree of Distribution.
- 36. File vouchers and enter Court Order discharging Executor.

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## Notes from the Academy

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

**Administrative Law.** (1) Boundary review board statute is constitutional, not a special law or an improper delegation of authority. *City of Wenatchee v. Boundary Review Board*, 39 Wn. App. 249 (12/20/84).

(2) RCW 49.60.250(5): (a) sets recovery cap of \$1,000 for humiliation and mental suffering in discrimination cases, regardless of number of unfair discriminatory practices alleged, and (b) operates retroactively. *Marine Power & Equipment Company v. Human Rights Commission Hearing Tribunal*, 39, Wn. App. 609 (1/21/85).

—J. M. Vaché

**Creditor-Debtor Law.** Homestead declaration recorded 24 minutes after execution sale of property covered by declaration was ineffective. RCW 6.12.080. *Sawyer v. Ostrom*, 39 Wn. App. 813 (1985).

—M. D. Rombauer

**Evidence.** (a) Prosecution in statutory rape trial should not have been allowed to introduce pediatrician's testimony that, based upon her interviews with victims, she believed they had been molested. Since physical evidence was inconclusive, expert's testimony was essentially opinion on veracity of victims, and, as such, invaded jury's responsibility to weigh evidence and determine credibility. (b) Same expert was properly allowed to testify as to statements made to her by victims. Statements admissible under ER 803(a)(4) as statements made for purpose of medical diagnosis or treatment. *State v. Fitzgerald*, 39 Wn. App. 652 (1/11/85).

—K. B. Tegland

**Local Government.** (1) Statute allowing recall of public officials allows courts to review sufficiency of charges as matter of law. Courts are to decide whether facts, if true, establish prima facie case of mis-, mal-, or non-feasance or violation of oath of office. Overrules several inconsistent decisions. *Cole v. Webster*, 103 Wn.2d 280 (12/26/84).

(2) Port districts are exempt from Public Employees Collective Bargaining Act (RCW 41.56). *Port of Edmonds v. Public Employee Rels. Comm'n*, 103 Wn.2d 331 (1/3/85).

(3) (a) City of Seattle has standing to challenge statutes limiting annexation on special legislation and state and federal equal protection grounds. (b) RCW 36.39.180 (10), requiring a reasonable relationship between taxes to be paid and services to be received in area to be annexed and which applies to cities over 400,000, is unconstitutional special legislation. No rational basis exists for distinction based upon population. (c) RCW 35.13.165, by allowing percentage of landowners, or owners of percentage of land, in area proposed to be annexed to block annexation, does not survive strict scrutiny analysis. Strict judicial scrutiny is triggered because statute restricts effective franchise and burdens right to vote. *City of Seattle v. State*, 103 Wn.2d 663 (1/11/85).

(4) Holder of security interest in leasehold does not have standing to contest local improvement assessment against leasehold, as holder is not property owner specially benefitted by improvement. *First Fed. Sav. & Loan Ass'n v. City of West Richland*, 39 Wn. App. 401 (1/3/85).

(5) County health standards may be applied to non-Indians living on fee reservation land, particularly when tribe has sought joint county-tribal enforcement and in absence of tribal health regulations. *Thomsen v. King County*, 39 Wn. App. 505 (1/11/85).

—J. M. Vaché

**Planning and Zoning.** (1) Exhaustion of administrative remedies is not required if resort to them would be futile. Futility may, in rare cases, be based upon factual circumstances instead of more common ground of legal inadequacy of administrative remedies. Where owner's tidelands on Padilla Bay (Skagit River estuary) were subject to multiple and restrictive regulations that made it clear that development would never be permitted, owner did not have to exhaust administrative remedies or apply for variance or conditional use permit under county shoreline management

program before commencing present action in court. Remanded for trial on merits of owner's regulatory "taking" claim. *Orion Corp. v. State*, 103 Wn.2d 441, 693 P.2d 1369 (1/11/85).

(2) Appearance of fairness doctrine does not apply to design review proceeding conducted to determine design of buildings on land that had already been rezoned. Present decision is on rehearing, vacating previous decision in same case, reported at 99 Wn.2d 488, 663 P.2d 823 (1983). *Zehring v. City of Bellevue*, 103 Wn.2d 588 (1/11/85).

(3) Under RCW 35.79.030, which forbids cities to vacate any street that abuts water except to use land for certain listed water-related purposes, any member of public has standing to challenge street vacation, but only if plaintiff can show he has "suffered an injury in fact personal to himself" that is related to water access. Remanded to allow plaintiffs to try to make such showing. *Dichum*. Only persons with standing to challenge vacations of ordinary land-service streets are those whose land abuts on them or whose land access is substantially affected. *DeWeese v. City of Port Townsend*, 39 Wn. App. 369, 693 P.2d 726 (12/27/84).

(4) (a) A landowner injured by neighbor's violation of zoning ordinance (10 feet forward of setback line) may enjoin it even without monetary damages. (b) If zoning violation was caused by local government's negligent failure to enforce its own zoning ordinance, government must indemnify violating neighbor for his costs of complying with injunction (costs of moving house). *Radach v. Gunderson*, 39 Wn. App. 392, 695 P.2d 126 (1/2/85).

—W. B. Stoebuck

**Real Property.** (1) (a) Real estate broker or salesperson may complete a simple, standardized earnest money agreement, provided that blank form was prepared by lawyer, is used only in "simple transaction" that arises in "usual course of broker's business," and is used in transaction being handled by broker or salesperson. No additional fee may be charged for completing form. Any danger to pub-

lie from allowing non-lawyers to complete such forms is outweighed by convenience, financial savings, expertise of trained real estate professionals, and practical consideration that brokers and salespersons need to bring buyers and sellers together at times and places where lawyers are not available. Court says it is not "re-treating" from recent decisions in, e.g., *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 675 P.2d 193 (1983), and *Hagan & Van Camp v. Kassler Escrow*, 96 Wn.2d 443, 635 P.2d 730 (1981), whose facts it distinguishes. (COMMENT: Earlier decisions are obviously limited.) (b) Because real estate broker or salesperson who fills out earnest money agreement is engaging in the authorized limited practice of law, she is held to standard of care required of lawyers. Here, saleswoman is liable for damages for her negligence in adding addendum to earnest money agreement that proved inadequate and caused loss. (c) Brokers and salespersons authorized to fill out earnest money agreement forms do not violate Consumer Protection Act, RCW 19.86, when they do so. *Cultum v. Heritage House Realtors*, 103 Wn.2d 623, 694 P.2d 630 (1/11/85).

(2) (a) County acquires prescriptive road easement where public uses roadway for prescriptive period. (b) When county had deed describing 40-foot roadway but description of line of road was so inadequate that it could not be located, deed was void as conveyance. However, it gave colorable title to 40-foot-wide roadway, so that, by prescription, county's prescriptive roadway easement was 40 feet wide, not merely narrower width of portion that had been paved. (QUAERE: If deed description was so inadequate that road could not be located, how could it give color of title to a particular 40-foot strip? Deed that gives color of title must appear good on its face, which this did not.) (c) Where county cut down valuable fruit trees on plaintiff's land outside 40-foot prescriptive roadway after plaintiff had disputed county's destruction of trees by commencing this lawsuit, the county's act was not "casual or involuntary" under RCW 64.12.040,

but was deliberate and intentional, so that, under RCW 64.12.030, it owed treble damages. (d) Measure of treble damages was three times lost production value of destroyed fruit trees for length of time it would take for replacement trees to mature. *Sparks v. Douglas County*, 39 Wn. App. 714, 695 P.2d 588 (1/31/85).

(3) One cannot gain title by adverse possession to land owned by state even if state owns it in proprietary capacity. Proprietary-governmental distinction is irrelevant to adverse possession. *Pioneer Nat'l Title Ins. Co. v. State*, 39 Wn. App. 758, 695 P.2d 996 (2/7/85).

—W. B. Stoebuck

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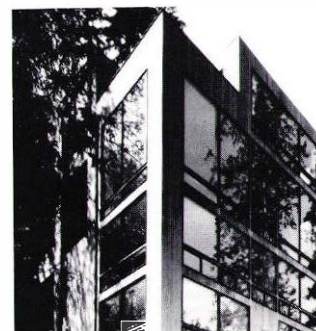
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## Around the State

### PIERCE COUNTY

by ROBERT W. MARSDEN

M. Fred Weedon has resigned as Director of Pierce County's Department of Assigned Counsel to go into private practice. Fred had been the DAC Di-

rector since its incorporation in March, 1974. He has permanently relocated on Lopez Island, but is practicing a few days a week in Tacoma.

For the fourth consecutive year, the Young Lawyer's Section of the Tacoma-Pierce County Bar Association sponsored a legal information booth at the Tacoma Mall during Law Week.

The law offices of Tuell, Anderson and Fisher have announced the hiring of two new associates, Steven Quick-Ruben and Robyn L. Koppe.

If there is a chicken-pox epidemic among Pierce County's young lawyers, we can blame Paula K. Tuckfield. It seems that the day after lunching with her colleagues at the annual spring Young Lawyer's Section meeting, she came down with the pox.

Kathryn Nelson, President of the Young Lawyer's Section, and Vice President John Graffe recently returned from a two-day leadership training conference in St. Petersburg, Florida. The Affiliate Outreach meeting, sponsored by the Young Lawyer Division of the ABA, also afforded Nelson and Graffe an early summer tan.

Mack D. Lieve, a member of Eisenhower, Carlson, Newlands, Reha, Henriot and Quinn since 1977, now practices with Kenyon Luce in Fife.

George Kelley, former author of this column, has been crying the blues lately, apparently distressed by the high cost of overhead. Kelley, a longtime member of the firm of Skoog, Mullin, Gagliardi and Kelley, recently broke away to open his own practice. Welcome to the realities of solo practice, George.

Supreme Court Justice Barbara Durham was the guest speaker at a recent meeting of the Pierce County Chapter of the Washington Women Lawyers. Tacoma attorney/legislator Art Wang also addressed the gathering on recent legislative developments. This seemed only fair, since the meeting was held at his home.

### SEATTLE-KING COUNTY

by JAMES L. VARNELL

Office Shifts. Wickwire, Lewis, Goldmark & Schorr announces that Gregory M. O'Leary has become a member of the firm and that Sarah B. Ignatius, Katherine Hendricks and Molly B. Burke are now associated with the firm.

Jacob A. Mikkellborg, Richard F.

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**Broz, Robert O. Wells, Jr., Douglas M. Fryer, Charles E. Yates, Douglas M. Duncan and Richard L. Phillips** have formed the firm of Mikkelsen, Broz, Wells, Fryer & Yates. **Jeffrey L. Jernegan, Shane C. Carew, Margaret Doyle Fitzpatrick and Jess G. Webster** are associated with the firm.

The law firm of Hatch & Leslie, formerly Quigley Hatch Loveridge & Leslie, has relocated its offices to Columbia Seafirst Center, and **Dillon E. Jackson** has joined the firm as a partner.

Preston, Thorgrinson, Ellis & Holman announces that **John W. Angus, III, Richard L. Barnes, David K.Y. Tang, Jay A. Reich, Kenneth S. Weiner, Frederick C. Rusina and Kenneth R. Kay** have become partners of the firm; that **Jane North, Mary E. Snapp, Louis H. Treiger, Kathleen M. McGinnis and Nancy M. Neraas** have become associates in its Seattle office; that **John Longstreth and Debra Tarnapol** have become associates in its Washington, D.C., office; and that **Michael C. Moore** has become an associate in its Spokane office.

Perkins, Coie, Stone, Olsen & Williams announces that **John D. Alkire, David J. Burman, Paul T. Fortino, Barry M. Kaplan, Russell L. Perisho, Robert A. Stout and Bart Waldman** have become partners in the firm. **David H. Binney, Robert A. Eshelman and Constance L. Proctor** have become members of Shidler, McBroom & Gates, and **Frances E. Pennell, Scott E. Wonder, W. Keith Fendrick and Pamela S. Nordquist** have joined the firm as associates in its new offices at the First Interstate Center.

Weinrich, Gilmore & Adolph, P.C., announce that **David L. Friend** has become a member of the firm, and that **G. Dave Hunter, III and Jonathan I. Feil** have become associates. **Jill A. Salmi** has relocated her office to the 1111 Third Avenue Building. **A. Stevens Quigley**, after a lengthy sojourn in Ballard, has been lured by the

"siren song" of the Regrade and moved his office to the Denny Building.

*Tea Time.* With the approach of Spring, a golfer's thoughts turn to the annual Phil Biege Open, also referred to as the Enumclaw Tournament of Champions. Expected to vie for the championship trophy, as they have done for the past decade, are the following: **Bill "Airmail" Levinson, Bob "The Silver Fox" Kuvara, Paul Houser, Tom "Special Delivery" McElmeel, and Kam Cayce.** In the judicial division it looks like a toss-up between Judges **Don Howard, Dick Ishikawa, Art Pichler, Frank Eberharter and Jack Scholfield.**

*Future File.* Next month the annual column on the ten best-dressed attorneys in the Seattle-King County area will appear. Judges in this year's competition will be the select panel of **Alva Long, Jack Steinberg, Bill Robinson and Barry Ernstoff.**

---

**William D. Ruckelshaus**, former Administrator of the U.S. Environmental Protection Agency, has joined Perkins Coie. Ruckelshaus will be primarily based in the firm's Seattle office, but also will work out of the firm's Washington, D.C., office.

The Washington State Supreme Court has appointed Seattle attorney **Mary Anne Vance** to the Limited Practice Board. The nine-member board supervises licensing and discipline for escrow agents in the state of Washington.

Jones, Grey & Bayley, P.S., announces that **John Elvidge Veblen** has become a member of the firm. **John J. Sullivan** and **Lawrence Repeta**, formerly associated with Adachi, Henderson, Miyatake & Fujita of Tokyo, Japan, have become associates.

**Duane A. Erickson** has become a partner in the Seattle firm of Musschl, Rosenberg, Grieff, Musschl & Cotter. He will concentrate on family law matters.

**Dudley Panchot**, of Wolfstone, Panchot & Bloch of Seattle, has been named a Fellow of the American College of Probate Counsel.

## IN MEMORIAM

**Donald E. Watson** of Seattle died April 4. A graduate of the University of Washington and its law school in 1943, he practiced law with Mansfield and Wicks in Okanagon until 1952, when he accepted an appointment with the Attorney General's office. In 1957 he moved to Burien, where he practiced for many years. Watson was past president of the South King County Bar Association and the Burien Chamber of Commerce.



**Charles I. Stone**  
**WSBA President 1972-1973**

Former State Bar president **Charles I. Stone**, 72, died March 12, while presenting a case before the state Court of Appeals in Tacoma. He was a senior partner in the Seattle law firm of Perkins, Coie, Stone, Olsen & Williams.

Born in Virginia, Stone came to Washington in 1920. He graduated from the University of Washington School of Law, and was admitted to practice in 1939. A fellow of the American College of Probate Counsel, Stone wrote and lectured extensively on matters of probate and estate planning throughout his career. He served as president of the Washington State Bar Association from 1972-1973.

At his death, Stone was a trustee of the Washington State University Foundation, a director of United Way International, and vice president and trustee of Highline-West Seattle Mental Health Center.



## Briefly Noted

### Filing Deadline for Resolutions to be Presented at Annual Business Meeting

Anyone wanting to have a resolution presented at the Annual Business Meeting on September 13 must file it with the Resolutions Committee, Washington State Bar Association, 505 Madison, Seattle, WA 98104 by no later than August 24. Each resolution must be accompanied by a written explanation of it. The resolution and its explanation may not exceed 1,000 words.

### PRELIMINARY NOTICE OF SPECIAL PUBLIC HEARING ON RESOLUTIONS AND OF PUBLICATION DEADLINE

The WSBA Resolutions Committee will, as usual, hold a public hearing at the Bar Convention to consider the views of the proponents and opponents of resolutions to

be presented to the membership of the Bar at the Annual Meeting. The hearing will be on Wednesday morning, September 11, in order not to conflict with continuing legal education seminars. The time and location of the hearing will be announced in the July *Bar News*.

In addition, to allow more time to those presenting views and to give committee members more time to consider the resolution and request any additional information, an advance session of the public hearing will be held in Seattle on September 5, at 10:00 a.m., at the Bar Association, 505 Madison, Seattle. Proponents and opponents of resolutions are urged to attend the September 5 session or, if unable to attend, to present their views in concise written form for consideration by the committee at the session. Presence at or absence from

the September 5 session will not affect any right under the by-laws to present views at the September 11 hearing. Preference in presenting views on September 11 will be given to those whose viewpoints were not expressed at the earlier session.

For a resolution to be published in the *Bar News* before the Annual Meeting, it must be received by the Resolutions Committee at least 60 days before the Annual Meeting, that is, on or before July 15. The July issue of the *Bar News* will contain further details.

**RESOLUTION COMMITTEE MEMBERS**—William L. Dowell, Chairperson; John Aaby; J. Thomas Carrato; Kenneth O. Eikenberry; Gary David Gayton; Jack A. Hawkins; Robert M. Keefe; Louis C. Kiefer, Jr.; Jonathan G. K. Lee; Frederick Luke Noland; Gregory Howard Pratt; Lawrence Cary Smith; Robert A. Stewart; Raymond R. Tanksley, Jr.; and Phillip L. Thom.

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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."

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## WWL Endorsements

The Seattle-King County Chapter of Washington Women Lawyers endorses qualified persons seeking the following positions by election or appointment: (1) King County Municipal Court; (2) King County District Court; (3) King County Superior Court Commissioner; (4) King County Superior Court; (5) District 1 (King County) candidates for the Washington Court of Appeals, Division I; (6) King County Prosecutor; (7) City Attorneys in King County; (8) WSBA Board of Governors—7th and 8th Congressional Districts and King-County-at-Large candidates; and (9) SKCBA Board of Trustees.

Persons interested in being considered for endorsement should write to Chair, Candidate Endorsement Committee, Seattle-King County Washington Women Lawyers, 19670 Marine View Dr. S.W., Seattle, WA 98166, Attn: Janet L. Gaunt.

## Parole Board Invites Bids

The Washington State Board of Prison Terms and Paroles invites bids from interested law firms or associations to handle parole revocation hearings conducted pursuant to RCW 9A.02.120-.125, in King County for the 1985 through 1987 biennium (July 1, 1985-June 1, 1987).

If your firm or association is interested, draft a detailed written bid for providing competent representation to indigent parolees. Send your bid to David L. Carlson, Executive Secretary, Board of Prison Terms and Paroles, 700 Capitol Center Building, 410 W. 5th, Olympia, Washington 98504, telephone (206) 753-6797.

## DISCIPLINE

### Disbarred

Stephen Lytsell of Stevenson, admitted in 1974, was ordered disbarred by the Supreme Court on March 29. Disbarment was based on a hearing offi-

cer's findings that: 1) Without the client's knowledge or consent, Lytsell had caused a forged endorsement to be placed on a \$1,674 check payable to a client. He then deposited the check into his trust account. 2) Lytsell delayed in paying funds owing to the client for more than six months. 3) He failed to cooperate with the Bar dis-

ciplinary investigation by not filing an answer to the complaint or appearing before the hearing officer. Lytsell was assessed costs of \$889.55.

### Suspended

Thomas A. Gagley of Seattle, admitted in 1952, was suspended from the

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practice of law for 30 days, beginning February 14, by order of the Supreme Court. The suspension was based on disciplinary findings that: 1) Gagley failed to provide a prompt and accurate accounting to a probate client; 2) He failed to pay that client estate funds to which he was entitled; and 3)

He converted interest earned on client funds in his interest-bearing trust account to his own use over a period of several years. Gagley was placed on probation for two years, during which he is required to employ an accountant to account for all interest earned on his trust account, and to

distribute that interest to clients. Costs of \$501.60 were assessed. Bar counsel had recommended disbarment.

### Reprimanded

Kent attorney **Michael J. Sligh**, admitted in 1972, has been ordered reprimanded pursuant to a stipulation that he failed to maintain proper trust account records; disbursed funds on behalf of a client when that client had no funds in trust, thus disbursing other clients' funds; and commingled personal funds with client funds. Sligh was also ordered to pay \$361.60 as costs.

### Censured

**Leonard Carl Maxey** of Spokane, admitted in 1951, has been ordered censured pursuant to a stipulation for discipline based upon his sale, without notice to client, of personal property which the client had left as security for his attorney's fees. After the client complained, Maxey returned the property (a rifle and shotguns) to his client and waived the outstanding balance due for fees. The letter of censure acknowledges that Maxey had a "good faith belief" that he was entitled to sell the property. The sale without notice violates DR 9-102(B)(2) requiring safe placement of client property, (B)(3) requiring appropriate accounting to clients, and (B)(4) requiring prompt delivery of a client's property to the client. Maxey was assessed \$300 in costs.

**Peter S. Banks** of Renton, admitted in 1976, has been ordered censured by the Disciplinary Board. Banks presented papers in a dissolution proceeding to a court commissioner as "agreed" when he did not have an affirmative representation from opposing counsel that there was an agreement. The conduct violated DR 1-102(A)(5), prohibiting conduct prejudicial to the administration of justice. The Board also ordered Banks to make restitution for the \$300 terms assessed against his client, and to pay the attorney's fees of \$502.99 paid by the opposing client to have the court set aside its previous order.

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### ATTORNEYS

*Relative values: determining attorneys fees.* Colorado Springs, Colo.: Shepard's/McGraw-Hill, 1985. 1 vol. Pp. 300. (loose-leaf)

### BANKRUPTCY

Williamson, John H. *The attorney's handbook on consumer bankruptcy and chapter 13.* Lakewood, Colo.: Argyle Publishing Co., 1984. Pp. 288.

### CIVIL PROCEDURE

Dombroff, Mark A. *Litigation organization and management: effective tactics and techniques.* Clifton, N.J.: Law & Business, Inc., 1984. (loose-leaf)

### CRIMINAL LAW AND PROCEDURE

Bailey, F. Lee, and Henry B. Rothblatt.

*Successful techniques for criminal trials.* 2nd ed. San Francisco: Bancroft-Whitney Co., 1985. Pp. 930.

Epstein, Edna Selan, C. Timothy Corcoran III, James I. Keane, and Richard C. Spencer. *Conflicts of interest: a trial lawyer's guide.* Owings Mills, Md.: National Law Publishing Corporation, 1984. Pp. 244.

### ETHICS

Haynsworth, Harry J. *Expanding your law practice: the ethical risks.* Chicago: American Bar Association Section of Economics of Law Practice, 1984. Pp. 248.

### EVIDENCE

Arnolds, Edward, William Carroll, Melvin B. Lewis, and Michael Seug. *Eyewitness testimony: strategies and tactics.* Colorado Springs, Colo.: Shepard's/McGraw-Hill, 1984. Pp. 497. (Trial Practice Series)

*Effective direct & cross-examination.* Berkeley: California Continuing Education of the Bar, 1984. Pp. 135. (Program Material)

*Using documentary and demonstrative evidence effectively.* Berkeley: California Continuing Education of the Bar, 1984. Pp. 62. (Program Material)

### INSURANCE

*Handling fidelity and surety claims.* New York: Wiley Law Publications, John Wiley & Sons, 1984. Pp. 439.

### NEGOTIATION

Shea, Gordon F. *Creative negotiating.* Boston, Mass.: CBI Publishing Company, Inc., 1983. Pp. 233.

### PRACTICE AND PROCEDURE

*Defending DWIs: battling the new BAC verifier seminar.* Seattle: Washington State Trial Lawyers Association, 1985. Pp. 208. (loose-leaf)

*Drama & persuasion in the courtroom: trying the case.* John A. Hoglund, Seminar Chair. Seattle: Washington State Trial Lawyers Association, 1985. Pp. 73. (loose-leaf)

*Effective recovery of attorneys' fees.* Chairperson William R. Sullivan. Seattle: Washington State Bar Association Continuing Legal Education Committee, 1985. V.p. (loose-leaf)

*What the general practitioner should know about labor law.* Seattle: Washington State Bar Association Continuing Legal Education Committee, 1985. 1 vol. (loose-leaf)



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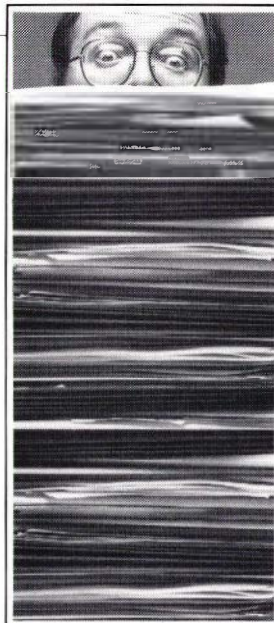
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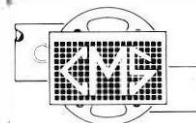
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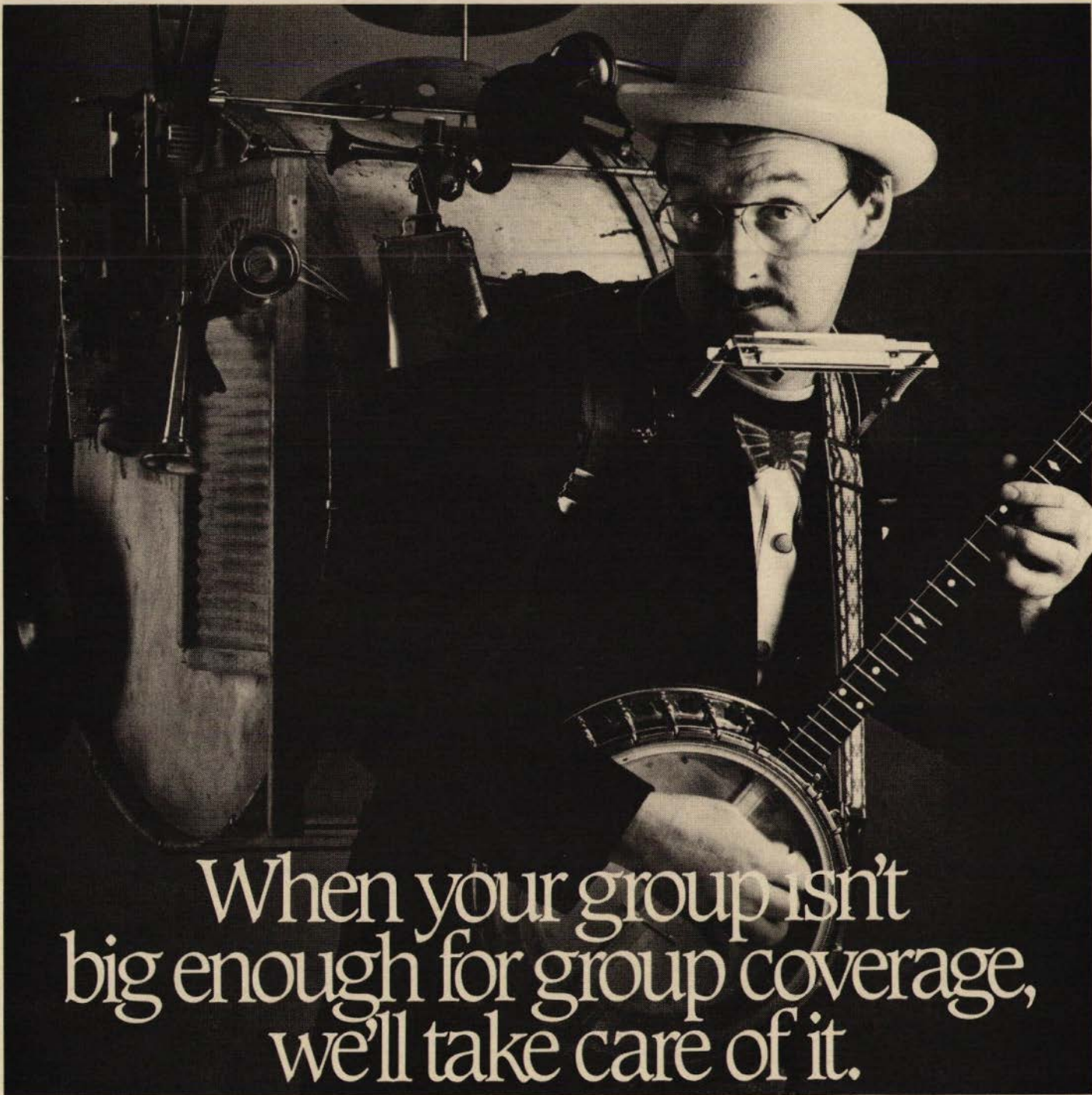
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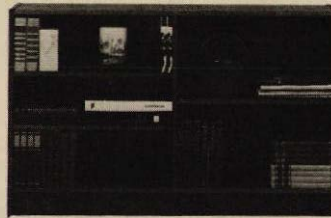
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