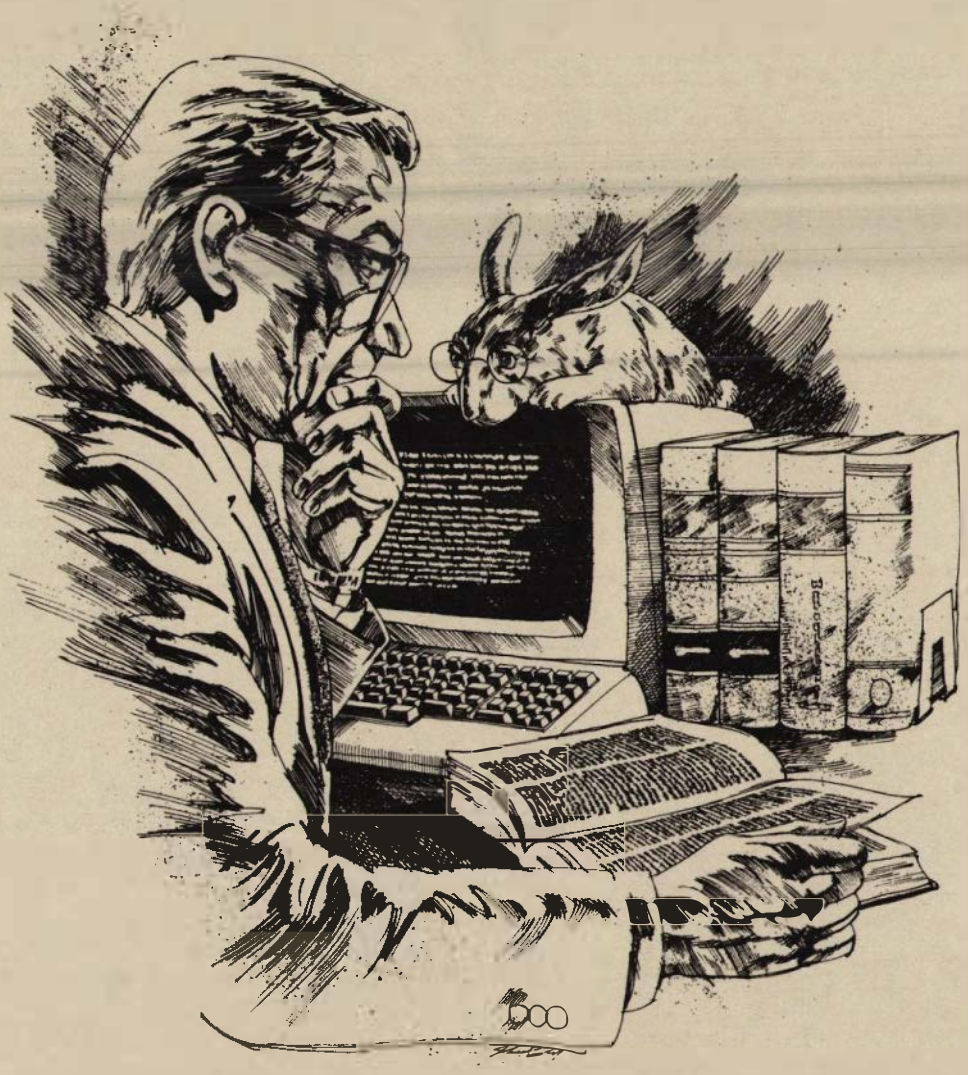
Washington State Bar News
Vol. 40, No. 3, March 1986

Inside: Business Practice Before a Federal Grand Jury



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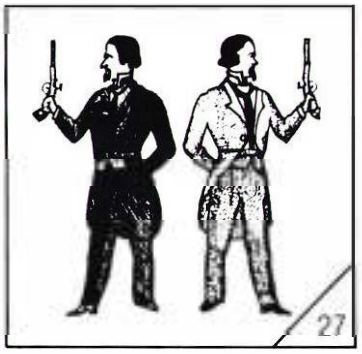
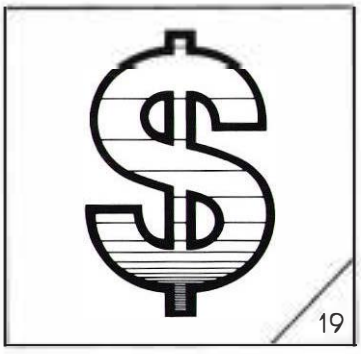
Washington State Bar News
Vol. 40, No. 3, March 1986

FEATURES

IN THE NEWS





DEPARTMENTS

ART CREDITS

COVER: *A Peroration in the Style of Demosthenes:* A lawyer passionately pleads his case. Caricature by 19th century French artist, **Honoré Daumier.**

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LETTERS

Notice

In the February 1986 issue of the *Washington State Bar News*, my letter to the editor published in the "Letters" column stated that Robert E. Schillberg "was an unapplaudable man who had been involved in DWI offenses in two different towns in Snohomish County."

This was a total misstatement of fact. Robert E. Schillberg was, in fact, the Snohomish County Prosecuting Attorney at the time of those two DWI incidents and was not the defendant involved in them. Judge Schillberg, now a Snohomish County District Court judge for the South District Court, has, to my knowledge, never been involved in a DWI incident.

I regret the publication of this misstatement and that I did not properly proof and correct my letter prior to sending it to the editor of the *Bar News*. I apologize for any misconceptions about Judge Schillberg's character, reputation or actions which may have been fostered by my letter.

David P. Mickelson
Bellevue

Judge Schillberg Mistakenly Maligned

Editor:

Robert E. Schillberg, former Snohomish County Prosecuting Attorney, is *not* "an unapplaudable man who had been involved in D.W.I. offenses in two different towns in Snohomish County." Robert E. Schillberg is a highly respected attorney and a quality human being; he has never been a defendant in a D.W.I. prosecution.

The letter from David P. Mickelson, which appears on pages 4-6 of the February Bar News, and which letter purported to "clarify the setting of the decision in *State ex rel. Schillberg vs. Cascade-District Court*, 94 W. 2d 772, 621 P. 2d 115," served to confuse Mr. Schillberg with the man he was prosecuting, one Mr. Cabe. It would, of course, be ingracious, and probably inappropriate, to describe Mr. Cabe as unapplaudable; perhaps "unenviable" would do.

The offending sentence is the first sentence of the fourth paragraph of Mr. Mickelson's letter. This letter is written to lessen the impact of Mr. Mickelson's apparent negligence on Mr. Schillberg.

Anton J. Miller
Tacoma

Representative Democracy Works

Editor:

I commend Howard K. Todd for his campaign to adopt the "referendum" process for all matters affecting the governance of the practice of law by court rule. I found his statement in support of the proposed resolution articulate and persuasive. Nonetheless, I voted "No".

Todd's campaign illustrates the feelings of frustration and helplessness inevitably spawned by a burgeoning bureaucracy. As the size of the Bar has mushroomed over the past 15-20 years, the strain on the democratic nature of the system has correspondingly intensified. Members of the Board of Governors find it increasingly difficult to effectively represent the ever-growing number of lawyers in their congressional districts. Perhaps more important than number, the changing demographics of the Bar in the areas of age, sex and experience make effective representation even more of a challenge. These problems are not unique to the Bar Association, but, rather, are inherent in the representative form of government in a dynamic society. Contrary to Todd's conclusions, however, I do not feel the answer lies in rendering the representative system impotent by requiring a general membership vote on all rules affecting the governance of the practice of law.

Rather, I feel it is incumbent upon all members of the Bar, as it is upon all citizens in our society, to educate themselves concerning the issues affecting the profession and to utilize every legal vehicle available to make their views known to their elected representative on the Board of Gov-

COLUMBIA CENTER QUIZ #2

Do you have the career potential to make the move to The Columbia Center? Take this quiz and find out.

1. What do you consider the secret of your success?
- ☐ a. Good looks.
- ☐ b. Tenacity.
- ☐ c. Good fortune.

2. What thrills you the most?
- ☐ a. Your bank account.
- ☐ b. Your stock splits and goes up 15 points.
- ☐ c. Great conversation.

3. Why does your mate say you're working too hard?
- ☐ a. You haven't had a vacation in three years.
- ☐ b. You don't even come home for the weekend without your attaché case.
- ☐ c. You're starting to hide work around the house.

4. If you'd had $10,000 to invest during the last century...
- ☐ a. You'd buy $10,000 shares in American Velocipede.
- ☐ b. You'd buy Denny's 5 acres at 1st and Pike, even though you knew he was overcharging.
- ☐ c. You'd lend the money to carbuilder Stanley for his Steamer.

5. What did you want to be when you grew up?
- ☐ a. A policeman.
- ☐ b. Chairman of the board.
- ☐ c. President of the United States.

6. What do you want to do next?
- ☐ a. Spend a day with President Reagan.
- ☐ b. Go public.
- ☐ c. Climb Mt. Rainier.

7. Imagine you're a runner. Why would you enter a 10K race?
- ☐ a. To get in shape.
- ☐ b. To win.
- ☐ c. To finish.

8. Which goal had you set for initial success?
- ☐ a. B.M.O.C. (Big Man On Campus)
- ☐ b. C.E.O.
- ☐ c. M.B.A.

9. What do you do for a good time?
- ☐ a. Play volleyball.
- ☐ b. Restructure my portfolio.
- ☐ c. Get together with a few friends and talk shop.

10. What time of day do you do your best work?
- ☐ a. Early in the morning.
- ☐ b. Just before the Market opens.
- ☐ c. After 10PM.

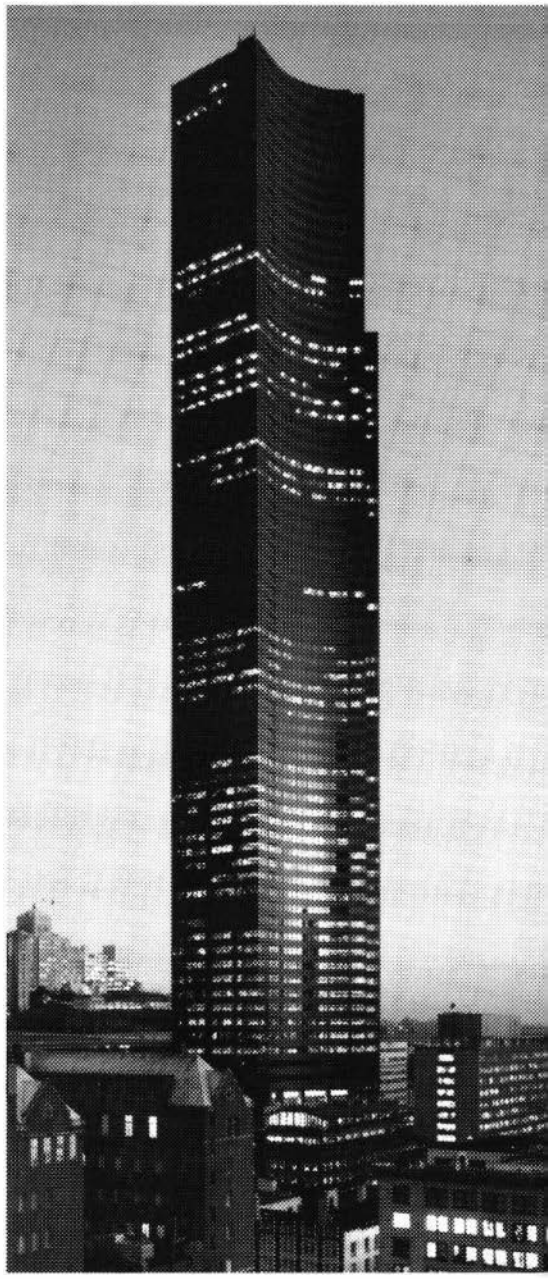
11. When do you intend to stop working?
- ☐ a. I'll stop for a martini at three.
- ☐ b. Never.
- ☐ c. I'll retire at 65 and grow sweet potatoes.

12. Do you like your career so well you'd do it for free?
- ☐ a. Not a chance.
- ☐ b. I'd do it if I had to pay for the privilege. It's exciting.
- ☐ c. I'd have to think about that.

13. How much income is enough?
- ☐ a. Money isn't important to me.
- ☐ b. Less than I want; more than I need.
- ☐ c. Enough to live comfortably.

14. If you had it to do all over again, would you?
- ☐ a. I'll get back to you.
- ☐ b. Absolutely. And I'd start sooner, push harder and risk more.
- ☐ c. Not a chance.

15. What does your current office location say about you?
- ☐ a. You're off the beaten track; you're just pleased if the business can find its way to your door.
- ☐ b. You're ready to take your place with the cream of Seattle's business community.
- ☐ c. You're still working in your hippie loft. Roots are important.



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ernors and, as needed, to the Supreme Court. Good government is ultimately the responsibility of the governed. To submit every question to a vote of the membership would abdicate that responsibility.

That the present system is basically sound was most recently demonstrated by the "specialization" issue. When it was first submitted by the task force, I, as did most I discussed the subject with, felt the adoption of the proposed specialization rule was a *fait accompli*. But the groundswell of opposition from the members of the Bar eventually convinced the Governors that their constituents were not ready for specialization, at least not in the form proposed. This was a victory for the representative system.

Though we may need to adjust the system to adapt it to changing times, I see no need to abandon it entirely because the issues confronting us are becoming more difficult. I, for one, still have confidence in the system and am willing to exert the effort required to make it work.

CHRISTOPHER M. HUSS
Tacoma, Washington

Strengthening Civil Rule 68

Editor:

I submitted the following suggestions for strengthening and improving CR 68 (offer of judgment) to the WSBA Court Rules and Procedures Committee. Colleagues who think my suggestions have merit may wish to write to the Committee expressing their support.

1. As Rule 68 is presently written, *only the defendant* may make an offer of judgment. Use of the Rule is not available to the plaintiff. Therefore one-half of all litigants cannot avail themselves of the Rule.

2. The present sanction under the Rule ("costs" incurred after the making of the offer) provides no real motivation to the offeree to give the matter serious consideration.

3. If the Rule were broadened to provide that *either* party may offer to have judgment entered in a specified amount, its availability would be doubled. Furthermore, reason and fairness dictate that the Rule should be available to both plaintiffs and defendants.

4. If the sanction to the non-accepting offeree who does not obtain a better trial result were something meaningful such as "reasonable attorney's fees and costs incurred after the making of the offer", I think the Rule would be much more widely used.

As matters now stand, the Rule is little used because of its limited availability and its toothlessness.

If expanded along the lines indicated the Rule could very well become an extremely useful tool in promoting settlements, reducing court congestion and a client's litigation expense. A litigant who receives a realistic settlement offer where the sanction for refusal and failure to obtain a better trial result is having to pay the opponent's reasonable attorney's fees and costs will look much more carefully at the offer before declining it than under the Rule as presently written.

If the Rule were so amended, then RCW 4.84.110 and .120 (with a scheme very similar to CR 68) should probably be repealed. It appears to have died of atrophy already anyway.

M. J. CARLSON
Everett

Fan Mail

Editor:

I just read Judge Bibb's article on trial lawyer competence in the January 1986 *Bar News*. An excellent article, especially the comments about "pages of boilerplate," "nit-picking" and aggression as a disguise for competence. He should be a regular feature.

HENRY W. GRENLEY
Seattle

Two April CLE Choices: SKILLS TRAINING: WILLS & PROBATE and ISSUES IN EMPLOYMENT LAW

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

The WSBA Wills and Probate Skills Training program will be presented at the Battelle Conference Center in Seattle. The course—with demonstrations, lectures and small group discussions—is designed to assist new attorneys or those whose primary areas of practice have not included wills and probate. The faculty is led by program chair **Robert Blais** (Short & Cressman, Seattle) and includes **George Velikanje** (Velikanje, Moore & Shore, Inc., P.S., Yakima), **Jennifer Olanie** (Foster, Pepper & Riviera, Seattle), **Paul Ricke** (Hatch & Leslie, Seattle), and **Gerald Treacy, Jr.** (Perkins Coie, Bellevue).

Issues in Employment Law is a seminar for attorneys who counsel and represent individuals and employers. It may also be of interest to attorneys in their own capacity as employers. Seminar chair, **J. Markham Marshall** (Preston, Thorgrimson, Ellis & Holman, Seattle), has assembled as faculty **Jon Howard Rosen** (Frank and Rosen, Seattle), **Michael E. Cavanaugh** (Bogle & Gates, Seattle), **Sidney Strong** (Halverson & Strong, Seattle), **Clemens Barnes** (Graham & Dunn, Seattle), **Deborah Allard** (Preston, Thorgrimson, Ellis & Holman, Seattle), **Ned Anna** (Lukins & Annis, Spokane), **Brian Scott** (Goodwin, Grutz & Scott, Seattle), and Prof. **Lawrence Weiser** (Gonzaga University School of Law, Spokane).

Topics include "Employment at Will From the Plaintiff's Perspective and From the Employer's Perspective," "Discrimination Law From the Plaintiff's and From the Employer's Perspectives," "How to Avoid Litigation," "Workers' Compensation From the Employer's and Claimant's Perspectives," "Entitlements: Unemployment Compensation, Social Security, Medicare and Others," and "Labor Law Considerations in the Formation or Acquisition of a Business—Record Keeping."

To facilitate the overall learning experience, this course is offered subject to a stringently limited enrollment (on a first-come, first-served basis). We urge immediate action by those interested in this course.

The two-day program is an intensive nuts and bolts seminar. Through the use of demonstrations, lectures and small-group discussions, the course is designed to familiarize registrants with both the substantive law and the skills required to effectively handle client problems in the wills and probate area.

[Contact for both of the above programs: Debbie Kirchhauser, WSBA, 505 Madison Street, Seattle 98104; (206) 622-6021.]

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by the **SKCBA Legal Clinic Committee**

As a volunteer attorney at Seattle-King County's eight legal clinics, you probably encounter legal problems that do not arise in your day-to-day practice. To assist the 125 volunteer attorneys who counseled over 3,500 clients last year, the SKCBA Legal Clinic Committee will sponsor brown-bag CLE Seminars through November 19, 1986. They will be held on the third Wednesday of every month from 12:00 to 1:30 pm at the SKCBA offices, 320 Central Building (Third and Columbia), in the basement conference room.

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MAR 20 Spokane (Ridpath Hotel)
MAR 27 Bellingham (Holiday Inn)
APR 3 Bremerton (Bayview Inn)
APR 4 Olympia (Westwater Inn)

Advising Washington Businesses
6.50 credits **$95**
MAR 14 Richland (Hanford House)
MAR 21 Bellevue (Greenwood Inn)

Skills Training: Wills & Probate
14.25 credits **$195**
APR 4&5 Seattle (Battelle Conference Center)

Issues in Employment Law
6.50 credits **$95**
APR 18 Spokane (Ridpath Hotel)
APR 25 Seattle (Westin Hotel)

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Family Law: Dissolution, custody, maintenance, temporary orders and Self-Help Plus (**Jill Salmi** and panel.)
MAR 19

Debtor/Creditor: Bankruptcy, garnishment, attachment and exemptions. (**Richard Schroeder,** Davis, Wright.)
APR 16

Motor Vehicles: DWI, traffic accidents and citations and insurance issues. (**Vicki Toyohara,** City Attorney's Office; **Kathryn Cashin,** Davis, Wright.)
MAY 18

Landlord/Tenant. (**Janis Bianchi,** Bianchi and Zosel.)
JUN 18

Probate, estate planning, wills and guardianship. (**Karen Boxx,** Preston, Thorgrimson.)
SEP 17

Public entitlements: Welfare, unemployment and social security. (**Elizabeth Schott,** Evergreen Legal Services.)
OCT 15

Family law: Domestic violence, spousal and child abuse, support enforcement, termination of parental rights, adoption and paternity. (**Jill Salmi** and panel.)
NOV 19

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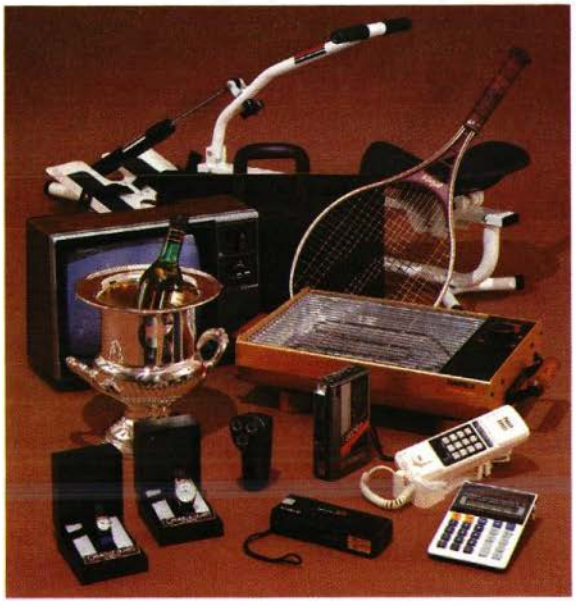

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To Bail or Not to Bail. . .

Should the dangerous propensity of an accused be considered by a judge in setting bail? Your Criminal Law Section and Court Rules and Procedures Committee have said "no." The Washington Association of Prosecuting Attorneys vigorously argue "yes."

A proposed amendment to Criminal Rule 3.2 would purport to allow consideration of dangerousness as a factor in setting bail and conditions surrounding pretrial release of a person accused of a non-capital felony.

The Supreme Court referred the proposed rule change to the Board of Governors for review and recommendation last year. The Criminal Law Section studied the matter and recommended against adoption, as does the Court Rules and Procedures Committee. The latter raised the question whether consideration of dangerous propensity as a factor in setting bail would be in violation of Article I. §20 of our State Constitution.

At its October meeting, the Board of Governors refused to recommend adoption of the rule change and the proposed amendment to CR 3.2 was referred back to the Supreme Court without recommendation. In doing so, I believe it was the sense of the Board that the change, if effected, should be done by constitutional amendment.

There is considerable dissatisfaction with our criminal justice system among the citizenry. Some of the criticism is somewhat vague and not well reasoned, but it is there nonetheless. It is a growing force, and "bail reform" or "pretrial release" is one of its current focal points. Whether based upon fear or fact, the public sentiment should be heeded.

I was discussing the concept of a fair trial with a lay friend some time ago, and the conversation shifted, as it inevitably does in discussions of that nature, to the "presumption of innocence" and the multiple ramifications which flow from that principle. My friend had difficulty applying that principle to the situation where the accused had been observed actually committing the crime or, as my friend said, "everybody knows the son-of-a-gun is guilty." Again, I expounded upon how important a fair trial is to protect the innocent. "Oh, well," said my friend, "I believe every *innocent person* should have a fair trial. But I don't see why we have to give a fair trial to criminals we know are guilty."

My friend's comments really express a deep-felt dissatisfaction with the criminal justice system—delay, criminals awaiting trial out among innocent people, easy sentences—the full panoply of public criticisms. Many of our law-related education programs attempt to educate and inform the public to dispel such misunderstanding, but in the matter of pretrial release, maybe the public doesn't misunderstand.

I recognize the philosophical and practical arguments on both sides of the issue. These arguments are weighty, and none are to be discarded lightly or simplistically.

At its November meeting, the Board of Governors again reviewed whether or not a judge should be able to consider dangerous propensity in setting bail. After heated discussion, and on a less than unanimous vote, the Board approved the concept in principle and directed that the Supreme Court be informed of such approval. Such approval was noted, however, without recommending adoption of the specific proposed amendment to CR 3.2 presently pending before the court.

We agree with the majority of the Board. We believe that adoption of a rule authorizing a judge to consider the dangerous propensity of an accused in setting bail is warranted, and in the public interest, provided appropriate safeguards are established to govern such determination.

However, because of the present wording of our State Constitution, we agree with our Court Rules and Procedures Committee that if such change is to be effected, it should be done through constitutional amendment. The public debate would be healthy and meaningful. Ultimately, the resultant action will help restore public confidence in our criminal justice system.

Semper Fidelis

"Congrats on your recent honors for serving as an attorney in Washington for fifty years," I wrote to the fifty-odd recipients of the Bar's semi-centenary award. "You must have fearful and wonderful moments, as well as a wealth of wisdom, to share." And share they did. Some gave their names; others wished to remain anonymous. We can learn from all of them.

Question 1: What was the funniest, scariest, saddest, most marvelous/devastating/curious/illuminating/shocking/_____ moment of your career? (The _____ elicited "happiest", "most astonishing", "most challenging", "most shocking". Some contributors let the reader decide.)

• For many years I unfailingly received brick bats for occasionally being slow in completing assignments. A young couple walked in one day with a beautiful bouquet for me, an envelope containing a check and a note saying, "Please, Mr. _____, don't forget us."

I was at once astonished and remorseful. Let it be said I worked that night and weekend on their problem, which is more than I have ever felt compelled to do for any of my brick bat friends. I have often thought since that that was one real smart woman—she thought she knew how to get to me, and she sure did.

• My appointment by the court to defend an indigent farm worker charged with first degree murder of his cabin mate with an axe: Despite the testimony of a purported eyewitness for the State, my detailed investigation and subsequent cross examination resulted in the acquittal of this innocent defendant.

• A client rushed into my office and said he had waited a whole month until I returned from vacation. He then talked for at least an hour during which time I said nothing. He arose abruptly and said, "I knew you could help me!" and left in a rush without my having said a single word. "Be sure to send me a bill," he said as he left. I never did.

(J.H. Gordon) Waiting outside the Board of Governors meeting with my fiancée to find out if I passed the Bar fifty years ago.

Being sworn in at the Supreme Court of the United States.

Settling a ½ million dollar lawsuit at 2 am in the Park Lane Hotel in New York.

Being elected and serving seven years as treasurer of the American Bar Association.

The responsibility and satisfaction of being the senior partner in a fifty-man law firm.

• (Philip W. Richardson) The moment the psychiatrist witness refuted his own diagnosis of *folie a deux* in a first degree murder case. My partner and I, counsel for the defense, were devastated.

• (Edward E. Henry, retired judge) My saddest experience was when I met with twenty members of the faculty of the University of Washington. They had been accused of being Communists or fellow travelers by members of the Canwell un-American Activities Committee, which said they should be removed from the UW faculty.

• My happiest moment came after many weeks of hearings before the Committee and the Board of Regents when the Board declared that my clients had been unfairly treated by the Committee and should remain on the faculty.

• (John Gavin) My most shocking moment came when I was advised that I was going to be honored for fifty years of service as an attorney. I was still laboring under the impression that I was a bright, young attorney just embarking on the practice. I suppose we all delude ourselves into thinking that we started only yesterday.

• (John N. Sylvester, who spent the 50 years in one firm) My funniest moment came in 1939, when I was 29 years old and Speaker of the House of Representatives in Olympia. There were a number of left-wingers in the House. In fact, it was established after the session that at least five were card-carrying Communists. One was an old geezer from Skagit and Snohomish Counties. I had not recognized him when he arose to take the floor. In the closing days of the session, he got up as usual and I recognized him. I said, "Mr. _____, you have the floor." He said, "Mr. Speaker, I wish to make a motion." I said, "Sir, make your motion." He did—he thumbed his nose at me! It really brought the house down.

Question 2. What is the most helpful thing you can tell new attorneys?

• Clients pay best midst gratitude's tears.

• Learn to write better English. Study grammar.

• Never accept a case if you feel that you are not qualified to handle it efficiently. If the hair on the *back* of your neck stands up while you hear the facts of the case, *absolutely* do not take it.

• Keep up with the "advance sheets" of our state courts' decisions and with newly passed laws and ordinances.

• Join and remain active in your local bar association.

• Never let legal technicalities stand in the way of common sense.

• (J.H. Gordon) Plan your career and set five- or ten-year future goals.

• You serve yourself the best by serving your client the best!

• Don't be afraid to admit that you don't know everything—get help when it's needed.

• (Philip W. Richardson) Prostitute your social life for the business if you must, but use some time for worthwhile service of the public.

• (Robert T. Hunter, retired Supreme Court justice) Avoid selling your clients short. They are often wiser than you think.

• Avoid confrontations unless they are professionally required. They are seldom if ever forgotten.

• (Edward E. Henry, retired judge) When you cross examine an opposing witness, be prepared to know what the answer will be.

• As a trial judge, I often noted that cross examination frequently assisted the opposing side. *E.g.*, Defendant's counsel in a personal injury case asked plaintiff's witness: "You said that my client was exceeding the speed limit, but you were just standing on the sidewalk and had no speedometer to

go by. You were just guessing, weren't you?" Response: "No, I wasn't guessing. I saw him passing the trucks and all other traffic on the highway. He was going much faster than they were."

• (John Gavin) Do not let anyone else but yourself control your time. Your time is what you have to offer, and if you let others use it as they wish, not as you wish, they are stealing something from you that you can never replace.

• Always work zealously in the profession, but do not forget to make some money along the way.

• (John N. Sylvester) Do your jogging on your own time.

Question 3. Any further comments?

• (J.H. Gordon) Looking back on fifty years of law practice makes me realize how fortunate I have been—not only to be a lawyer but a lawyer in the Puget Sound area. There are very few things that I would have changed even if I could.

• (Edward E. Henry) As I reflect over fifty years of membership in the Washington State Bar Association, how fortunate I was to obtain my law degree and become a member of this Association. Having met and associated with lawyers and judges throughout the United States and the world, I have found that none of them has a higher degree of professional ethics than members of the Washington State Bar. It has been an enjoyable experience for me to have been associated with them for these fifty years.

• (John N. Sylvester) Take an active part in your local and State Bar Association activities.

• (John Gavin) It has been a pleasant and rewarding half century; I'm engaged in a profession that is clearly the best of all professions. I ponder about many things I might have accomplished and did not, but in the end I always conclude that if I had it to do over, I probably would have happily followed exactly the same route.

And then there was the 'phone call I received one day. "I'm not sure what you're after in your letter about the 50-year lawyers," the voice on the other end said, "but I'd be glad to talk about it over lunch."

Files concerning his civic and legal activities lay on his desk. "I really haven't done anything remarkable," he said as he leafed through them. Their contents belied his statements, but I never could have told him this.

A 50-year lawyer, yes—but this one didn't start practicing 'til he was 39. (Scoop Jackson was a law school classmate.) Earl Phillips' *parents* were Seattle natives, and he was born at 4th and John, which today is home to the Space Needle. One grandpa owned the land in 1880; the other grandpa owned land at 3rd and Pine.

Phillips still practices law. He recently stepped down as U.S. chairman of the World Peace Through Law Center, which has members from 140 countries. He and former ABA president Charlie Rhyne have been involved in it since its inception in 1953.

On a snowy November day, Phillips, his nephew, and I walked from Phillips' office to the Rainier Club. (Phillips knew its architect.) Conversing about a world grander than the daily toiling at law, we touched on travel, the Golden Rule, and our place in the universe.

When he was 81 and his wife 80, "for sheer amusement" they flew on the first commercial flight ever to circumnavigate the globe via the north and south poles.

The weight and the privilege of history were on my bones. I bid adieu to the nigh-nonegenarian and retired (so to speak) to my own office---where I promptly fell asleep. Oh, for Phillips' energy! And his ability to laugh.

And his thoughts after 50 years in the profession?

If the community is good to you, you have to give something back. You only pass this way once.

Litigation costs so much. . .and the client goes broke.

You always take your reputation with you.

The big (firms) should play by the same rules as everyone else.

Just because you're at one table and they're at another, people assume you're enemies. That's not professionalism. You have to do your job with respect and dignity.

Carole Grayson

How To Choose A Lawyer

by **Steven B. Tubbs**

The real impetus behind the recent specialization effort has been a drastic increase in lawyer advertising. The public is very susceptible to blandishments in the Yellow Pages, the classifieds, the late-night TV programs, and local magazines which tout the credentials of one or more practicing attorneys. I am convinced, however, that selecting an attorney through these advertisements is the worst method available, and that the Bar Association has an affirmative duty to the public to say so.

According to Claude Pearson, chair of the defunct Specialization Committee, $50 per year from each participating attorney was contemplated to maintain that attorney in the Specialization Program. I suggest that the Bar Association assess such a fee (substantially less than the cost of a Yellow Pages ad) from each member of the Bar for the purpose of educating the public concerning lawyer selection. Based upon a present attorney population of approximately 13,000, an annual budget of $650,000 is projected.

At present, according to Joseph Holmes, chair of the Public Relations Committee, *no* funds are budgeted for that express purpose. The Bar does not include a brochure on attorney selection in its list of publications directed towards the public. The Vancouver Yellow Pages simply state, "There is one good way to find a lawyer," followed by a reference to the Bar Lawyer Referral Service.

The Bar and its Public Relations Committee should inform the public through paid advertising in the media that there are a number of ways to select an attorney, including, but not limited to, the following. Is the at-

Please turn to page 14

Tort Reform

by **Ron Bland**

This is in response to the legislative proposals of the Washington Association of Defense Counsel as set forth by F. Ross Burgess, President, in a letter in *The Seattle Times* on January 19, 1986. Burgess advances ten goals which "must be achieved if there is to be a system dispute resolution which is fair, efficient and effective. . .". The defense goals and my responses are as follows:

1. Make the public aware of the cost to all of the ever-expanding size of damage awards for injuries, the multiplication of unjustified theories of recovery, and the spiraling costs of litigation.

Response: I'm not quite sure what Mr. Burgess is talking about, but if it has anything to do with the skyrocketing win-lose-or-draw hourly fees of defense lawyers, I'm all for it.

2. Limit or eliminate punitive damages.

Response: I didn't know we had any in our state.

3. Limit discovery abuse.

Response: You're right on, brother. A good start might be to eliminate the 60-page set of defense interrogatories

Please turn to page 14

More Listening, Less Marketing

by **Irving "Buddy" Paul**

The December President's column concludes with the salutation "Always listening". I am sure that the sentiment is heartfelt, and this letter is addressed to that open ear. However, the content of the column seems to belie the concept that we, as lawyers, are listening at all.

The column promoted Bar educational programs:

"We have said it before, but we believe it bears repeating: 'If the public understands the system, it will respect the keepers of the system.'"

"General WSBA name recognition must first be established through institutional advertising before specific educational and public relations projects will have appreciable impact."

By coincidence, I read this column the same day I heard the results of a Harris poll indicating almost complete lack of public confidence in lawyers.

My concern with our President's column is the organized Bar's inability to appreciate the cry of a public genuinely disillusioned with our current legal system and its practitioners. Unfortunately, we continuously dismiss the criticism with the somewhat presumptuous response, "*They* simply don't understand."

Our only effort at improving our public image is, therefore, *MARKETING*. In our society, marketing is all too frequently used to obtain public approval, regardless of product quality. Criticism of our legal system and its practitioners comes from persons of ability, education and foresight. If we are to rise in the public image, we must learn to understand, appreciate and remedy the criticism. Let me provide some examples.

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How To Choose
(continued from page 13)

torney:

a. recommended by friends or relatives?
b. recommended by people with similar problems?
c. recommended by professionals in related fields?
d. recommended by attorneys in non-related fields?
e. compatible with the client after an appropriate interview?
f. a member in good standing with the State Bar?

The status quo is benefiting no one but ad agencies. If this proposal is beyond the scope of purpose set forth in the By-Laws of the Public Relations Committee, I suggest that purpose be expanded by appropriate amendment.☐

Tort Reform
(continued from page 13)

with which we are all too frequently confronted.

4. Seek the cooperation of the judiciary in taking a more active role in case management.

Response: I'm not quite sure what Mr. Burgess is talking about here either, but it sounds pretty good.

5. Diligently explore methods to administer claims efficiently and to deliver quality legal services to plaintiffs and defendants in civil cases at reasonable cost.

Response: I'm all for it.

6. Pursue and encourage the use of alternative dispute resolution techniques as appropriate.

Response: The plaintiff's bar has consistently and vigorously supported mandatory arbitration as well as other forms of arbitration. No argument here.

7. Limit or eliminate joint and several liability.

Response: This is a biggie, Mr. Burgess. It seems to me that without joint and several liability, there would be nothing to stop defense lawyers from heaping liability and blame on absent and often insolvent wrongdoers at the victim's expense.

8. Eliminate the collateral source rule which allows inappropriate double recovery of damages and allow full disclosure of all facts bearing on a plaintiff's financial loss.

Response: If we are going to "tell all" to the jury, why not allow mention of liability insurance and permit reference to the fact that plaintiff's attorney's fees are payable out of the award?

9. Control the use and amount of contingent fee contracts to appropriate limits.

Response: This sounds reasonable if the legislature will also limit the hourly fees of insurance defense lawyers to, say, $75 per hour. Similar controls on medical and hospital charges might also be helpful in keeping costs down.

10. Increase judicial compensation.

Response: The plaintiff's bar spearheaded the increase in judicial salaries in the 1984 legislature. No argument here.☐

More Listening
(continued from page 13)

RPC 1.6 permits, but does not require, an attorney to divulge confidential information to prevent the client from committing a *future* crime. This is a concept that the public does not, and should not, accept. We cannot, as attorneys, put our "system" above the lives of our fellow citizens. If client confidences are important enough to justify secrecy in the face of an upcoming crime, then no attorney should be permitted to divulge client secrets. If, on the other hand, preventing future crime is significant enough to justify an intrusion into the attorney/client privilege, then all attorneys should be required to prevent future criminal action. What effect does this have on the public's confidence in us?

RPC 1.15 is another example of the legal profession's oversight of public welfare. Even if an attorney believes that his or her services are being used to perpetrate a crime or fraud, withdrawal from the matter is not mandatory, but left to the attorney's discretion. Similarly, RPC 3.3 provides that an attorney *may* refuse to offer evidence that the lawyer reasonably believes is false. Accordingly, an attorney may also go ahead and offer evidence he or she reasonably believes is false. The same rule also leaves it up to the attorney to decide whether or not to withdraw from representing a client who has already made a false statement of material fact to a tribunal, but who does not want to provide the court with the truth. Rule 3.3 (d).

These omissions in the Rules, coupled with such actions as reinstating Gordon Walgren to the practice of law, are not matters which are going to improve our public image, no matter how much money we spend on TV time. Besides the lack of regulatory ethics, we must also look at the cost, accuracy and efficiency of this system we represent. How many times have we advised a client, "You might as well settle this matter since you will pay more in attorney's fees than you would save by winning the case"? While good fiscal advice, this is a damaging indictment of our system. We, as lawyers, cannot expect the public to continue to pay more to resolve a dispute than is involved in the dispute itself. Similarly, civil or criminal defendants prevailing at the end of a two-week trial face attorney's fees of $10,000, $20,000 or $30,000. Even though the verdict completely exculpates them, they face the prospect of overwhelming financial injury or ruin. Who among us can afford to pay an extra $30,000 when we are innocent of any wrongdoing? We cannot expect the public to accept this anomaly.

The expense of the system has always been a topic of discussion. However, as the legal/judicial system eats up a greater and greater portion of our state and county budgets, we cannot expect our fellow citizen taxpayers to accept the wisdom of our ways. I believe as strongly as does any attorney in the protections afforded by our Constitution and jury system. However, I cannot expect my fellow citizens to put those values ahead of reasonable health care, adequate roads, and quality education. Each of these areas requires its portion of funds.

I am gratified that our President concluded his column with the salutation that he and, I hope, we are always listening. I hope that we can incorporate what we hear into meaningful reform that will legitimately capture the confidence of those who currently hold us in such low esteem. I very much doubt, however, that our public image will change significantly if we continue to ignore the legitimate shortcomings of our system and resort to marketing as our prime response. The money we are spending on advertising could be better spent funding forums in which the Bar listens to the concerns of the public. I hope that the difference between Madison Avenue and Madison Street is the ability to do more listening and less marketing. We cannot assume that the problems exist because the public does not understand the system, but must ask to what degree we appreciate the criticism.☐

WASHINGTON STATE BAR **NEWSLINE**

The Board's Work

by Carole Grayson

Tacoma, February 14-15, 1986

Present both days: All Governors (except Steven Heisler 2/14 pm and Angelo Petruss 2/15), Pres. Pat Comfort, Exec. Dir. John Michalik, General Counsel Robert Farrell, and Charles Snyder (WSBA Young Lawyers). Present 2/14: James Noe (Superior Ct. Judges Assn.), Patrick Sutherland (Wa. Assn. of Prosecuting Attys.), John Straight and Gregory Canova (WSBA Crim. Law Section), James Strong (Govt. Lawyers), Mary Drobka (SKCBA Young Lawyers), and John Petrich (Ct. of Appeals Judges Assn.).

ROSELLINI REINSTATEMENT HEARING — On February 15, the Board of Governors (minus Angelo Petruss, who recused himself) heard disbarred lawyer John M. Roselini of Seattle petition for reinstatement ot the Bar. It was the first reinstatement hearing before the Governors to utilize outside "special counsel to the Bar." (See "Outside Counsel in the Public Interest", June 1985 Bar News, p. 7).

"The law looks with favor upon the rehabilitation of erring attorneys (and if rehabilitation has occurred), the law looks with favor upon the readmission of the attorney," said Rosellini's attorney, Fredric Tausend of Seattle. Alleging an "overwhelmingly strong showing of appropriateness for reinstatement," he said that his client had achieved a "record of substantial active participation in the community" since disbarment in 1982. Tausend asked the Governors to focus on the present and to rely on the written record for information about his client's past.

Special Bar counsel Ronald E. McKinstry of Seattle noted that his "charge" was "to investigate all information available and to present pros and cons" so the Governors could apply the eight criteria of In re Walgren (104 W.2d 557, ---p. 2d---(1985). "The evidence weighs in favor of reinstatement," said McKinstry, who told the Governors, "What we're doing is not above the law; we're trying to do it in accordance with the law."

Rosellini acknowledged that when allegations of wrongdoing surfaced during his campaign for Attorney General in 1980, "I denied (them) initially...I was not candid about anything." Rosellini was disbarred for taking $10,000 from a client's trust account through 14 withdrawals and "repaying" it by taking $10,000 from another client's account. In re Rosellini, 97W.2d 373, 646 P.2d 122 (1982). He eventually made restitution to both clients. He was never prosecuted criminally.

"Disbarment was a shock, although I had tried to prepare myself for it," said Rosellini. "I had thought it a possibility...I knew if I got caught, it was likely I'd be disbarred... (But) I did it; it was wrong; it was terribly, terribly wrong; I never should have done it."

Governor Elizabeth Bracelin and other Governors inquired what impact a recommendation of reinstatement by the Governors would have on the public. "This is a high visibility case, no doubt about it." said Rosellini. He said that public opinion on the issue went both ways.

Asked by Governor Jay White which of the eight criteria in Walgren gave him the most pause, Rosellini said it was the one dealing with the reformation of conduct.

Rosellini testified that his psychiatrist had concluded that depression might have contributed to the thefts. Rosellini did not think he was depressed when he took the moneys in 1977, although it was "probably true" that he was "bored with the world" in the late 1970s, he said. Tausend acknowledged that psychiatric findings "bear only on rehabilitation and do not excuse or justify" the acts.

Albert Carlin, Ph.D., an associate professor in the University of Washington Department of Psychiatry, was called as a witness by McKinstry. He termed Rosellini "a good risk of not repeating the infraction." Carlin had never met Rosellini but based his conclusion on Rosellini's ability to maintain a marriage, employment and therapy and to stay out of further trouble during disbarment.

Since being disbarred, Rosellini has held a variety of jobs, including driving a truck, performing lab testing at a race track, and working part-time in real estate. From May-August, 1984, he worked part-time for the King County Council studying office space alternatives. From August 1984-October,1985, he worked in the King County real property division negotiating leases. He has been assistant to a review officer in the Department of Employment Security since October, 1985.

Tausend asked the Governors to ignore "a little blip": Rosellini's home 'phone number in the Seattle White Pages lists him as an attorney. Referring to an exhibit before the Governors, an invoice from PNB in late 1982 which purported to cancel the Yellow and White Pages listings at his direction, he said that he learned of the White Pages listings a few weeks before the hearing, and that he has never held himself out as an attorney or performed legal services during disbarment.

The Governors will announce their decision within 60 days of the February 15 hearing. Any favorable recommendation would be subject to full review by the Supreme Court.

HOBBESIAN CHOICE: FIFTH vs. SIXTH AMENDMENTS — Criminal Law Section members Michael Frost of Seattle and William Johnston of Bellingham asked the Governors to authorize an amicus curiae brief on behalf of the Bar Association in Tornay v. United States,

C85-272R, currently pending before U.S. District Court Judge Barbara Rothstein.

After what President Pat Comfort termed "a very spirited discussion," a motion to approve the request failed 4-5. The Governors then voted 8-1 to consider the matter in March.

"The IRS is trying to turn a lawyer into a witness against his own client and thus take him off the case," said Frost. Tornay seeks to quash an IRS summons served on Robert Wayne of Seattle for records of all fees he paid to Wayne over a six-year period. The government seeks the information as part of a possible tax evasion case against Tornay.

Governors Ed Lane, Hal Vhugen, Don Bond, Frank Hayes Johnson and Angelo Petruss voted against the proposal. All except Lane condemned the practice of utilizing IRS summons of attorney records. Governors Ted Zylstra, Roy Moceri, Elizabeth Bracelin and Jay White favored the proposal. It was noted that Governor Steven Reisler, who had a prior time commitment, would have voted in favor of the proposal. "I feel that (the use of IRS summons) is a very bad thing for lawyers and the system," said Zylstra. Bracelin said the summons "strike at the fundamental right to counsel."

STRAIGHT TALK ON DEMING The Governors, by a vote of 5-3, authorized the Criminal Law Section to file an amicus curiae brief in the Supreme Court concerning allegations of misconduct against Judge Mark Deming. Authorization is contingent on the Governors' approving the brief at their March meeting.

Section member John Straight, who is a professor at the University of Puget Sound Law School, emphasized that the brief would take no position on the merits, but would focus on the need for guidelines in assessing judicial conduct on and off the bench.

Governors Petruss, Lane and Vhugen opposed the motion. Governor Reisler was absent, and Governor Bracelin recused herself.

WORLD PEACE By a vote of 6-3, the Governors authorized the World Peace Through Law Section to publicize a resolution passed by the section, with the proviso that the resolution has the support of, but was not passed by, the Bar Association as a whole. The resolution condemns apartheid and demands the release of South African lawyer Nelson Mandela from prison. Section secretary Elizabeth Schott of Seattle made the presentation.

"How can we turn down (the request of an amicus brief in Tornay) and ok this?" asked Zylstra, who dissented with Johson and Lane. Governor Reisler was absent.

OTHER WORK

- President Comfort appointed to the Task Force on Resolution and Referendum Procedures Governors Don Bond, Jay White and non-Governors Jerry Boyd of Spokane and Lembhard Howell and David Hoff (chair) of Seattle. (See "Board's Work", February 1986 Bar News, p. 29.)
- The Governors named six more attorneys from the Second Congressional District to be special district counsel pursuant to RLD 2.7: Julian C. Dewell and Mark Patterson of Everett, John Slater of Bellingham, David Welts of Mount Vernon, William H. Wilson of Lake Stevens, and Richard Bailey of Arlington.

UPCOMING MEETINGS: MAR 21-22 Yakima (Thunderbird); APR 18-19 Vancouver WA (Inn at the Quay); MAY 16-17 Spokane (Inn at the Park.)

LATE-BREAKING NEWS: Annual spring seminar, Greater Seattle Legal Secretaries Assn: SAT Apr. 5, Rm.316, UW South Campus Ctr.: Collecting Judgments, Drafting Interrogatories, Drafting Wills & Trusts and Personal Injury.[Amy Wong (206) 622-6021]

Mock Trial

Culminating a semester of study as part of its MENTOR project, seniors at Seattle's Summit High School recently conducted a mock trial in Seattle District Court. Students in **Al Young's** American Government class role-played the parts of the victim, defendant, prosecutors, defense team and jurors.

Seattle District Judge **John G. Ritchie** presided at the trial; his bailiff, **Molly Hoffa Torres,** a Summit graduate, performed her usual court functions for the mock trial. Summit's MENTOR partner, the Seattle law firm of Bovy, Wampold & Munro, were consultants for the project.

The mock trial involved a 73-year-old widow who was accused of assaulting a 17-year-old student. Claiming the destruction of flower beds and verbal harassment by kids in her neighborhood, the defendant purchased a handgun. A week later, upon encountering a young boy (the victim) in front of her house, she fired her gun, striking him in the leg.

Two six-member juries heard the case. After deliberating for more than two hours, one jury rendered a guilty verdict, while the second jury found the defendant not guilty. (Student observers were also split when polled by Judge Ritchie during a recess.)

MENTOR is a law-related education program sponsored by the State Bar. A law firm and high school class are paired for a semester- or year-long program of study to de-mystify the law. In addition to mock trials, typical activities include class visits to law firms and courthouses, lawyer visits to the classroom and hypothetical case studies. Seventeen high school/law firm partnerships are currently participating in the ever-expanding project.

Court sketch by Summit student Ravah Shafer

Court sketch by Summit student Rebecca Rooz

In Memoriam: Charles Goldmark

by Gerald Johnson

On Christmas Eve, 1985, Charles A. Goldmark, his wife Annie and their young sons, Colin and Derek, were brutally assaulted in their Seattle home. All four eventually died as a result. Chuck Goldmark was a partner in Wickwire, Lewis, Goldmark & Schorr, the Seattle firm he helped form ten years ago.

Chuck's lawyer-rancher father, the late John Goldmark, represented Okanogan County for three terms in the State House of Representatives. John's defeat in 1962 amid a McCarthy-style witch hunt in which he and his wife, Sally, were accused of being Communists ended a promising political career. The Goldmarks eventually were vindicated in a celebrated libel trial. They were represented by Seattle attorney William Dwyer, whose book, *The Goldmark Case*, details the family and the trial.

The Charles Goldmark family evidently was the victim of similar anti-Communist mythology, for Goldmark's alleged assailant sought him out in the mistaken belief that he was a Communist.

Educated at Reed College and Yale Law School, Charles Goldmark was admitted to the State Bar in 1973. He worked at the Seattle office of Davis, Wright, Todd Riese & Jones before starting his own firm with several colleagues.

Goldmark's practice emphasized what he described as "public law." He represented a number of municipally chartered public authorities throughout the state which undertook projects as diverse as historic preservation, low-income housing development, restoring Tacoma's Pantages Theater and rehabilitating Seattle's Pike Place Public Market. He also counseled the Arctic Slope Eskimos. Bucking the tide of increasing specialization within the profession, Goldmark was a dedicated and successful generalist equally at home before the State Supreme Court, in complex proceedings, managing complicated municipal financings or negotiating major development agreements.

Goldmark participated actively in the Seattle-King County and Washington State Bar Associations. Besides being a board member and eventually chairing the SKCBA Young Lawyers Section, he served on numerous WSBA and SKCBA judicial qualifications and selection committees.

He was the driving force behind the establishment of the Legal Foundation of Washington, of which he was president at the time of his death. The Foundation channels interest on lawyer trust accounts to benefit legal services for the indigent. He was *pro bono* counsel to SKCBA, the principal proponent of the plan, and helped secure State Supreme Court approval of the proposal.

Goldmark also was active in civic and democratic party activities. During the last two years of his life, he served on the board of "Today's Constitution and You", which works to promote understanding of the Constitution during its bicentennial. He served as counsel to the King County Democratic Central Committee and later the State Democratic Party.

On the day Chuck died, his partner James Wickwire stated on behalf of their law firm:

> Chuck Goldmark was one of this state's most brilliant and outstanding attorneys, a wise counselor, our partner and friend. He was one of Seattle's finest, hardest-working and most generous and public-spirited citizens. He loved his wife Annie, and together they raised two wonderful children in a happy home. He was the best of all of us. His death is a tragedy for everyone of good will in the Seattle community.
>
> We will never understand or accept this.

Remembrances to the Charles and Annie Goldmark Family Foundation: PO Box 4099, Seattle, WA 98104.□

B. Gerald Johnson is an associate at Wickwire, Lewis, Goldmark & Schorr.

IOLTA GRANT$ 1985 AWARD$

The following organizations received grants from 1985 IOLTA funds.

FREE CIVIL LEGAL SERVICES FOR THE POOR (75% of total grant funds)

$18,000 to the **Catholic Community Services Legal Action Center,** Seattle, for legal services to low-income persons in Seattle and King County with landlord/tenant and state public entitlement problems.

$20,000 to the **Community Service Center for the Deaf and Hard of Hearing,** Seattle, for individual advocacy and law-related education to low-income, deaf and deaf-blind persons and providers who serve the deaf.

$454,500 to **Evergreen Legal Services,** Seattle, to provide free civil legal services in 31 of Washington's 39 counties. Funds will be used to re-open offices in Clark and Snohomish counties, provide legislative advocacy and increase statewide coordination and litigation support.

$20,000 to the **Fremont Public Association,** Seattle, for information and advocacy to 2,400 public entitlement recipients/applicants in King and South Snohomish counties; for education

of welfare recipients and service providers. Funds are a 2-to-1 match for City of Seattle funds.

$8,500 to the Law Students' Civil Rights Council for placement of five law students as legal interns with low-income legal service providers in Washington during summer, 1986.

$131,000 to the **Puget Sound Legal Assistance Foundation,** Tacoma, for civil legal services to low-income residents of Pierce, Thurston and Mason counties. Funds will add an attorney, paralegal and support staff to the Olympia office for rural clients. Staff will be added to the Tacoma office in employment law, food law and legal problems of the Indo-Chinese refugee community.

$10,000 to the **Skokomish Indian Tribe,** Shelton, for free civil legal assistance through the NW Intertribal Court system to low-income Skokomish tribal members residing on the reservation or in Mason County.

$107,500 to the **Spokane Legal Services Center,** Spokane, for increased attorney and support staff of free civil legal services in Spokane, Stevens, Ferry, Lincoln and Pend Oreille counties.

$40,000 to the **Unemployment Law Project,** Seattle, for counseling, negotiation and direct legal assistance to unemployed, low-income claimants in the unemployment hearing process. Emphasis on claimants in King, Pierce, Yakima, Spokane and Clark counties.

$50,000 to the **Washington State Special Education Coalition** (40 groups who are concerned with developmentally disabled children), Olympia, for education, legal advice, representation and consultation to parents of children with special education needs in Washington on the issue of handicapped childrens' rights to free, appropriate public education.

PRO BONO/PRIVATE BAR REPRESENTATION
(11% of total grant funds)

$17,500 to the **Benton-Franklin County Bar Association Pro Bono Project** to establish a screening process for low-income persons who receive *pro bono* services through Benton-Franklin/County Bar. A portion will cover costs of representation of indigent clients.

$10,000 to **Seattle-King County Bar Association Neighborhood Legal Information and Referral Clinics,** Seattle, for continued operation of eight clinics in King County.

$25,000 to **Snohomish County Legal Services,** Everett, to support the current program of direct legal representation to low-income persons through *pro bono* services by the Snohomish County Bar.

$16,400 to the **Snohomish County Bar Association Pro Bono Project,** Spokane, to support the current program of *pro bono* representation of low-income residents who cannot receive services from other Spokane providers.

$21,000 to the **YWCA/Yakima County Bar Domestic Legal Aid Project,** Yakima, to implement a new program that will provide legal information and referrals to low-income victims of domestic violence and persons seeking divorces *pro se*. A limited number of *pro bono* family law referrals will be made to Yakima County Bar members.

LAW-RELATED EDUCATION FOR LAYPERSONS (11% of total grant funds)

$7,500 to **LEARN (Washington State Law-Related Education and Resource Network),** Seattle, to create and implement a two-day workshop for secondary education teachers of Spokane Educational Service District No. 101 on curriculum for "You and the Law" for high-school juniors and seniors in Adams, Ferry, Stevens, Pend Oreille, Lincoln, Spokane and Whitman counties. Workshop format and materials are available at no charge.

$32,500 to the **Seattle-King County Bar Association Domestic Violence Task Force,** Seattle, to produce and distribute a videotape to *pro se* petitioners obtaining civil protection orders against domestic violence. Full-time coordinator will assist petitioners. Videotape will be available for other counties.

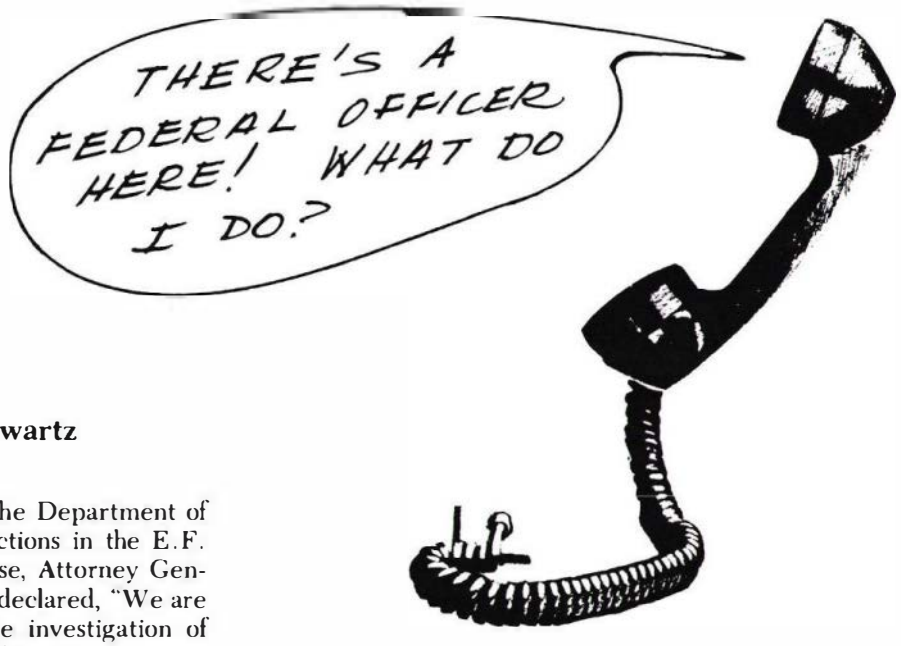
$40,000 to **"Today's Constitution and You", Metrocenter YMCA,** Seattle, for program formed in anticipation of U.S. Constitution bicentennial. Support and develop TC&Y committees; promote and convene statewide conference for volunteers to bring law-related education to their communities and set up programs about the Constitution.

$50,000 to the **Washington State Shelter Network,** Olympia, in coordination with the Coalition of Sexual Assault programs to provide statewide training, coordination and technical assistance to volunteers and employees of shelters and rape relief organizations on domestic violence and sexual assault issues.

ALTERNATIVE DISPUTE RESOLUTION MECHANISMS (3% of total grant funds)

$35,000 to the Seattle-King County Bar Association Dispute Resolution Center, to implement model alternative dispute resolution center. Free mediation of small civil legal problems in Seattle and King County. Funds cover six-month start-up period.□

Federal Grand Jury Practice For The Business Practitioner



by **Irwin H. Schwartz**

Defending the Department of Justice's actions in the E.F. Hutton case, Attorney General Edwin Meese declared, "We are as aggressive in the investigation of so-called white collar crime as narcotics and organized crime." In the Reagan and Carter administrations the Department of Justice committed increased resources to prosecute business-related offenses. In mid-1985, the *New York Times* reported this was accompanied by "a trend toward increasingly stiff penalties in high-visibility white collar crime cases. . . ." Congress, in its far-reaching amendments to the criminal laws in October 1984, provided for new penalties against business entities. The maximum fine for any felony is now $500,000 and for a misdemeanor $100,000.

Problems for a client may begin with a visit from a federal law enforcement officer to interview and/or deliver a grand jury subpoena or serve a search warrant. Problems for the lawyer begin with an urgent phone call from the client: "There's a federal officer here; what do I do?"

"There's an FBI agent here with a subpoena. . ."

When the client calls, your best advice is, "Do nothing; say nothing." It is imperative that you make the time for necessary inquiries before the client acts. Advise the client to decline any further conversation with the officer and to accept the subpoena, if there is one. Delaying contact between the client and federal authorities rarely prejudices the client. An interview can be arranged later, and documents can be produced if appropriate. Your immediate object is to stop everything until informed advice can be given.

Occasionally, a client may be faced with a "forthwith" subpoena. It purports to require that the client drop everything and go immediately to the grand jury to produce records or give testimony. "Forthwith" subpoenas are contrary to Department of Justice policy as a general rule[1] and are disfavored by the courts.[2] The client should not fail to appear as required, but should neither testify nor produce records. He should inform the foreperson of the grand jury of the circumstances under which the subpoena was served and that, until he has an adequate opportunity to confer with counsel, he is unable to decide whether or not to assert available privileges. The prosecutor at that point can allow the witness an opportunity to confer with counsel, or she can proceed to District Court—a forum more favorable to the witness than the grand jury itself. Alternatively, the witness may take the initiative in the District Court by way of a motion to quash.

With increasing frequency, the government is employing search warrants rather than subpoenas for businesses. The warrant generally allows

the search for and seizure of broad categories of company records, including correspondence and financial files. The client often is put to the difficult choice of assisting the search for specific materials or allowing extended disruption of business while the premises are searched and cartons of records are hauled off. Just after the search, a grand jury subpoena which requires the company to produce anything missed in the search may be served.

The client must be advised not to interfere in the search, but to witness and document, however possible, the scope of the search—number of searchers, length of search, areas of the premises searched, which files were looked at and whether files were examined before being removed. Action by the attorney immediately after the search may be needed to prevent exploitation of a search too broad in scope or too intrusive in manner. For example, one may pursue a motion to seal materials seized pending the filing and litigation of a motion for return of property.

Is your client at risk?

Inquiry into your client's position begins when you examine a grand jury subpoena and any attachments to it. Of particular importance is a "target notice." This document informs the party subpoenaed that he or she may be a subject of the grand jury's inquiry. Although not required by law, it is Department of Justice policy that all "targets" receive such notice.[3] Department of Justice policy notwithstanding, do not rely upon the absence of a target notice; your necessary second step is to contact the Assistant U.S. Attorney assigned the matter. Ask about the scope of the investigation and the client's perceived role in the matter.

If the client is not in jeopardy of criminal prosecution, then the Assistant U.S. Attorney should have no reason not to furnish your client with immunity, either by the informal means of a letter or the formality of a court order. Both are binding.[4] Several variables affect the desirability of one over the other (See the section on immunity.) An assurance that the client is not a "target" is *not* immunity. The comparison is easy; the former is worthless, as **U.S.V. Olmstead,** 698 F.2d 244 (4th Cir. 1983), illustrates. Olmstead was contacted by an IRS agent who was investigating someone else and was assured that he was not the subject of the inquiry. Olmstead "cooperated." Things changed; Olmstead was indicted for five counts of income tax fraud. The Court of Appeals held Olmstead's statements admissible despite the agent's assurance.

Company Production to a Subpoena Duces Tecum

The grand jury subpoena duces tecum is akin to a civil demand for production of a type that lawyers only dream (or have nightmares) about. At least in the Ninth Circuit, there is

almost no issue about relevance, reasonableness, the cost of inconvenience to the producing party. Original records are subject to production, and if the producing party requires copies (for some silly purpose like continuing business), they generally must be made at the producing party's expense.[5]

Counsel's role is to see that documents outside the subpoena are not produced and to assure full compliance with its demands. A willful and material omission may be a felony.

If the subpoena is vague or overbroad, or if additional time is needed to produce, negotiate with the prosecutor. If that is unsuccessful, the subpoena or the issuance of the subpoena may be challenged.

A subpoena duces tecum is challenged by motion to quash and/or by refusal to produce. Intervention by third parties is permitted and may be mandatory if the third party wishes to preserve an issue.[6] The possible grounds for motions to quash and bases for refusal to produce are too many and too involved to treat here. Some reference materials are suggested at the conclusion of this article.

Very frequently a grand jury subpoena is accompanied by an offer to have an agent accept materials in lieu of an appearance before the grand jury. The offer is attractive, especially where a client is in another part of the country. There are drawbacks, however. There will be no transcript of the proceeding, and the limited grand jury secrecy rules may not apply at all. On the other hand, as a *quid pro quo*, counsel may attend such a session. If an informal arrangement is pursued, at least obtain a letter, to be presented by the government to the grand jury, stating that it is done in lieu of a grand jury appearance and that the government agrees it will be accorded the secrecy protection of Rule 6(e).

The Witness Appears

Counsel for the witness must wait outside the grand jury hearing room to confer with his client. However, the witness does have a right to confer with counsel, and the ordinary practice is for the client to write down the question asked of him by the prosecutor, and then ask to be excused to discuss it with counsel.[7] Counsel and client then jointly may decide whether to assert a privilege in response to a particular question. The client returns to the grand jury room and either answers the question or asserts a privilege. Another question is asked and the process is repeated. It is frustrating because of its tediousness.

Resist the temptation to allow the client to stay for a series of questions, or to assume that the client will heed your adivce on questions to answer and questions not to answer. If you do not know what is happening behind the closed door, you cannot properly advise him. Be sure your client understands when to confer with you. All too often the witness fails to confer because he feels awkward. Beware of a waiver of privilege which can occur by answering "limited" questions.

Immunity and Its Shortcomings

Immunity may take several forms: it may be "transactional" or "use," formal or informal. Transactional immunity is a promise not to prosecute. It is rarely granted, for under Department of Justice policy it is a device of last resort to obtain a witness' testimony or assistance.[8] "Use immunity," a creature of statute,[9] is the principal device employed today by the federal government. It protects the witness from direct and derivative use of his testimony in a criminal prosecution.[10] It does not, however, protect against the use of his testimony in a civil proceeding or even against collateral use in a criminal proceeding.[11] If offers no protection against a foreign prosecution.[12]

Informal immunity is accomplished by a letter from the U.S. Attorney. Whether it binds a state authority is unclear. For that reason, one may choose not to accept informal immunity, a decision legally within the client's rights.[13] Formal immunity involves an application by the U.S. Attorney, with Department of Justice approval, to the District Court, which then enters an order conferring immunity. The District Court thus truly acts as a rubber stamp for the prosecution; it has no choice but to enter the order if it is in proper form.

An immunized witness retains all privileges and claims except the Fifth Amendment privilege against self-incrimination. For a variety of reasons, particularly possible civil use of his testimony, even an immunized witness may have good reason to avoid giving evidence.

The Myth of Grand Jury Secrecy

Fed. R. Crim. P. 6(e) renders grand jury testimony secret in theory. But secret from whom and for how long? There are four major exceptions to the secrecy rule: (1) grand jury matters may be disclosed to other federal attorneys in connection with criminal investigations; (2) they may be disclosed to "other government [federal] personnel" as the U.S. Attorney deems necessary to the criminal inquiry; (3) they may be disclosed on court order "preliminarily to or in connection with a judicial proceeding;" and, (4) they may be disclosed to the accused in connection with motions or at trial under Fed. R. Crim. P. 12 and 26.2. As of November 1, 1986, disclosure also will be permitted on court order to state and local authorities.

This disclosure to potential civil adversaries is a distinct possibility which you should consider in rendering advice. Before advising a client to produce records which he otherwise may not be required to produce, consider the civil consequences of their disclosure.

Parallel Proceedings

Parallel proceedings, in which civil or administrative action is undertaken at the same time as a criminal investigation/prosecution, present the most difficult problems. Constitutional issues and discovery problems abound

because evidence obtained in one is not rendered inadmissible in the other.[14] Protecting rights in one forum may jeopardize the other proceedings. From the client's perspective, a stay of the civil or administrative proceedings is often the most desirable course. On the other hand, that may lead to subsequent use of the grand jury material.

Conclusion

Grand jury practice is as specialized as any other area of business law. The pitfalls are many. In dealing with grand jury issues, I remind my clients of two principles. First, in the words of the Hon. William J. Campbell (N.D. Ill.):

> Today, the grand jury is the total captive of the prosecutor who, if he is candid, will concede that he can indict anybody, at any time, for almost anything, before any grand jury.[15]

Second, even if the client is spared indictment, the grand jury proceeding is one which can affect adversely the client's business and personal life even more than might civil litigation. The client's response to a grand jury subpoena should be commensurate to the threat.□

* * * * *

Reference sources

ABA National Institute, "The Grand Jury and Your Client" (1979)

National Lawyers' Guild, *Representation of Witnesses Before Federal Grand Juries* (1985)

Practicing Law Institute, *Pre-Indictment Tactics in Criminal Cases* (1981)

Footnotes

[1]*U.S. Attorneys' Manual, § 9-11.230.*

[2]**U.S. v. DiGilio,** 538 F.2d 972 (3rd Cir.), *cert. denied,* 429 U.S. 1038, (1976); **U.S. v. Wilson,** 614 F.2d 1224 (9th Cir. 1980).

[3]U.S. Attorneys' Manual, § 9-11.250.

[4]Informal immunity can be binding. **U.S. v. Nussen,** 531 F.2d 15 (2nd Cir.), *cert. denied,* 429 U.S. 839, 50 L.Ed.2d 107, 97 S.Ct. 112 (1976); **U.S. v. Society of Independent Gasoline Marketers,** 624 F.2d 461 (4th Cir. 1979), *cert. denied,* 449 U.S. 1078. Formal immunity is provided in 18 U.S.C. § 6001 *et. seq.*

[5]There is a statutory exception for certain financial institutions. 12 U.S.C. § 3415.

[6]In re Proceedings Before Federal Grand Jury, 643 F.2d 641 (9th Cir. 1981).

[7]§ 9-11. 250, U.S. Attorneys' Manual instructs the prosecutor to inform the witness "that the grand jury will permit the witness the reasonable opportunity to step outside the grand jury room to consult with counsel if he desires."

[8]Department of Justice, "Principles of Federal Prosecution," 36 (1980).

[9]18 U.S.C. § 6001 *et seq.*

[10]**Kastigar v. U.S.** 406 U.S. 441, *rehearing denied* 408 U.S. 931 (1972).

[11]**U.S. v. Martinez-Navarro,** 604 F.2d 1184 (9th Cir.), *cert. denied,* 444 U.S. 1084 (1979), allowed immunized testimony to be considered against the witness at his sentencing on another charge.

[12]**In re Flanagan,** 533 F.Supp. 957 (E.D. N.Y. 1982), *reversed,* 691 F.2d 116 (2nd Cir. 1983).

[13]**U.S. v. D'Apice,** 664 F.2d 75 (5th Cir. 1981), vacated a contempt citation, holding the witness had a right to refuse to testify under informal immunity even after the district court concurred in its being granted.

[14]**United States v. Kordel,** 397 U.S. 1 (1970).

[15]**Campbell,** "Eliminating the Grand Jury," 64 *J. Crim. L. C. & P.S.* 174 (1973).

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CASELAW CAPSULES

Notes From the Academy

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

Creditor-Debtor Law. *(Case 1.)* Bank's security interest in taxpayer's account was subordinate to prior unfiled federal tax lien where, prior to government levy, security interest was not perfected as pledge under common law by transfer to bank of an indispensable instrument, such as passbook, or by assignment sufficient to transfer title to bank. Bank's unexercised setoff right did not extinguish taxpayer's property rights in account and could not defeat federal tax lien. ***Peoples Nat'l Bank of Wash. v. United States***, 777 F.2d 459 (9th Cir. 1985).

(Case 2.) Reversing bankruptcy court, district court held that Internal Revenue Service should not be enjoined from enforcing against responsible corporate officers the 100 per cent penalty for failure to account for income and social security taxes withheld from corporate employees' wages (26 U.S.C. § 6672), even if such enforcement could result in interference with Chapter 11 reorganization by impairing officers' commitment and involvement with reorganization effort. Federal statute prohibiting restraint of tax assessment and collection contains no bankruptcy policy exception. ***In re Dulien Steel***, 53 B.R. 99 (W.D. Wash. 8/2/85).

—M. D. Rombauer

Evidence. In prosecution for negligent homicide, deposition of prosecution witness was inadmissible against defendant, even though defense counsel was present at deposition and cross-examined witness. A deposition is hearsay and is admissible under ER 804 only if witness is unavailable to testify at trial. Here, fact that witness was vacationing in Mexico did not make her unavailable within meaning of ER 804, particularly where state had not tried to subpoena witness or to procure her attendance at trial by other reasonable means. ***State v. Sanchez***, 42 Wn. App. 225 (1985).

—K. B. Tegland

Real Property. *(Case 1.)* Plaintiffs, landowners on Vashon Island, sued American Smelting and Refining Company in trespass and nuisance on account of deposit on their land of airborne, invisible, microscopic particulate matter from the company's copper smelter at Ruston, Washington. Action, originally brought in King County Superior Court, was transferred to United States District Court, Western District of Washington. District court certified questions to Washington State Supreme Court, which answered them as follows: (1) Trespass is "intentional" if defendant knows that his acts are "certain or substantially certain" to cause harm and still does the acts. (2) Deposit of invisible, microscopic particulate matter on another's land is a trespassory invasion as well as possibly being a nuisance. (3) Plaintiff in such trespassory action must prove "actual and substantial" damages to maintain action. (4) Limitations period for such trespassory action is three years; with continuing trespass, plaintiff may recover damages for three years preceding suit. ***Bradley v. American Smelting & Ref. Co.***, 104 Wn.2d 677, 709 P.2d 782 (11/14/85).

(Case 2.) RCW 36.87.090 provides that a county road, except one dedicated in a plat, is automatically vacated if it is not opened for public use within five years after it is authorized to be opened. *Held*, abutting landowner may begin adverse possession of such unopened road after five years, even though county commissioners do not adopt formal resolution vacating it until later. Here, adverse possessors acquired neighbor's fee simple estate upon which county had street easement. *(Note.* Owner cannot get title to county land by adverse possession.) ***Wells v. Miller***, 42 Wn. App. 94, 708 P.2d 1223 (11/7/85).

(Case 3.) Held, inter alia: (1) A joint venture agreement that was written, signed, and acknowledged and that provided that one venturer "grants, conveys and transfers" a half interest in land to the other venturer was a sufficient deed. (2) A quiet title action may be maintained (apparently) more than 10 years after the cause of action arose because "actions to quiet title are not subject to the statute of limitations." *(Comment.* It is clear that quiet title actions are not subject to the *three-year* statute of limitations, but whether they may be subject to the *10-year* statute has not been so clear. *See, e.g.*, ***Wagner v. Law***, 3 Wash. 500, 28 P. 1109 (1892). If *no* statute of limitations applies to a quiet title action, might a disseised owner defeat a defendant who had been in adverse possession over 10 years by bringing a quiet title action?—W.B.S.) ***Petersen v. Schafer***, 42 Wn. App. 281, 709 P.2d 813 (9/3/85, changed 12/10/85).

—W. B. Stoebuck

DIVORCED BUT NOT DECEASED

THE ANOMALY OF THE "SURVIVING" FORMER SPOUSE

by **Mark Reutlinger** *and* **William C. Oltman**

Divorce has always had its complications, most of them obvious to the parties or their attorneys. One subtle yet potentially devastating consequence is the possible effect of the existence of a surviving former spouse on the will of the other spouse.

Attorneys familiar with Washington probate law know that divorce ends any direct testamentary relationship between the testator and the divorced spouse. The "post-testamentary spouse statute," RCW 11.12.050, not only revokes a will as to a person who marries the testator after execution of the latter's will (giving the spouse an intestate share of the estate), but also revokes a will as to a spouse following divorce, taking from the divorced spouse any benefits under the will.

The complication occurs during distribution of the estate to the remaining beneficiaries under the will. Since the statute revokes the will only "as to the divorced spouse," the will remains valid and effective as to any other beneficiaries.

No problem, you say: simply delete the divorced spouse's share, and divide the rest among the remaining beneficiaries; or, if there are none, among the intestate takers. But consider the following gift under a typical will:

> I give to my wife Helen all of my bonds; but if my wife fails to survive me, I give such property to the Seattle Home for Wayward Children.

The testator's son Tom is the intestate taker of all property not otherwise devised by the will. Wife Helen has been divorced, but is still alive at the testator's death; the gift to her is revoked by operation of law, and she takes nothing. Who takes the bonds?

Should death and divorce have the same, or different, effects on a contingent gift?

Clearly, if one follows the literal language of the will, Tom takes the bonds as undevised property. Since Helen did, in fact, "survive" the testator, the contingency upon which the Home would take (*i.e.*, failure of Helen to survive the testator) has not occurred. Is this what the testator had in mind when he made the Home the recipient should Helen not survive? Our dilemma increases if we postulate variations in which the substitute taker is a close relative, the intestate taker a disfavored child, or the substitute taker a relation only by marriage to Helen (for example, Helen's son by a former marriage). Should death and divorce have the same, or different, effects on a contingent gift?

Washington courts faced with this dilemma have done their best to develop a coherent approach, but ultimately only legislation can offer a satisfactory resolution. The first case to address the question, *Peiffer v. Old Nat'l Bank & Union Trust Co.*,[1] concerned a gift of his entire estate to the testator's "beloved wife" if she survived him for three months, and to his son if she did not. The testator's daughter was expressly disinherited. The testator divorced his spouse, who survived him by more than three months. The divorce revoked the former wife's share by operation of law; but the effect of that revocation on the son's contingent gift was unclear. By the literal language of the gift, the former wife had indeed "survived," defeating the son's contingent gift and passing one half of the estate to the disinherited daughter by intestacy.

The court recognized that this result would have been contrary to the clear intent of the testator, and to avoid it the court focused on the term "beloved wife" used by the testator: while the ex-wife survived, she did not survive as his "beloved wife," and therefore the son's gift took effect. The difficulty with this narrow "terminology" approach is obvious: if the testator had used his spouse's first name only, instead of "beloved wife," the court would have been forced to award half of the estate to the disinherited daughter, or to find another theory.

The next case, *In re McLaughlin's Estate*,[2] illustrates this difficulty. The testator used the term "she" in referring to a prior naming of his wife in the survival clause; again, following a divorce, the former spouse survived the testator. Here, however, the substituted taker was the former wife's son, the testator's stepson; the court determined that the testator would not have wished the stepson to take under the circumstances that occurred. It did not, to its credit, merely distinguish *Peiffer* on the basis of the different words used by the testator, recognizing that this would be a "rather technical distinction." However, the test the court did apply was little better: it held that the "plain meaning" of the "express condition" was that the survival of the former wife should negate the stepson's gift, and therefore the stepson could not take.

Again the difficulty seems clear: had the former wife happened to predecease the testator, a purely fortuitous circumstance, apparently by the court's stated reasoning the stepson would have taken, whether or not this had been the testator's intent. (Did the testator favor the stepson on his own merits, or only because of his closeness to the testator's then-beloved wife? Was the contingent gift a favor to his wife or an expression of concern for the stepson?) A subsequent case, *In re Harrison's Estate*,[3] followed *McLaughlin* on similar facts.

Both the technical language test of *Peiffer* and the "plain meaning" test of *McLaughlin* are inadequate responses to the problem raised by the statute, at least to the extent they seem to depend upon the vagaries of language or happenstance. A test merely following the testator's intent might be desirable, but intent is often difficult to ascertain, especially when dealing with circumstances which most testators do not (and do not wish to) anticipate.

The easiest solution to the problem is a small addition to the language of the statute. Following the revocation of any provisions for a divorced spouse, the statute need only continue that, "except as otherwise provided in the will, property shall pass as if the former spouse had predeceased the testator." This is the approach taken by the Uniform Probate Code,[4] and it has the advantage of certainty, at the admitted sacrifice of some flexibility. However, since the basic provision for revocation upon divorce is absolute and unaffected by the testator's (unexpressed) intent, it does little violence to the scheme to include the defeat of those gifts conditional upon the survival of that spouse. More importantly, both effects of divorce seem to be in keeping with what the average testator would prefer. Despite occasional defeat of a testator's true intent, at least there will be the opportunity for the testator to include some other scheme in his or her will and avoid the statutory choice.

Finally, what should the practitioner do pending any change in the statute? At the very least, every married testator must be apprised of the statutory effect of divorce on any provisions for his or her spouse, just as any single testator should be apprised of the effect on his or her will on a post-testamentary marriage. And if the testator wishes to adopt the scheme suggested above, one need only add to the standard "if my spouse predeceases me" the additional phrase, "or we are not still married at my death," or, perhaps more delicately, "or is prevented from taking by operation of law." It is a small change, but it can have a major effect on the testamentary scheme. Just ask Tom and the Home for Wayward Children.□

Footnotes

[1] 166 Wash. 1, 6 P2d 386 (1931).
[2] 11 Wn. App. 320, 423 P.2d 437 (1974).
[3] 21 Wn. App. 382, 585 .2d 187 (1978).
[4] Uniform Probate Code § 2-508.

Mark Reutlinger and ***William C. Oltman*** *are Professors of Law at the University of Puget Sound School of Law. This article is based upon materials in* Washington Law of Wills and Intestate Succession, *published by Butterworth Legal Publishers.*

CLARK COUNTY REPORT

by **JOHN NICHOLS**

As the 1986 lawyering season kicks off, the Clark County Bar is undergoing numerous "transitions". For some this means a change of titles, for others a change of location, and for most it's a change of socks. The long distance award goes to **Randy Ferguson.** Bowing to the pressure of the O.L.I. (Oregon Lawyer Invasion), Randy has taken a sabbatical from Gallup, Duggan, Tubbs & Heurlin and ventured to Micronesia. He will be working with the government's tax department and scouting for league basketball teams. Becoming a government employee on a more local level was **Ron Wilkinson,** who was appointed Superior Court Commissioner. Ron defeated a bevy of attorneys for the position by using his strengths in the swimsuit and talent competitions to outdistance his rivals.

A sixth Superior Court judgeship will open up in January 1987, and hopefuls are already circling the courthouse. Evidence of interest in basic black was the long list of jobseekers for the recent District Court position. Such legal heavyweights as **Marcine Miles, Darvin Zimmerman, Eddie Dunkerly, Ken Eisland, Randy Fritzler, Barbara Johnson,** and the cast of "A Chorus Line" applied for the spot. Unfortunately the excitement was premature; the position will be filled by election in November. In the meantime, the tag team of Eisland and Fritzler man the magistrate's job and have challenged all Russian teams to a full contact mitigation hearing.

George Miller moved laterally from Superior Court clerk to District Court administrator. George immediately reduced court operating hours to conform to his naps. **Rick Pomerville** moved from Omaha to Mozena & Armstrong to **John Stichman's** office, all in the space of one year. Stichman, meanwhile, parted company with **Mark Baum** and **Loren Etengoff.** Scripts to the above have been accepted by "Dynasty". **Dale Read, Sr.** and **Jr.** have vacated the fabled firm of Wolfe, Mullins, Hannan & Mercer, whose gold stationery has many melting down letterheads without reading the contents. Saves time, and you don't miss a great deal. **Daniel Marsh** has moved but is still in The Yellow Pages and talking to the same client.

Numerous other changes that are the habit of the lawyer species may be followed in The Yellow Pages. Nominations for best ads, most ads, most "specialties" and lowest fees have been received. Winners of the coveted Beagle Awards will be announced at February's annual awards ceremony. Unlike last year, no pansies from the FTC or the BBB will be invited. The results will be reported in the usual fashion—the Greyhound restroom next to **Casey Marshall's** phone number.

EAST KING COUNTY REPORT

by **DOUGLAS W. HARRIS**

Well, another month has gone by and my only consolation is that by the time this column is printed in the *Bar News* it will be spring (or at least very close to it). The winter doldrums are in full swing and material has been hard to come by.

Recent developments: **Robert Conklin** has moved to Bellevue from Seattle. Two months ago, the January Trustees meeting resulted in an investigation into the feasibility of an Eastside attorney referral directory. If it is affordable, it will list Eastside attorneys by areas of practice emphasis. **Steve Hanson** volunteered to assist **Eric Jeppesen** in the task of arranging speakers for our monthly general meetings. Anyone with suggestions for speakers should contact Steve or Eric.

Speaking of help, discussion of an Eastside law library has geared up again. There is space available at Bellevue District Court (sign on the door even says "library"), but we need books and shelves. Judge **Brian Gaine, Chris Frost** and yours truly are working out these minor details. Anyone with suggestions or major contributions should contact one of the above.

Finally, the annual Spring Banquet is now in the planning stages. It can be distinguished from the Christmas "banquet" in that at this one you actually sit down and eat dinner. It should be fun.

PIERCE COUNTY REPORT

by **ROBERT W. MARSDEN**

Congratulations to the newly-elected officers of the Young Lawyers Section of the Tacoma-Pierce County Bar Association: President, **John Graffe;** Vice President, **Michael B. Smith;** Secretary, **Dennis Greenlee** and Treasurer, **Jane Faulkner.**

Office moves: **David Gordon, F. Michael Misner** and **Jefferey Robinson** have formed a new partnership in Gig Harbor. **Dick Weiss** has been named a partner with Small, Winther, Snell and Logue. Eisenhower, Carlson, Newlands, Reha, Henriot and Quinn announces that **Kathryn J. Nelson** has become a partner in that firm. **John R. Connelly, Jr.,** who had been an associate with Gordon, Thomas, Honeywell, Malanca, Peterson and Daheim, was named a partner in that firm. **Cheryl R. Robbins-Brown,** formerly with Manza, Moceri, Gustafson and Messina, joined Dolack, Hansler, Burrows, Dayhoff, Barline and West. Burgess, Kennedy, Fitzer and Strombom has hired **Leslie Ann Budewitz,** formerly a clerk for Division II of the State Court of Appeals, as an associate.

On their own: **Karen V. Wood,** formerly an associate with Adams and Degel, opened her own practice in downtown Tacoma. **James G. Manza** has left the practice of law to pursue private business interests. His former law partner, **Mel Rubin,** has announced that **Kevin M. Boyle** will be moving into his office in the near future. **Jonathan Blado** is on his own these days. Blado's former partner, **Dave Breedlove,** gave up his practice in Tacoma to move back to his home state of Illinois.

SKAGIT COUNTY REPORT

by **WM. H. NIELSEN**

New officers of the Skagit County Bar Association are: President, **Pat McMullen** of McMullen, Reed, Reilly and Weyrich; V/P **Colonel Betz** of Youngquist and Betz; Secy/Treas, **Sheila Ridgway** of Ridgway and Ridgway.

In the comings and goings department, two additional attorneys are now practicing in Skagit County. **John Green** is soloing in Anacortes and **Carol Lyles** is associating in Pat McMullen's office in Sedro Woolley. On January 13, two new lawyers were sworn in: **Terry Carroll** of Stiles and Stiles and **Warren Gilbert, Jr.** of (surprisingly enough) Gilbert and Gilbert. Sheila Ridgway, who suffered long enough as secretary, is leaving for the big city, and **Peg Cahill**, who suffered enough period, is leaving for the cold northlands.

The Island County Bar, with the able assistance of the Skagit County Bar, held a roast for retiring Judge **Howard A. Patrick.** Many of Patrick's friends and foes attended, and he was certainly well basted and baked by his former friends.

Skelton and Tims successfully fought off the invasion from out-of-county firms and were awarded the contract for the public defender work for 1986. Shortly thereafter, they left for their annual trip to the Caribbean; it is unlikely the County Commissioners were informed of that during negotiations.

District Court Judge **Larry Moller** was recently told by a defendant whose case had lingered on that he thought of the Judge "as a son." He was thereafter shown an expression of gratitude commensurate with the judge's softhearted nature and received only sixty days in jail.

SPOKANE COUNTY

by **JUDY J. FOSTER**

Twelve admittees were sworn in by Judge **Michael Donohue** in January. The Spokane Bar Association and Young Lawyers of Spokane County held a reception following the ceremony. Admitted were: **Silas Carroll, Rita Cooney, James DeWolf, Jeffrey Finney, Robert Greer, Colleen McQuaid, Keith Newell, Anna Nordtvedt, Douglas Ragland, Milton Rowland, Denise Stern** and **Gregory Stevens.** Congratulations to each of you! Welcome to the profession!

Law Day 1986 is well underway in Spokane County. Committees and groups are working together to make this an outstanding year. If you have suggestions or would like to help out with this worthwhile celebration, please contact Robert Beaumier at 456-2657.

The Spokane Bar Association Pro Bono program has received additional funding to enable us to continue and upgrade the present program. And, we have had 90 more attorneys in the county sign up to do referrals. WAY TO GO! We still need more signups, however . . . and, as said before, in the domestic relations area. Of course, if you want to sign up in areas other than domestic relations, landlord-tenant, administrative and debtor-creditor, please feel free to do so.

On the Move! – **Laurel Siddoway** and **Keith Brown** joined the Randall & Danskin firm as associates. Siddoway received her undergraduate and law degrees from the University of Utah; is admitted in Utah, New York and Washington and was corporate counsel to Dean Witter Reynolds, Inc., in NY for five years. Brown re-

ceived his undergraduate and masters degrees from Bemidji State University, MN and his law degree from Gonzaga.

William J. Williams, having completed his term as Chief Justice of the Supreme Court of the State of Washington is now practicing with Dean, Keane, Smith & Hemingway, N. 721 Jefferson, Spokane, 99210. 328-5550. **Randall L. Stamper** & Associates, P.S., opened offices in Spokane on February 1. He and **Teresa Sherman** are at Suite 200-Post Place, W. 720 Boone, Spokane, 99201. 326-4800. **Lucinda Saue, Charles Baechler, Stephen Heintz** and **James Kane** joined the Spokane County Public Defender's Office.

Board of Governors Elections Due

Lawyers residing in the Second, Fourth and Seventh Congressional Districts please note:

Members of the Board of Governors of the State Bar to represent those Districts, for three-year terms ending in 1989, are due to be elected this year. Expiring in September, 1986 are the current Board terms of Ted D. Zylstra (Second District), Donald H. Bond (Fourth District) and Elizabeth J. Bracelin (Seventh District).

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

Nominating petitions may be obtained from the Bar Office, 505 Madison Street, Seattle, WA 98104. The petitions must be filed with the Executive Director at the Bar Office by 5:00 p.m. on Wednesday, April 30, 1986.

WASHINGTON WOMEN LAWYERS

Officers for 1986 are: Co-presidents **Claudia Backlund** and **Janet Gaunt**, (both of Seattle), VP Membership **Vicki Seitz** (Seattle), VP Funding **Katharine Witter** (Spokane), VP Programs **Jeanne Betzendorfer** (Pierce Co.), Treasurer **Kim Churchill** (Kitsap Co.).

At the annual Board retreat on January 11, Board members adopted as their goals and priorities for the year: legislation, fundraising, job listing service, speakers bureau, candidate endorsements and a membership plan.

For more information, contact WWL administrator **Susan Helf** at 520 Jones Bldg., 1331 Third Ave., Seattle, WA 98101, (206) 622-5585.

BRIEFLY NOTED

DISCIPLINE

Disbarred

Seattle attorney **Thomas A. Gagley** (admitted 3/18/52) was disbarred from the practice of law by Supreme Court order entered December 30, 1985. Gagley was disbarred based on findings that he failed to comply with probationary conditions resulting from a February 8, 1985 order of the Supreme Court in prior disciplinary proceedings, failed to pay costs and expenses assessed against him in those prior proceedings, and failed to comply with the rule requiring notifying clients of his suspension. The prior proceedings involved Gagley's failure to disburse interest earned on client funds to those clients. He had been ordered as a condition of his probation to employ a Certified Public Accountant to determine the amount of interest owed each client, and to disburse that interest.

Spokane attorney **Riner E. Deglow** (admitted 7/1/54) was disbarred by the Washington Supreme Court on December 30, 1985. The order of the court was based on unchallenged findings involving mishandling of client funds. Deglow invaded client funds to make disbursements to himself and other clients and commingled his funds with clients' funds. He also failed to cooperate with the Bar's examination of his trust accounts.

Vancouver attorney **Randolph L. Johnson** (admitted 5/2/73) was disbarred by the Washington Supreme Court on December 30, 1985. The order of the court was based on a felony conviction for second degree assault, noncooperation in a Bar investigation, failure to file a trust account affidavit for year 1983, and his previous disciplinary record. Johnson had been reprimanded in 1982 for neglect and failure to carry out the objectives of his client and for failing to return client funds. Additionally, he had been suspended from the practice of law in October 1983 for 30 days for neglect and failure to carry out a contract of employment, and for an additional 31 days for failure to cooperate in a Bar investigation.

Suspended

Seattle attorney **Ralph W. Anderson** (admitted 5/17/76) has been ordered suspended from practice for one year commencing on January 7, 1986, to be followed by probation for one year on various conditions. The suspension was based upon a hearing officer's findings that while an employee of a law firm, Anderson had converted funds of the firm with the intent permanently to deprive the firm of the funds; that while a partner in a law firm he had failed to account for and deliver funds paid to him as fees, converting them to his own use with the intent permanently to deprive the law firm of the funds; that he failed to deposit advance fees into a trust account and had converted those funds to his own use before they were

earned, without any accounting to the clients; and that he had failed to perform work as contracted and paid for by a client and had failed to refund unearned fees until after a complaint to the Bar Association. The hearing officer found various mitigating factors which warranted a sanction less than disbarment.

Reprimanded

Oroville attorney **William E. Garnett** (admitted 11/10/77) has been ordered reprimanded, pursuant to a hearing panel officer's recommendation which was not appealed, for neglecting an immigration matter and misrepresenting its status to the clients and others.

Censured

Edmonds attorney **Allen L. Carr**, (admitted 2/21/58), has been ordered to receive two censures for neglect and failure to carry out contracts of employment with clients. Carr has also been placed on probation for two years.

Spokane attorney **Raymond L. Lebsack** (admitted 10/25/74) has been ordered censured pursuant to a stipulation for discipline. Lebsack, the attorney and personal representative for an estate, had been directed by court order to pay the attorney's fees of a party who had moved to compel him to provide certain documents and property. Lebsack failed to comply with the court order for nine months.

IN MEMORIAM

Mary Ellen Krug Case, 67, who chaired the state Public Employment Relations Commission under four governors, died December 17, 1985. The labor and employment law specialist was a senior partner in the Seattle firm of Schweppe, Krug & Tausend. Krug received her undergraduate and law degrees from the University of Washington in 1939 and 1943. She was a co-author of West's Federal Forms for the U.S. Courts of Appeals. Krug chaired the state commission from 1976-80. After being reappointed in November 1982, she chaired it until September 1984 and was a member until her death. Remembrances to the YWCA.

American Bar Association Section of Litigation

John R. Tomlinson, chairman-elect of the American Bar Association Section of Litigation, announces that the Section's 11th Annual Meeting will be held in Seattle October 15-18, 1986. The Section of Litigation, the second largest of the ABA, has over 45,000 attorneys. Last year's meeting in Dallas attracted 720 lawyers. A detailed description of the CLE and social programs will be available this spring. For more information, contact Melanie Mitsui at (206) 628-6600.

Indian Law

The *Washington Law Review's* annual Jurisprudential Lecture will be on "The Status of Indian Tribes in American Law" by the **Hon. Wm. C. Canby, Jr.**, 9th Circuit Court of Appeals, Phoenix, Arizona, at 8 pm, Thursday, May 1 in Kane Hall, University of Washington.

Rate Change

Avis Rent A Car, which gives special rates to WSBA members, has announced the following moderate increases. Daily rates: subcompact, $33; compact, $36; intermediate, $39; full-size 2-door, $41; full-size 4-door, $43. Surcharges may apply in certain major metropolitan areas and their airports. There's a 10% discount on Avis SuperValue for other car classes, one-way rentals and the SuperValue Weekly rate discount. A 5% SuperValue Weekend rate is new. For reservations, call toll free 1-800-331-1212, or contact your local Avis Representative at (206) 455-3866. Present your Avis Bar Association identification card or sticker at any Avis location to take advantage of these special rates.

Younger, Mitchelson and Bryan in Poulsbo July 31, 1986

It's not too early to register for the 1986 Poulsbo CLE and Dinner. Featured luminaries will include Professor Irving Younger, presently Marvin J. Soronsky Professor of Law at the University of Minnesota Law School; Marvin M. Mitchelson, renowned domestic relations attorney from Los Angeles; and Federal District Judge-designate Robert J. Bryan, who will receive the coveted Poulsbo "Small Town Lawyer Made Good" Award at the Poulsbo Dinner. The Poulsbo event is, perhaps, the only celebration of small town law practitioners in America.

Past speakers at the CLE and Dinner have been Paul Luvera (Mount Vernon, WA), Chief Justice James Dolliver (Washington State Supreme Court), Gerry Spence (Jackson, WY), Richard "Racehorse" Haynes (Houston, TX), and Justice John Paul Stevens (U.S. Supreme Court).

Fee for the July 31, 1986 event is $125.00; lunch is included. It is anticipated that the event will be accredited by the Washington and Idaho Bar Associations, as it has been in the past. The dinner cost is $22.00. To pre-register or for more information, contact Roof, Tolman & Kirk, P.O. Box 851, Poulsbo, Washington 98370.

STATE LAW LIBRARY

Recent Acquisitions

Listed below are some of the new titles recently acquired by the State Law Library, and available for loan by calling (206) 753-6525, or mailing your request to: Washington State Law Library, Temple of Justice, AV-02, Olympia, Washington 98504-0502. A bi-monthly *Selected Recent*

Acquisitions list, generally containing 150-250 new titles, is also available. Copies may be obtained by sending your request to the Washington State Law Library at the above address.

ASBESTOS INDUSTRY

Asbestos in the courts: the challenge of mass toxic torts. By Deborah R. Hensler & others. Santa Monica, CA: Rand, 1985. Pp. 165.

ATTORNEY AND CLIENT

Establishing and maintaining effective attorney-client relationships. Berkeley, CA: California Continuing Education of the Bar, 1985. Pp. 143. (Program Material)

ATTORNEYS

How to set and collect attorney fees in criminal cases. Chicago, IL: American Bar Association, 1985. Pp. 47.

Willging, Thomas E. and Nancy A. Weeks. *Attorney fee petitions: suggestions for administration and management.* Washington, DC: Federal Judicial Center, 1985. Pp. 102.

BANKRUPTCY

Campbell, Don and D. M. Lynn. *Creditors' rights handbook: a guide to the debtor-creditor relationship.* New York, NY: Clark Boardman Company, Ltd., 1985. Pp. 410.

The secured creditor in and out of bankruptcy. Continuing Legal Education Seminar Materials. Seattle, WA: Univ. of Washington School of Law, 1985. (loose-leaf)

CIVIL PROCEDURE

Dombroff, Mark A. *Dynamic closing arguments.* Englewood Cliffs, NJ: Prentice-Hall, Inc., 1985. (loose-leaf)

Fischer, James M. *Federal trial procedure handbook.* Federal Practice Library. New York, NY: Wiley Law Publications, 1985. Pp. 459.

COMPUTERS

Computing power and legal reasoning. St. Paul, MN: West Publishing Company, 1985. Pp. 885.

Trial advocacy: the use of computers in litigation. Seattle, WA: Washington State Bar Association, 1985. 1 vol.

CONFLICT OF INTERESTS

Conflicts of interest: a trial lawyer's guide. By Edna Selan Epstein et al. Owings Mills, MD: National Law Publishing Corporation, 1984. Pp. 384.

CONSTITUTIONAL LAW

Cook, Joseph G. *Constitutional rights of the accused.* 2d ed. Rochester, NY: The Lawyers Co-Operative Publishing Co., 1985. Pp. 825.

CONTRACTS

How to handle commercial bad faith cases. Berkeley, CA: California Continuing Education of the Bar, 1985. Pp. 160. (Program Material)

CORPORATIONS

Incorporating small businesses. Seattle, WA: University of Washington School of Law, Washington Law School Foundation, 1985. 1 vol. (loose-leaf)

CRIMINAL LAW AND PROCEDURE

Maeder, Thomas. *Crime and madness: the origins and evolution of the insanity defense.* 1st ed. New York: Harper & Row, Publishers, 1985. Pp. 219.

DAMAGES

Compensation and support for illness and injury. By Donald Harris and others. Oxford: Clarendon Press, 1984. Pp. 431.

DISPUTE RESOLUTION

Alternative means of family dispute resolution. Washington, DC: American Bar Association, 1982. Pp. 623.

EVIDENCE

Practising Law Institute, 1985. Pp. 336.

Recent developments in evidence. Materials for a Continuing Legal Education Seminar. Seattle, WA: University of Washington School of Law, 1985. (loose-leaf)

EXAMINATION OF WITNESSES

Dombroff, Mark A. *Dombroff on direct and cross-examination.* Trial Practice Library 1-676. New York, NY: Wiley Law Publications, 1985. Pp. 313.

FAMILY LAW

The practical lawyer's manual on divorce and separation. Philadelphia, PA: American Law Institute-American Bar Association Committee on Continuing Professional Education, 1985. Pp. 198.

FORENSIC PSYCHOLOGY

Sannito, Thomas and Peter J. McGovern. *Courtroom psychology for trial lawyers.* New York, NY: Wiley Law Publications, 1985. Pp. 342.

INSURANCE

WSTLA's seventh annual seminar on insurance law. Seattle, WA: Washington State Trial Lawyers Association, 1985. Pp. 273. (loose-leaf)

LEGAL PROFESSION

Denney, Robert W. *How to market legal services.* New York, NY: Van Nostrand Reinhold Company, 1984. Pp. 287.

Establishing a successful law practice. Berkeley, CA: California Continuing Education of the Bar, 1985. Pp. 62. (Program Material)

NEGOTIATION

Sperber, Philip. *Attorney's practice guide to negotiations.* Wilmette, IL: Callaghan & Company, 1985. Pp. 877.

Williams, Gerald R. *A lawyer's handbook for effective negotiation and settlement.* Seattle, WA: Washington State Bar Association, 1985. Pp. 125.

PERSONAL INJURIES

Tarantino, John A. and David J. Oliveira. *Personal injury forms: discovery and settlement.* Santa Ana, CA: James Publishing, Inc., 1985. Pp. 350.

TRUSTS

Turner, George M. *Irrevocable trusts.* Tax and Estate Planning Series. Colorado Springs, CO: Shepard's/McGraw-Hill, 1984. Pp. 600.□

NOTICES ADVERTISING

Professional: WSBA Members only. $40.00 per inch. Billed at publication.

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

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Attorney jobs: National and Federal Legal Employment Report – A monthly detailed listing of hundreds of attorney and law-related jobs with the U.S. Government and other public/private employers in Washington, D.C., nationwide, and abroad. $30-3 months; $50-6 months. Federal Reports, 1010 Vermont Ave, N.W., #408, Washington, DC 20005. Attn: WAB. (202/393-3311). Visa/MC.

For Sale: 1. Products Liability Frumer & Friedman 11 Bound Volumes, 2. Products Liability CCH 10 Bound Volumes, 2 Volumes Looseleaf Advance Sheets. All in excellent condition. (206) 622-0494.

Law library for sale including Washington Reports; Washington Appellate (Vols 1-30); Washington Digest: Proof of Facts, Shepard's Washington Citation (3 Vols); RCWA; Washington Practice (Vol 1-11); Modern Legal Forms. Call (509) 248-3085 evenings.

For sale: Fully updated and complete set USCA $650; Partial set West's Supreme Court Reporter $300; Chronometrics Timekeeping Device $350. Call (206) 671-7970.

For sale: IBM Mag Card II typewriter, card unit and many mag cards; always on maintenance contract; $900.00 or best offer. Call Sonja Sackmann at (509) 488-5636.

For sale: ALR 2nd, 3rd, 4th, and Federal; best offer. *Contact* Kenneth Brewe, (206) 259-6184, P.O. Box C, Everett WA 98206.

OFFICE SPACE

Hoge Building – Law office available in pleasant work environment. Spacious basic library/conference room, copier, phones. Adjacent suite also available, suitable for one or more beginning practitioners or practitioners with shared receptionist/secretarial. Contact Harvey Grad – (206) 624-0130.

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Attractive downtown Seattle office space, 4-8 offices plus secretarial space. Approx. $12.00 per ft. Subtenancy and/or long-term lease & phone system available. Reply to Box 38, WSBA.

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Bellevue: Two-person firm seeks one experienced attorney to share beautiful suite. View of lake/Olympics. Across from One Bellevue Center. Parking, secretarial space, receptionist, library, copier, and conference room. Wang equipment, time and billing, and phone system available. (206) 462-8222.

Very attractive office in three-attorney suite in excellent downtown Seattle location (Westland Building). 5 minutes from courthouse. Includes base telephone, copier and receptionist. Parking, secretarial, word-processing and other amenities available. (206) 682-1771.

Bellevue – Two experienced attorneys with emphasis in litigation and real estate seek experienced third attorney to share office space with view toward future partnership. Direct confidential reply/inquiry to: Attorneys, 10112 NE 10th St., Bellevue, WA 98004; telephone: (206) 451-9568.

Office space: 1 - 3 offices. Reception, secretary space, library/conf., copying and phones available. Pacific Bldg., Seattle. (206) 587-6224.

Office space available. 6th and Pike Building. Western view, off-elevator exposure, receptionist, word/data processor, secretarial space, copier, parking, telephones, conference room, etc. Call (206) 621-1823.

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POSITION WANTED

Tax and business attorney with C.P.A. and five-plus years' broad experience seeks position with growth-oriented Western Washington firm

committed to quality legal work. Superior credentials and references. Reply to Box 34, WSBA.

Attorney-Engineer with Industrial Hazardous Waste and professional services marketing experience seeks position with firm handling environmental, (RCRA, TSCA, CERCLA), product liability, and complex construction cases. Currently counsel for local corp. Contact Box 48, WSBA.

Mature 1986 law graduate seeks clerking or research position in Seattle September 1986. Experience: marine affairs, hazardous waste, insurance defense, federal practice, civil litigation. Deborah Cochelin, 1812 Greene Street, Columbia, South Carolina 29201. (803) 799-6616.

I am a member of the bar associations of both Washington and California and have five years' experience in private practice and three years' experience as general counsel in a single-attorney legal department. I am seeking a position with a small to medium size in-house legal department located either in Spokane or Puget Sound area. Reply to Box 46, WSBA.

POSITION AVAILABLE

Growing practice seeks associate with general background in civil, criminal and domestic relations work. Salary negotiable and commensurate with experience. Send resumé to: Daggy Legal Services, P.O. Box 1793, Longview, WA 98632.

Opportunity knocks: For a young, ambitious attorney. I came to Soap Lake in 1947 and have made a good living. It's time for the younger generation to take over and I'll help if you want. Give me a call. K. Edison Gimple (509) 246-1841; PO Box 938, 98851.

Longview firm seeks attorney with experience in commercial/corporate law. Business/accounting background preferred. Reply in confidence to R. Graham Cross, POB 1489 Longview 98632.

Growing Longview firm seeking associate 0 - 2 years' experience. Direct inquiries to R. Graham Cross, POB 1489, Longview 98632.

Sole practitioner located in Eastern Washington community has an immediate opening for associate attorney with 0-4 years' experience. Must have excellent academic credentials. Send resumé to Box 47, WSBA.

Northwest Women's Law Center legal coordinator. Duties: Develop and expand litigation docket and cooperating attorney network; supervise legal intern program. Must be an attorney with 2-3 years' experience in civil rights law and demonstrated interest in women's rights. Salary: $15,000 .60 FTE. Deadline: March 28, 1986. For more information contact Leslie Owen, Executive Director, (206) 682-9552.

New Part-time Magistrate: public notice of appointment. The Judicial Conference of the United States has authorized the appointment of a part-time United States Magistrate for the Western District of Washington at Tacoma. The Court will appoint the Magistrate for a four-year term beginning July 1, 1986. The duties of the position are demanding and wide-ranging and will include:
(1) conduct of preliminary proceedings in criminal cases;
(2) trial and disposition of misdemeanor cases;
(3) serve as back up for district's full-time Magistrates.

The individual selected for this position will be responsible for those matters set out above which are generated by Fort Lewis Military Base, McChord Air Force Base, and Mount Rainier National Park. Travel to these locations will be necessary.

The basic jurisdiction of the United States Magistrate is specified in 28 U.S.C. §636. To be qualified for appointment an applicant must:
(1) Be a member in good standing of the bar of the highest court of a state, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands of the United States for at least 5 years;
(2) Have been engaged in the active practice of law for a period of at least 5 years;
(3) Be competent to perform all the duties of the office; be of good moral character; be emotionally stable and mature; be committed to equal justice under the law; be in good health; be patient and courteous; and be capable of deliberation and decisiveness;
(4) Be less than 70 years old; and
(5) Not be related to a Judge of the district court.

A Merit Selection Panel composed of attorneys and other members of the community will review all applications and recommend to the Judges of the district court in confidence the five persons whom it considers best

qualified. The court will make the appointment, following an FBI and IRS investigation of the appointee. An affirmative effort will be made to give due consideration to all qualified candidates, including women and members of minority groups. The salary of the position is $34,200 per annum.

A part-time United States Magistrate may practice law, subject to certain limitations set forth in conflict of interest rules promulgated by the Judicial Conference of the United States.

Application forms and further information on the Magistrate position may be obtained from the Clerk of the district court:
Bruce Rifkin, Clerk, 308 U.S. Courthouse, Seattle, WA 98104. Applications must be submitted only by potential nominees personally and must be received no later than April 18, 1986.

Skagit County firm seeks associate with 1 to 3 years' experience. This established firm is a trial-oriented general practice. Reply to Box 44, WSBA.

Established (17 years), two-lawyer, Seattle trial firm interested in similarly established, non-litigator attorney who enjoys group practice in small firm environment. Reply Box 45.

Four-attorney, Tacoma law firm seeks associate applicants. Salary negotiable. Experience preferred. Must be member of Washington State Bar. Send resumé to Box 43, WSBA.

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WILL SEARCH

Seeking will of Judith Ann Freed. Contact Peter J. Glase, Attorney at Law, 600 - 108th N.E., #505, Bellevue, WA 98004. (206) 453-0300.

Seeking Last Will and Testament of Daniel J. Burke. Please contact Thomas P. Robinson, Attorney, W. 910 Garland Avenue, Spokane, Washington, 99205. (509) 326-2613.

Seeking will of Max Lamar Leigh. Contact Sidney S. Rodabough, attorney, 860 SW 143rd Street, Seattle, WA 98166. (206) 246-7773.

MISCELLANEOUS

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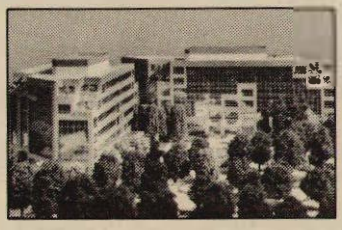

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