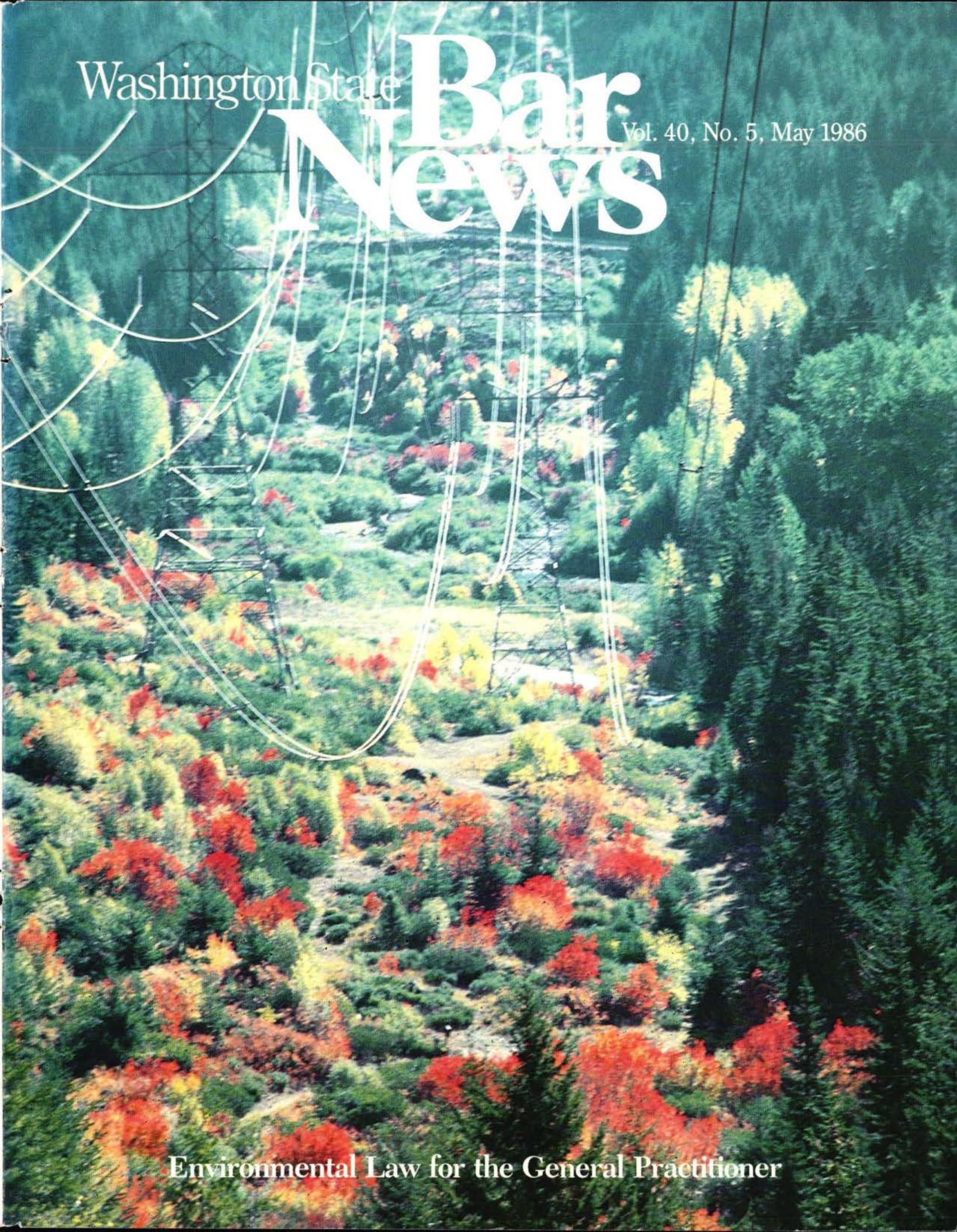

Washington State Bar News
Vol. 40, No. 5, May 1986

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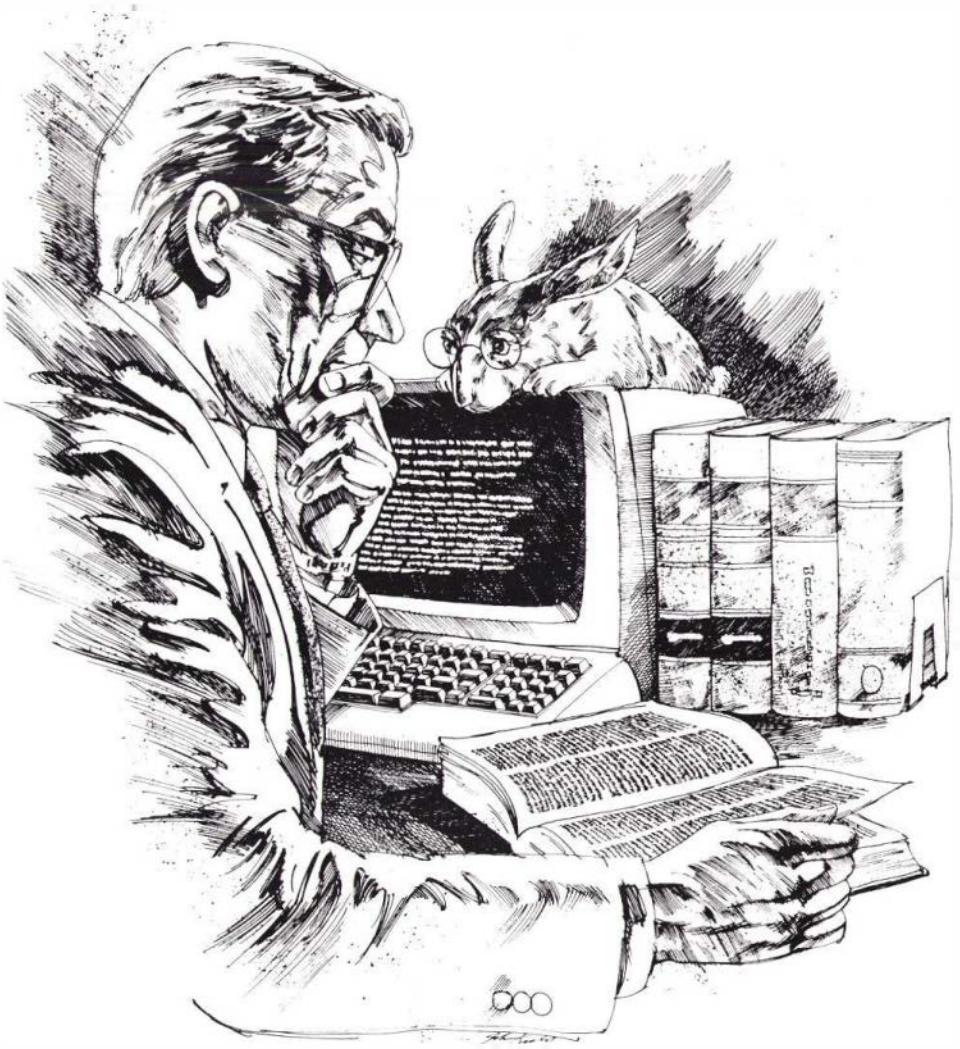

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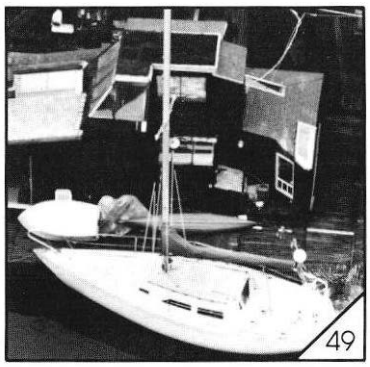
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IN THE NEWS

DEPARTMENTS

ART CREDITS

Cover: Powerlines at Stevens Pass near Highway 2 in the Wenatchee National Forest in October, 1985, photographed by **Karen I. Ellentuck**, Seattle attorney, whose work has been shown at the Exposure Gallery on Fifth Avenue near Denny Way.

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Lawyers' Malpractice Insurance: What Shall We Do?

by **William H. Gates,** *chairman, WSBA Lawyers' Malpractice Insurance Task Force*

Just how bad is the lawyer's malpractice insurance situation? This is an important question because your task force on this subject is looking very carefully at some significant, far-reaching measures to deal with the problem. No one wants to trundle out a howitzer to swat a fly.

We have generated a lot of very valuable data which will be discussed later in this article. The dimensions of the basic problem, however, remain a matter of judgment. Premiums are going out of sight, but the carriers continue to assert that they are losing money. We have heard from many lawyers who are having serious problems with inability to obtain coverage. Some of these callers later report they were able to buy a policy; many apparently are not. Undoubtedly a good number of lawyers who would buy coverage if it were available to them are "going bare". Certainly many are refusing to buy on the basis of cost. How many uninsured lawyers do you need to make a crisis?

We went through a period of high cost and severe underwriting in the mid-1970s. Is it going to ease again as it did in the late '70s? If so, will it all come around again in the '90s?

Several state bars have already taken drastic measures to avoid these apparently repetitive problems with the commercial market. Down in Oregon the bar has created a professional liability fund which covers all lawyers and is financed by annual assessment. In North Carolina, Texas, California, Ohio, Oklahoma and Minnesota lawyer- or bar-owned insurance companies have been set up. The programs in North Carolina and Texas have been going for over seven years, and each has received an A+ rating in *Best's Insurance Guide*. In at least another dozen states like our own, the bar is looking carefully at instituting similar programs.

In order to learn as much as it could about this situation, your task force sent out a questionnaire to all members last December. 12,741 questionnaires were mailed, and we have responses covering 5,226 lawyers.

Of those responding to the question dealing with insurance coverage, 479 had no private practice, 231 were part-time and 4,428 full-time. Six percent of the full-time practitioners and 45% of the part-time indicated they were not covered by a malpractice insurance policy. It is probably fair to assume that the percentage of uninsured lawyers among those who did not respond to the questionnaire is higher than among those who did respond.

Eighty percent of the lawyers favored the state bar forming some mechanism to provide malpractice coverage. This figure includes 72% of the respondents who have no private practice.

One question asked whether the lawyer preferred the insurance company solution, the mandatory fund, or either. Thirty percent of the lawyers answering preferred the insurance company, 21% the mandatory fund, and 48% either. Lawyers with no private practice and part-time practice were more inclined to prefer the mandatory fund than those in full-time private practice.

As to providing the capital to start an insurance company, 57% of the full-time practitioners indicated they would invest, 44% indicated they would invest up to $1,000, and 72% indicated a preference for an assessment by the bar of $100-$150 for three years. It is interesting to note that even 33% of the lawyers with no private practice gave a positive answer to the question about assessment.

The survey results show clearly that the lawyers of this state want the bar to do something about providing malpractice coverage. The survey responses leave no question that the situation is perceived to be of serious proportions.

With the benefit of this data, the Board of Governors has now asked the task force to design a model of both a liability fund and a regular insurance company setting forth the basic elements of deductible, limits, capitalization and premium. These models will be reviewed by the Board at its meeting on May 16.

As mentioned earlier these proposals have some far-reaching implications. Here are some of the issues:

- Will it be necessary for a bar-owned insurance company to invoke underwriting discretion just as a commercial company would? That is to say, will some lawyers be refused coverage or possibly surcharged? Those who operate such companies in other states assert convincingly that the bar-related carrier must reserve the right to refuse to cover all applicants.
- How do you relate the requirements of a mandatory liability fund at primary limits of, say, $300,000 to the uniform practice in large law firms to insure with deductibles of up to $250,000? Can we design a mandatory scheme that does not make those lawyers buy and pay for insurance they neither want nor need?
- Is it possible to work out a premium structure which makes some allowance for the lawyer with only a part-time practice?
- Can a bar-owned insurance company, even with moderate financial strength, survive if rates turn highly competitive again as they were in the early 1980s?
- With either a fund or a company what relationship will there be between claim information and the bar's disciplinary procedures?
- Can a bar-sponsored company or fund really provide this insurance any cheaper than the commercial market, or is the attractiveness of a bar program based more accurately on bringing some stability and credibility to this business?

Perhaps a most important fundamental question is whether or not a program of insurance in this state controlled by the lawyers themselves could effect some reduction in the dramatic increase in claims.

If the bar decides to launch its own malpractice insurance program, and there is a distinct possibility that it will, it will certainly be among the most significant and challenging it has ever undertaken.□

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Jack Stephenson with new partner, John Spellman, in Carney-Stephenson's 23rd floor reception area.

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Reinstatement – a Tough Road

Recently the Board of Governors completed a public hearing on a petition for reinstatement submitted by a disbarred attorney. The purpose of the hearing, of course, was to enable the Board to recommend whether or not the petitioner met the three basic criteria for reinstatement under RLD 9.

If the Board finds affirmatively, it is required to forward its recommendation to the Supreme Court, which body ultimately has the power to grant or deny the petition. If the Board recommends against reinstatement, the record and recommendation are retained in the office of the Association unless the petitioner requests that it be submitted to the Supreme Court for disposition.

There is no more soul-searching and arduous task in which your Governors become involved than the reinstatement hearing process. Time and time again when I was on the Board, either I or one of my fellow Governors stated "reinstatement hearings (and admittance hearings) are the toughest, most demanding things we do." Why are these hearings so tough?

First, your action—no matter which way you decide—will impact the judicial system, the public and your fellow lawyers. Second, your action will affect the life of a fellow human being in a very direct sense.

Under RLD 9.6(a), reinstatement may be recommended by the Board of Governors only upon an affirmative showing that the petitioner possesses the qualifications and meets the requirements as set forth in the Admission to Practice Rules for lawyer applicants, *and that his or her reinstatement will not be detrimental to the integrity and standing of the judicial system or to the administration of justice or be contrary to the public interest.* The factors which are to be considered in determining whether or not the criteria for reinstatement have been met have been set forth under applicable Supreme Court decisions. They are as follows:

1. The applicant's character, standing and professional reputation in the community in which he resided and practiced prior to disbarment.
2. The ethical standards which he observed in the practice of law.
3. The nature and character of the charge for which he was disbarred.
4. The sufficiency of the punishment undergone in connection therewith and the making or failure to make restitution where required.
5. His attitude, conduct and reformation subsequent to his disbarment.
6. The time that has elapsed since disbarment.
7. His current proficiency in the law.
8. The sincerity, frankness and truthfulness of the applicant in presenting and discussing the factors relating to his disbarment and reinstatement.

Recently the Board established a policy under which Special Bar Counsel is appointed in any reinstatement hearing involving prior commission of a felony. The function of Special Bar Counsel is to investigate the respective petition and present all evidence to the Board which should legitimately be considered in opposition to the petition. Whether this function be carried out by Bar Counsel or Special Bar Counsel, I believe it to be a function of vital importance and a policy which should be maintained. If we believe adversarial inquiry is one of the hallmarks of our legal system, we should be confident of its place in the reinstatement process.

Some time ago, a long-time acquaintance of mine wrote to me to advise of his feelings toward a petitioner's request for reinstatement. I was advised to do "everything within my power to prevent the return" of the petitioner to the practice of law in this state. My friend should have addressed his comments to the Board of Governors for presentation at the hearing, not to me individually. My function as presiding officer is to assure that the hearing is fair and properly conducted, not that it reaches a predetermined result.

I do believe, however, that consideration should be given to lengthening the time before which a disbarred attorney may petition for reinstatement. Currently, under RLD 9.1, no petition for reinstatement may be filed within a period of three years after disbarment. It seems to me that if an attorney has committed an offense serious enough to warrant disbarment, a period of three years may be too brief a period of time within which the Board is able to conclude whether the criteria for reinstatement have been met.

Some states totally deny reinstatement privilege to a disbarred attorney. Other states require a period of five, seven or ten years before a disbarred attorney may petition for reinstatement. I intend to suggest to your Board of Governors that we recommend to the Supreme Court that the time period set forth under RLD 9.1 be extended. The extended period should be whatever period the Governors may deem appropriate to recommend—but in my judgment at least a period in excess of five years.

We would welcome your comment on this most important subject.

Bob Comfort

That's Enthusiasm

Editor:

Your editorial, "Semper Fidelis," in the March *Bar News* was excellent. I enjoyed every word of it. While the "old timers" didn't have too much to say that I haven't already either learned or heard before, it was enlightening to know that so many of them still have such enthusiasm for the law after so many years before the Bar. (Let's see: if you practiced 50 years, that is over 17,000 calendar days as a lawyer; or at the rate of 3 trips per week, the average trial attorney visited his courthouse 7,500 times. *That's* enthusiasm.)

Keep up the good work and I for one will look forward to your column each month.

PHILIP H. DeTURK
Puyallup
(admitted 1956)

More on Choosing a Lawyer

Editor:

Thank you, Mr. Tubbs, for your thoughtful and timely article in the March 1986 *Bar News* on the responsibility of our Bar and lawyers to educate the public on how to properly choose a lawyer. In my usual individualistic fashion, I have been putting your theory into practice for some time. Having lectured (not solicited) on this topic within libraries, corporate auditoriums, and as a teacher with the University of Washington Experimental College, I have very strong feelings on this subject. It would be fairly easy for the following to take place without any type of organization or investment:

1. Have corporate house counsel voluntarily provide a lecture and materials to corporate employees during a lunch break or evening seminar. I will be happy to supply advice and/or materials to those interested.

2. Have outside counsel for business entities without house counsel provide a similar courtesy lecture and onetime newsletter on point. I'm sure that personnel departments will be receptive in assisting in this task.

3. Utilize our legal clinic volunteers to appear at a community college, library, church/synagogue, in lieu of their clinic participation for that week, to speak precisely on this issue.

4. Have attorneys who are involved members of their community centers put on a presentation for the community monthly meetings in which other neighborhood attorneys participate.

Last but not least, I believe the California Bar Association already has a citizens' pamphlet on "How to Choose an Attorney" which could be modified to suit our needs.

MICHAEL B. GOLDENKRANZ
Assistant General Counsel
Blue Cross of Washington and Alaska

Guarding Its Privileges

Editor:

I should think it merits recognition in the *Bar News* that a majority of lawyers voted in favor of referring changes in professional regulation to the membership of the Bar. The final vote was 2,757 to 2,622. Inasmuch as the By-Laws require a 50 percent participation by the active membership to validate a referendum, the referendum has been said to have failed.

The WSBA response to the referendum has been more characteristic of an organization which intends to guard its privileges than to accommodate the majority sentiment of its members. The task force which has been appointed to consider resolution and referendum procedures does not include a single one of the 455 lawyers who signed the petition calling for the referendum. I am not aware that any of the signatories was asked to serve on the task force. One wonders whether any of the appointees voted with the majority.

I hope that the task force has sufficient respect for the majority which brought the referendum question to the fore that it will submit any recommendations it might have to the membership, either by ballot or at the Annual Business Meeting in Seattle next September.

Let's reconsider the requirement that 50 percent of the membership has to vote in order for a referendum to be validated. I still believe, as does a majority of the active, voting membership of the Bar, that the members of the Bar should have the controlling voice on what changes in rules of professional conduct are recommended to the Supreme Court. The membership might also like to vote directly for its president, since we are being asked to respect the proposition that the Bar's government is representative, rather than elitist.

HOWARD K. TODD

—Editor's note: See "The Board's Work," Bar News, February, 1986 p. 29.

Recognizing Pierce County

Editor:

It is heartening to learn that WSBA leadership is taking a serious look at the delivery of legal services to low-income citizens in Washington. The December 1985 *Bar News* article on current services, as surveyed by the WSBA Legal Aid Committee, was informative but didn't mention the successful pro bono program operating in Pierce County, a program which should not go without recognition.

The leadership of the Tacoma Pierce County Bar Association recognized the need to provide services to low-income citizens in 1980. Under Pat Comfort, local Bar President in 1980, TPCBA leadership made a strong commitment to work with Puget Sound Legal Assistance Foundation (Legal Services) in designing and delivering a high quality pro bono program. Since that time, the Bar Committee, a vital and energetic group of attorneys, and PSLAF have built one of the country's most successful referral programs.

TPCBA can boast that approximately twenty-five percent of local Bar members have volunteered to handle four pro bono cases each year. Approximately 225 cases were handled by pro bono attorneys in 1984. 1985 statistics are unavailable, but it is clear that there has been an increase in the number of cases handled by the pro bono panel. These cases range from the simplest of wills to the most difficult senior abuse cases.

Pierce County pro bono attorneys and the WSBA should feel proud of their contribution and their commitment. Their efforts have made a significant difference in the lives of many low-income citizens, and greatly increased their access to the judicial system. The legal needs of the low-income community, though not met, have clearly been affected by the joint efforts of Legal Services, TPCBA, and the pro bono attorneys. Their outstanding success, having been recognized nationally, should not go unrecognized locally.

PATRICIA K. LASHWAY
Pro Bono Coordinator
Tacoma

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

Notes From the Academy

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

Creditor-Debtor Law Attorney fees cannot be awarded to successful lien claimant under RCW 60.08.010, which creates nonpossessory lien on chattels for labor performed or material furnished. Statute does not codify common law but only supplements common law possessory lien. ***Burns v. Miller***, 42 Wn. App. 801 (2/14/86).

—*M. D. Rombauer*

Evidence In unusual reversal based upon competency of a witness, state supreme court held that trial court should not have admitted deposition of six-year-old child in personal injury case when child's testimony was contradictory and deposition itself was only information upon which finding of competency was based. Court stated that deposition showed child did not have memory sufficient to retain independent recollection of occurrence. Three judges dissented. ***Jenkins v. Snohomish County Pub. Util. Dist. No. 1***, 105 Wn.2d 99, 713 P.2d 79 (1/16/86).

—*K. B. Tegland*

Personal Property Security On certification from federal district court, on appeal from bankruptcy judge's decision, held: Security assignments of vendor's interests under real estate contracts were "general intangibles," not "contract rights," for purpose of determining filing requirements under UCC Article 9 (RCW 62A.9-302) before 1982 amendments removed "contract rights" category. Such security assignments had to be UCC-filed to be perfected. Decision is in accord with decision of Bankruptcy Judge Treadwell, contained in ***In re Himlie Properties***, 36 Bankr. 32 (Bankr. W.D. Wash. 1983). ***Crichton v. Himlie Properties***, 105 Wn.2d 191, 713 P.2d 108 (1/30/86).

—*M. D. Rombauer*

Torts When plaintiff was injured by equipment manufactured by his employer's corporate predecessor and located in predecessor's plant, tort remedy was precluded by workers' compensation statute. Court reaffirmed its rejection of dual-capacity doctrine and in dictum suggested that successor could be held liable pursuant to dual-persona doctrine only if injurious product had been put into stream of commerce (*e.g.*, by sale to successor by predecessor before merger). ***Corr v. Willamette Industries***, 105 Wn.2d 217, 713 P.2d 92 (1/30/86).

—*J. T. Richardson*

Everything I created was meant for you. Take care not to spoil or destroy my world, because if you spoil it, there is no one to repair the damage you cause. (*Kohelet Rabba,* 7:13)

Thus was Adam told by his Creator while being shown the beautiful trees in Paradise. The world has changed since Adam's day, but not the message. This issue of the *Washington State Bar News* has been coordinated by the Environmental and Land Use Law Section. Its 800 members represent diverse interests, but all share a sense of the importance of our environment.

GUEST EDITORIAL

In the Balance
by **Thomas M. Walsh**

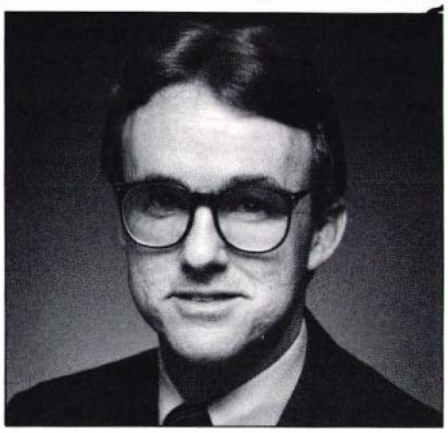
It was first called "zoning" law. The "environmental" label was developed in the 1960s, and the "land use" description took hold recently. Some now suggest that it should be called "governmental regulation of land," but others contend that label is too narrow.

Whatever the label, it is an area of practice that has developed in the past 10 to 20 years into a specialized and sophisticated field of law involving more laws and lawyers than ever before, and the numbers of both are growing. It is a specialty within our profession that deals with significant public and private investments in real property and concerns itself with policy issues that deeply touch all of us who desire to live and work in a clean and well-planned environment.

Traditional zoning laws are rapidly being replaced with more sophisticated land use regulatory tools and more complex legal guidelines. Seattle's new downtown land use code employs, among other tools, complex TDRs (transfers of development rights), unique high-rise development standards, and detailed restrictions on the demolition of low-income housing. The laws relating to vested rights—that is, the rights of a property developer to be protected from changes in land use laws after investing in property—are in an unsettled state. Judicial guidelines for when an unconstitutional "taking" occurs—that is, when a regulation is overly restrictive and is a "taking" of private property without compensation—are vague and can be applied effectively only with a full understanding of the applicable precedent and then only with great caution.

The three traditional "consumers" of environmental and land use legal services have been developers, municipalities, and citizen/environmental groups. Yet, new client groups are now emerging. For example, real estate lenders, including banks, savings and loan associations, insurance companies and pension funds are becoming more sophisticated and are now regularly employing the services of environmental and land use lawyers. Lenders must be assured, before advancing funds for real estate purchase or development, that the value of their real property security will not be threatened by a challenge to the permits.

In the area of hazardous wastes, the Comprehensive Environmental Response, Compensation and Liability Act (known as "Superfund") imposes significant financial liability on those who handle hazardous wastes if those wastes later require cleanup. Often, mere owners of property on which hazardous waste is dumped or discovered are held liable. Recently, federal and state authorities have brought criminal enforcement actions against executives of companies allegedly violating environmental laws, sending into executive offices and board rooms a powerful message about corporate environmental responsibility and requiring environmental lawyers to join as co-counsel specialists in criminal law. A wide range of businesses, from Boeing to the neighborhood dry cleaner, must now pay careful attention to the types of wastes they generate and the methods of disposal. How our governmental agencies recycle or dispose of sewage sludge and solid waste represents another area of increasing activity in the environmental and land use law area. Attorneys for cities, counties and sewer districts must keep current on developments in these areas.



For approximately 800 members of the Washington State Bar Association who are members of the Environmental and Land Use Law Section, the section offers invaluable continuing educational opportunities for a mere $10 annual dues. The section publishes a newsletter several times a year; the newsletter is the only timely source of information on recent developments in this area of the law, including pending litigation, trial court decisions, and commentary on recent appellate court decisions, new legislation and regulations. The section sponsors CLE programs throughout the year—including an annual seminar at Rosario Resort at the end of May—directed toward the intermediate and advanced levels of knowledge in this field.

As a community, we care deeply about the environment in which we live and work. A clean and well-planned environment promotes growth and economic prosperity for our region. As long as we as a society continue to care about these matters, there will continue to be a significant body of law regulating the use of our land and resources, and there will continue to be a need in our community for lawyers skilled in this whatchamacallit area of practice.

Tom Walsh

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Washington Land Use and Environmental Law In a Nutshell

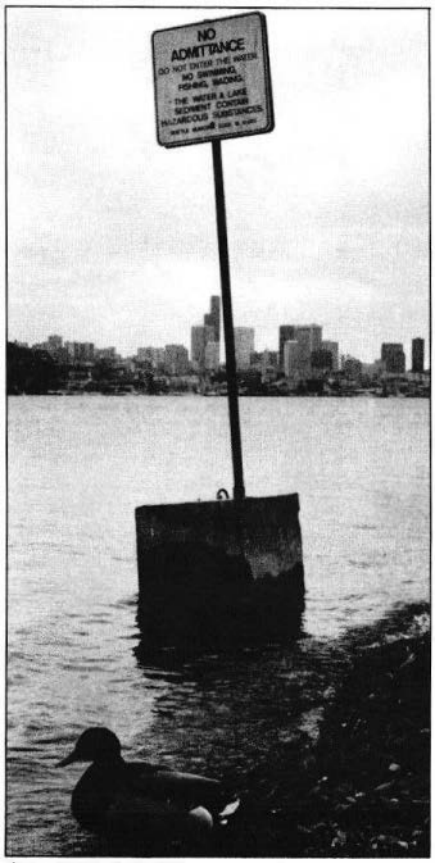
by **Richard L. Settle**

This article sketches the evolution of American land use regulation, describes the usual components of land use regulatory systems, and identifies the substantive and procedural limitations on the exercise of regulatory authority which are the most common bases for legal challenge.

I. The Evolution of American Land Use Regulation

Systematic, comprehensive public regulation of the use and development of land is very recent in the United States.

A development of this century, it has rapidly accelerated during the last twenty years. There always had been sporadic, reactive judicial regulation of land use through the common law of nuisance. And private parties could consensually restrict land use through covenants. But until 1916 the only land use controls legislated by local government were occasional piecemeal responses to specific, extremely obnoxious uses like slaughterhouses and brick kilns. America's first comprehensive zoning ordinance, systematically regulating the use of land and height and bulk of buildings, was adopted by New York City. During the ensuing decade zoning swept across the land. By 1926, when the constitutionality of zoning was first



Gas Works Park, Seattle
(courtesy of photographer, Jenny Wilhelm)

decided by the U.S. Supreme Court in the landmark case, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), all but five states had adopted zoning enabling acts and 420 municipalities had adopted zoning ordinances.

Zoning was a response to the chaotic jumble of conflicting uses left in the wake of rapid urbanization. More people packed more closely together inevitably generated more land use conflicts. The sewage, air pollution, odors, noise, traffic, and fire hazards which some uses thrust upon others in densely settled urban areas spawned loud cries for relief by both altruistic social reformers and self-interested owners of vulnerable property. Numerous practical obstacles generally precluded private negotiation of protective covenants. Common law nuisance doctrine, shaped by an agrarian society, was fundamentally deficient as a means of avoiding or reconciling the land use conflicts of urbanizing America. In short, turn-of-the-century American cities were becoming land use jungles, and the law of these jungles was survival of the most oppressive use. Obnoxious uses survived at the expense of sensitive ones until even more obnoxious uses came along.

Property owners were insecure. Urban reformers lamented the waste, suffering and social disorganization. Thus, in New York, the first American zoning ordinance was successfully promoted by a curious coalition of social reformers committed to ameliorating the wretched urban environment and self-interested Fifth Avenue merchants fearful of the invading garment industry's impact on their district's carriage trade. Historians say it was the Fifth Avenue merchants—not the social reformers—who had the political acumen and muscle to carry the day. So, ironically, it was private property owners who successfully advocated government control of the use of private property. They preferred the stability of public regulation to the

intolerable uncertainty of private land use anarchy. This may explain another irony—that the constitutionality of zoning was upheld by a U.S. Supreme Court notable for its extreme hostility to government regulation of private enterprise. Writing for the court, Justice Sutherland characterized zoning as protection rather than limitation of private property.

Since zoning emerged early this century, land use regulation has undergone a process of intensification and refinement reflecting rising expectations for the quality of life and increasing recognition that quality of life is directly proportional to quality of the environment. Where environmental quality aspirations are the highest, land use regulation tends to be most highly developed.

II. The Tools of Public Land Use Regulation

In Washington, the main components of local and state land use regulation are the comprehensive plan, zoning, subdivision regulation, the Shoreline Management Act (SMA), and the State Environmental Policy Act (SEPA). The SMA and SEPA were both enacted in 1971 on the crest of the wave of environmental consciousness.

The comprehensive plan is supposed to be a coordinating, enlightening source of intelligence for all local government decisions affecting the environmental destiny of a community. A common misunderstanding is that a comprehensive plan is about the same as a zoning map but painted with a broader brush. In both theory and practice, the two are quite different.

The role of the comprehensive plan is to guide the multitude of government actions by various local decision-makers along a chosen course. The plan is to guide not merely zoning actions, such as zoning ordinance adoptions, rezones, use permits, and variances, but all other local land use regulatory decisions as well, such as subdivision and historic district regulation. Moreover, the plan's guiding role is not limited to land use regulatory decisions but extends to all local actions affecting environmental quality, such as public road building, sewer system development, and urban renewal programs. To provide such comprehensive guidance, the plan is the repository of the community's goals, implementing policies, information about the community's past and present, and projections of its future.

There is frequent confusion about the legal effect of the comprehensive plan on zoning. Must zoning actions be consistent with the goals and policies of the plan? For example, what if a county's plan declares that high density residential development should occur only in areas served by sewer systems, and the county rezones for high density residential use

an area neither presently nor planned to be served by a sewer system? Is the rezone invalid for infidelity to the plan?

The extent of the plan's legal constraint on zoning and other local actions generally depends upon judicial interpretation of the provisions of the applicable enabling act. (Chs. 35.63, 35A.63, 36.70, RCW.) For "home-rule" cities and counties exercising direct constitutional regulatory authority, the plan's legal effect depends upon relevant constitutional and local charter provisions. *See, e.g., Dalton v. Honolulu*, 51 Haw. 400, 462 P.2d 199 (1969). Zoning and planning enabling acts generally say that zoning must be in accord with the comprehensive plan or must further the goals and policies of the comprehensive plan. Washington courts construe such statutory language to require "general conformance" between zoning and the plan, but not strict fidelity. *E.g., Cathcart v. Snohomish County*, 96 Wn.2d 201, 634 P.2d 853 (1981). What is meant by "general conformance" and whether the same standard applies to governments operating under all three enabling acts and home-rule authority await judicial elaboration. Apparently, if the plan indicates low density residential use for an area, zoning for medium density residential use normally would be permissible, but zoning for high density residential or intense non-residential development might not be within the range of general conformity without a plan amendment.

It is important to distinguish the respect a local government *must* accord its comprehensive plan from the homage it *may* give its plan. "General conformance" is the minimum legal constraint of a plan. In recent years, local governments, in their own zoning ordinances, often have given their plans greater legal effect. They have done so to promote greater consistency in their regulatory decision-making and to foreclose loopholes in their zoning ordinance. Thus, uses permitted by zoning may be qualified by the proviso that they be consistent with the goals and policies of the plan. Such zoning provisions, in effect, incorporate by reference plan goals and policies, making them standards of the zoning ordinance itself.

Zoning limits what is done on a given parcel of land—what residential, commercial, industrial and other uses may be undertaken; permissible height, bulk, design, signing, lighting, and landscaping of structures. Traditional zoning has: a *text* setting forth regulations of use and development; and a *map* designating the location of the various zoning "classifications" which are subject to different regulations. Zoning ordinances often are amended to modify the text or the map. Map amendments are called "rezones." Some uses, called "conditional" or "special" uses, are not absolutely permitted or denied but are allowed only if prescribed standards are met. Sometimes zoning regulations make sense, in general, but not as applied to a specific lot, for example, a thirty-foot height limit, designed to prevent view blockage, as applied to a lot in a thirty-foot crater. A variance may be granted as relief from such specifically inappropriate restrictions.

Shortcomings of traditional zoning have inspired pervasive and fundamental changes. Traditional zoning, often labeled "Euclidean" after the Supreme Court decision, naively assumed that various kinds of uses were inherently compatible or incompatible. Experience has taught that the precise use and precise form of development has more to do with compatibility than the general category into which it falls. Moreover, compatibility depends upon precisely where the use is located—what is next door and across the street.

Most communities have been evolving away from rigid "Euclidean" toward more flexible zoning which regulates on the basis of the precise development proposal and its specific effects rather than assumed development consequences. The hatchet of traditional zoning is being replaced for most significant development by the scalpel of flexible zoning. Flexible regulatory tools include planned unit developments (PUD), conditional and special uses, rezones subject to concomitant agreements, floating, overlay, and incentive zones, performance standards, and site plan review. A modern zoning ordinance may bear little resemblance to "Euclidean" zoning. Even the term "zoning" may be abandoned in favor of something like "land use code."

While zoning regulates what may be done on a given parcel of land, subdivision regulation governs the creation of new parcels of land. The division of land may seem environ-

mentally insignificant—merely lines on paper. But communities have learned by experience that land division has far-reaching, often irreversible consequences. The design of subdivisions and the provision of public facilities to serve the eventual residents largely determine the quality of their living environment and the spillover effects which the surrounding community must endure.

Unlike "Euclidean" zoning, subdivision regulation traditionally has not been self-executing but tailored to specific subdivision proposals. While local subdivision regulations are applied, ultimately local regulators have broad discretion to determine permissible subdivision design and the nature and extent of required roads, sewers, drainage systems, parks, and other public facilities.

Subdivision regulation occurs through a two-step process of preliminary and final plat approval. The terminology may mislead the uninitiated. Preliminary plat approval is the critical stage of regulation. Final approval is largely an enforcement device.

Probably the most controversial aspect of subdivision regulation is the extent to which a developer may be required to dedicate land for, and bear the cost of installing, public facilities. The legality of subdivision exactions ("extractions" to their deriders) for on-site roads, sewers and drainage systems is well-established. Whether to permit exactions for parks, school sites, schools, and off-site facilities in general is more controversial and unclear. Implicated are constitutional limitations, the state subdivision statute (RCW 58.17.110), statutory limitation of development fees (RCW 82.02.020), and the substantive authority of SEPA (RCW 43.21C.060; WAC 197-11-660).

III. Legal Limitations on Land Use Regulation

The law of land use regulation defines the regulatory authority of various governmental entities. This authority is subject to substantive and procedural limitations imposed by constitutions, statutes, ordinances, and common law rules. Noncompliance with any of these requirements is a basis for invalidation of challenged regulatory action. Obviously, such a brief account of a complex dynamic area of law must be highly generalized and simplified. For detailed coverage of these topics, *see generally* Settle, *Washington Land Use And Environmental Law And Practice* (Butterworth, 1983).

Land use regulation is an exercise of the police power which emanates from the state constitution and is subject to state and federal constitutional limitations. In general, the police power to regulate land use is delegated to local governments by state statutes. In Washington, there are three zoning and planning enabling acts. Chs. 35.63, 35A.63, 36.70, RCW. Since substantive and pro-

cedural requirements for planning and zoning vary among the enabling acts, it is essential to identify the operative statute. "Home rule" cities and counties may regulate land use under a direct constitutional grant of the police power. WASH. CONST., Art. XI Sec. 11; *Nelson v. Seattle*, 64 Wn.2d 862, 395 P.2d 82 (1964). While home rule governments may avoid the constraints of an enabling act, they remain subject to all other constitutional, statutory, ordinance, and common law limitations. Local governments are not merely authorized but required to regulate land subdivisions in accordance with the requirements of Ch. 58.17, RCW. The regulation of shoreline development also is mandatory; and under the Shoreline Management Act (SMA), Ch. 90.58 RCW, the state retains ultimate authority to approve both the content and administration of shoreline regulation.

Substantive constitutional challenges are most often based on substantive due process and the "taking" limitation, with occasional equal protection and first amendment-based freedom of expression claims. Substantive due process (often asserted in terms of "arbitrary and capricious" actions) and equal protection generally require only that land use regulation rationally serve a legitimate public interest. *E.g., Duckworth v. Bonney Lake*, 92 Wn.2d 19, 586 P.2d 860 (1978). This usually very permissive and deferentially applied standard is somewhat more demanding when quasi-judicial (rather than legislative) regulatory actions are challenged. *See, e.g., Hayden v. Port Townsend*, 93 Wn.2d 870, 613 P.2d 1164 (1980). The "taking" issue is raised by assertions that even if regulatory action is rationally related to the public interest, it is an unfair burden on the regulated property owner. Claims of regulatory takings (distinct from physical takings under the power of eminent domain) rarely succeed, *e.g., Maple Leaf Inv. v. D.O.E.*, 88 Wn.2d 726, 565 P.2d 1162 (1977), and when they do, are subject to remedial uncertainty. *Williamson County Reg. Pl. Comm. v. Hamilton Bank*, 473 U.S. ____ , 87 L. Ed.2d 126, 105 S.Ct. ____ (1985). Freedom of expression claims have been made in the context of sign and adult entertainment regulation. *E.g., Northend Cinema v. Seattle*, 90 Wn.2d 709, 585 P.2d 1153 (1978).

Procedural constitutional challenges, which may relate to notice, right to be heard, availability of cross-examination, *ex parte* contacts, and bias, are largely comprehended by Washington's appearance of fairness doctrine, partially codified in Ch. 42.36, RCW.

Statutory requirements are imposed not only by the enabling acts, but also the subdivision regulation statute (Ch. 58.17, RCW), the SMA (Ch. 90.58, RCW), statutes relating to the appearance of fairness doctrine (Ch. 42.36, RCW) and development fees (RCW 82.02.020), and most notably, SEPA (Ch. 43.21C., RCW).

Local ordinances are sources of legal constraint which may vary infinitely among localities. As long as the regulations are consistent with statutory and constitutional limitations, local governments may establish additional requirements.

The common law is another source of potential constraint. To effectuate judicial review, the courts require a verbatim record of quasi-judicial regulatory proceedings and findings and conclusions explicating regulatory actions. *See, e.g., Parkridge v. Seattle*, 89 Wn. 2d 454, 573 P.2d 359 (1978). The appearance of fairness doctrine is largely based on common law due process. Washington's vested rights doctrine, which is far too complex and mysterious to be treated adequately in this brief account, may also be a matter of common law. The courts have yet to say whether its basis is constitutional or common law. *See Polygon v. Seattle*, 90 Wn.2d 59, 578 P.2d 1309 (1978); *Burley Lagoon Imp. Ass'n v. Pierce County*, 38 Wn.App. 534, 686 P.2d 503 (1984).□

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WASHINGTON STATE BAR NEWSLINE

The Board's Work

by **Carole Grayson**

Vancouver, WA. April 18-19

Present: All Governors, President Comfort. Also present: John Michalik (WSBA Exec. Dir.), John Gray (Govt. Lawyers), W. Edward Allan (Dist. Ct. Judges Assn.), Patrick Sutherland (Wa. Assn. of Prosecuting Attys.), Mary Drobka (SKCBA Young Lawyers), Chuck Snyder (WSBA Young Lawyers), Geoffrey Revelle (SKCBA Bd. of Trustees), Solie Ringold (Ct. of Appeals Judges Assn.), R. Wayne Wilson (WSBA Public Affairs), Keith McGoffin, John Skimas (Superior Ct. Judges Assn.).

GATES TO OPEN The Governors unanimously elected William H. Gates of Seattle to succeed Patrick Comfort of Fircrest as Bar president in November 1986. Gates, a former member of the Board of Governors, heads the Bar's task force investigating possible responses to the lawyer malpractice insurance situation.

LOCAL LINE: VANCOUVER Clark County Bar president Steve Busik discussed areas of concern for lawyers in southern Washington.

The local bar is "suffering somewhat" from "the tremendous proliferation" of Oregon attorneys, although "much of the business has always gone across the river," he noted. Every major Portland firm except one has a branch in Clark County. To combat the situation, some Washington lawyers are also becoming licensed in Oregon. It is "not particularly constitutional or desirable to limit practice (to resident attorneys)...It's a free marketplace," he said. Local court rules require lawyers to include Washington Bar numbers on pleadings. Clark County has 230,000 residents and about 300 lawyers. Annual dues for the bar, a nonprofit corporation, are $15.

PUBLIC AFFAIRS HIGHLIGHTS R. Wayne Wilson, WSBA Public Affairs head, brought the Governors up to date on the Bar's activities. Highlights included:

• 180,000 Citizen Rights pamphlets have been distributed--twice the number anticipated. Pamphlets on bankruptcy and how to find a lawyer are in the works.

• The Bar's Public Relations, Prepaid Legal Services, Legal Services, and Law-related Education Committees are interested in public service advertising. "The best advertising we can do is to publicize the benefits of our programs and activities rather than to merely tell people what we are," Wilson said.

• WSBA is developing a directory for the public "to raise the visibility of the Bar Association and make people aware of the variety of services we perform," said Wilson.

SKILLS TRAINING--AT A CROSSROADS? At their August 1985 meeting, the Governors allocated approximately $30,000 for a skills training pilot program for newly admitted lawyers.

In April, they were reluctant to fund a pilot program without a commitment to an ongoing program. After discussing but not voting on the merits of any funding option, the Governors opted to defer consideration of the issue until this summer.

Cost of an ongoing program was projected at $362,600 by the WSBA Skills Training Committee, which is headed by Governor Don Bond of Yakima: $105,000 in development costs during the first two years of the program and an annual operating cost of $257,600 to present approximately ten courses each year.

Two major funding options were discussed:

• having the participants themselves fund the program. This would cost approximately $250-350 per registrant, based on 1,000 registrants annually.

• recommending an increase in bar dues of $25 per year.

Several Governors and Young Lawyer representatives Chuck Snyder (WSBA) and Mary Drobka (SKCBA) felt that law schools had an obligation to provide skills training. Judge Solie Ringold, chief judge of the Court of Appeals, Division One, disagreed: "You're not going to (impart skills training) in one day or one year."

Asked Governor Steve Reisler of Seattle, "We're at a policy crossroads. Why should we start a program if there is no way to go through with it?"

BAR EXAM The Governors voted unanimously to recommend to the Supreme Court that bar exam fees be increased:

- for general applicants from $250 to $300
- for attorney applicants from $425 to $500
- for ethics-only applicants from $50 to $75.

The bar exam lost $90,023 in 1984 and $130,884 in 1985.

TODAY'S CONSTITUTION & YOU On April 18, the Governors tabled a request by Robin Anderson, director of Today's Constitution & You (TC&Y), for $48,000 for 1986. On April 19, after she had provided them with TC&Y's budget, the Governors voted 10-0 to allocate $48,000.

Governor Reisler asked: "Are we really getting to the folks on the periphery?

DATES OF UPCOMING MEETINGS

May 16-17	Spokane	Inn at the Park
June 27-28	Vancouver, BC	Four Seasons
July 18-19	Orcas Island	Rosario Resort
Aug. 22-23	Gleneden Bch, OR	Salishan
Sep. 19-20	Seattle	Westin

Revolution in Washington Law—

SEPA, SMA, and the Appearance of Fairness Doctrine

by **Thomas M. Walsh**

In the late '60s and early '70s there was a revolution—some say an explosion—in Washington land use and environmental law. During this period, three significant new land use and environmental laws were born: the State Environmental Policy Act; the Shoreline Management Act; and the Appearance of Fairness Doctrine, as applied to land use law. This article describes these three laws.

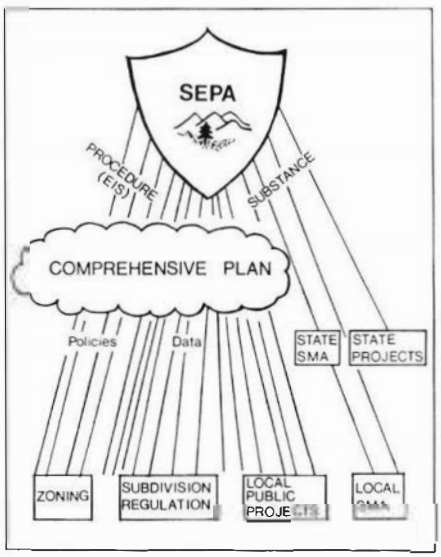
I. State Environmental Policy Act

In 1971, the State Legislature enacted the State Environmental Policy Act (SEPA), Chapter 43.21C RCW, with a minimum of debate and public attention. Modeled on the National Environmental Policy Act, its seemingly innocuous purpose was to require state and local agencies to consider the environmental effects of their actions. The Legislature could not have predicted that SEPA would become, primarily through judicial and administrative interpretation, the single most significant source of governmental authority to control private investment in Washington real property. In the 15 years since its enactment, there have been more than 100 Washington cases citing SEPA, and over 50 of these have been decisions of the state supreme court. In 1984, the State Department of Ecology (DOE) enacted extensive new SEPA rules, Chapter 197-11 WAC, which provide comprehensive guidance on the application of SEPA.

SEPA is far-reaching. It applies to any state or local governmental "action" (which is defined as an activity of an agency that will directly or indirectly modify the physical environment). Examples of actions include public works projects, decisions to grant permits for private projects, the transfer of publicly-owned land, and adoption of policies which contain standards controlling use or modification of the environment.

Some governmental actions are usually minor in their effect on the environment. The SEPA rules lump these actions together into "categorical exemptions" from the application of SEPA. WAC 197-11-800, *et seq.*

If a governmental action is not categorically exempt, the governmental agency is required to conduct a "threshold determination" to determine whether or not to prepare an environmental impact statement (EIS). An EIS is required for any action which is likely to have a significant adverse environmental impact. An EIS is not required for most actions; however, where an EIS is not required, the agency must prepare a determination of non-significance (DNS) to document its determination not to prepare an EIS. In the minority of actions in which an EIS is required, the EIS must be prepared and publicly circulated for comment in accordance with the SEPA rules.



courtesy of artist, L. Johanna Schorr

Once the DNS or EIS procedure is completed, the agency may make its substantive decision, *i.e.*, the decision to build or not build the project, grant or deny the permit, adopt or reject the policy, or whatever action is contemplated. The decision must take into consideration, and be guided to an appropriate extent by, the environmental information developed in the SEPA review process.

The three most prevalent areas of legal challenge based on SEPA are: the correctness of the threshold determination, the adequacy of the EIS, and challenges to the substantive decision.

A. *Threshold Determination—Is an EIS required?*

Most threshold determination issues have arisen upon appeal by project opponents who believe a DNS was issued improperly, arguing that the environmental impacts of the project would be significant and hence an EIS is required. There are fewer threshold determination cases arising from appeals filed by project proponents challenging the agency's deci-

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sion to require an EIS. It is usually less expensive and safer in the long run for a project proponent to prepare an EIS than to litigate whether an EIS must be prepared.

When is an EIS required? The SEPA rules require an EIS for a proposal that is likely to have a significant adverse environmental impact. WAC 197-11-330. The regulations define a "significant" impact as one involving a reasonable likelihood of more than a moderate adverse impact. WAC 197-11-794.

This is a broad and subjective test, and there have been numerous cases applying the test with various results. For a recent summary of Washington SEPA case law, including a discussion of threshold determination cases, see Rodgers, *The Washington Environmental Policy Act,* 60 *Wash. L. Rev.* 33 (1984).

For example, EISs were required in the following cases:

- A proposal to subdivide a 52-acre heavily wooded area into a residential suburban neighborhood with 198 lots.
- Application of an industrial plant for a variance from air pollution regulations governing emissions of arsenic-containing particulate matter.

But EISs were not required in the following cases:

- A 34-unit condominium project in Tacoma that was not significantly different from the surrounding community.
- County approval of a 6-year road plan that was advisory and not regulatory.

The standard of review for the court's consideration of a threshold determination challenge is the "clearly erroneous" standard. *Norway Hill Preservation and Protection Ass'n v. King County Council,* 87 Wn.2d 267, 552 P.2d 674 (1976). Under this standard, the court may search the entire record and reverse the decision if firmly convinced that a mistake has been made. This standard of review is less deferential to agency decision-makers than the "arbitrary and capricious" standard under which the court reviews the record until it finds any reasonable justification for the decision below.

B. *EIS Adequacy—Did the EIS adequately consider all required elements?*

There have been numerous EIS challenges in Washington courts, but few appellate court decisions in which an EIS has been found inadequate. By and large, the courts have reviewed the question of EIS adequacy with marked deference to agency decision-makers and reluctance to second-guess EIS adequacy.

The SEPA rules provide relatively detailed guidelines for determining what an EIS must include. An EIS must analyze: the reasonable alternatives to the proposal—alternatives that could feasibly attain the proposal's objective but at reduced environmental cost, WAC 197-11-440(5)—and each element of the environment for which there could be significant adverse impacts, WAC 197-11-440(6). The rules include a long list of elements of the environment, such as earth, air, water, plants and animals, noise, hazardous materials, housing, and traffic. WAC 197-11-444.

Guemes Islanders challenged the fairness of the county's closed meeting with aluminum plant proponents, and the Court agreed. Thus was the "appearance of fairness" doctrine introduced to Washington land use law.

C. *The Substantive SEPA Decision.*

SEPA grants an agency substantive authority to condition or deny proposals based on environmental impacts disclosed in an EIS. *Polygon Corporation v. Seattle,* 90 Wn.2d 59, 578 P.2d 1309 (1978). However, there are significant limitations on that authority. RCW 43.21C.060; WAC 197-11-660(1).

One of the limitations requires that conditions or denials be based on written policies identified by the agency and incorporated into regulations, plans, or codes which are formally designated by the agency as possible bases for the exercise of its SEPA authority. RCW 43.21C.060. For example, if a city intends to condition projects to minimize view blockage, the city must have previously adopted a policy relating to its SEPA authority to do so. One unresolved question is how specific these policies must be. The City of Seattle has enacted and is now considering revisions of a relatively specific view protection policy. The policy identifies a list of public viewpoints and provides that the city may require modifications of a project, such as changes to a building's profile, to minimize view blockage from these public viewpoints. SMC 25.05.902(G). However, other jurisdictions have adopted more general policies which merely reiterate the broad policies in SEPA relating to protection of the environment. See RCW 43.21C.020. Whether these general policies will be considered sufficient under the requirements of RCW 43.21C.060 is a question not yet addressed by the courts.

Other significant limitations on a governmental agency's SEPA authority to deny proposals are: (1) the agency must find that the proposal would result in significant adverse impacts identified in an EIS prepared under SEPA; and (2) the agency must find that reasonable mitigation measures are insufficient to mitigate the identified impact. RCW 43.21C.060. The first of these limitations means that agencies may deny only proposals for which an EIS has been prepared. However, these limitations may have little practical effect on agency decision-making. Agencies rarely deny proposals, since they can usually achieve their desired results by imposing conditions on projects which eliminate or significantly mitigate the impacts.

SEPA limits agencies' authority to impose mitigating conditions on projects. For example, mitigating measures must be reasonable and capable of being accomplished. RCW 43.21C.060. Unfortunately, it is not possible to provide in the statute or regulations clear guidance as to what

measures are reasonable or unreasonable, or what measures are capable or incapable of being accomplished. Therefore, these determinations will have to be made on a case-by-case basis.

In addition, an agency may impose mitigating measures only to mitigate specific adverse environmental impacts which are identified in the environmental documents prepared under SEPA, and the mitigating measures must be stated in writing. RCW 43.21C.060. This provision would allow an agency to condition a project for which a DNS, and not an EIS, has been prepared.

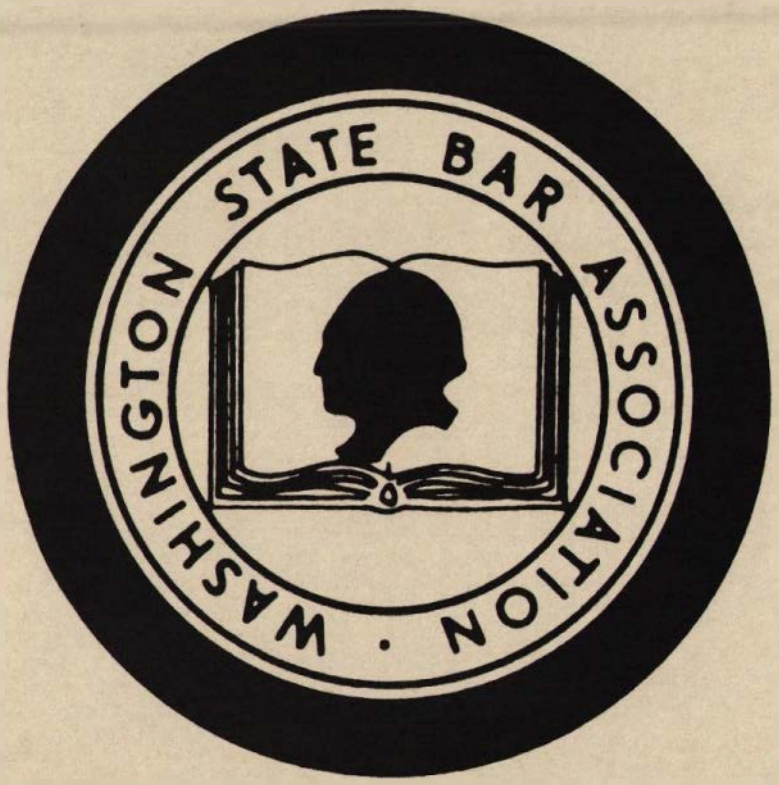
For a comprehensive discussion of SEPA, the SEPA rules, and relevant case law, see Settle, *The Washington State Environmental Policy Act* (1986).

II. Shoreline Management Act

In the 1960s, there developed a growing interest in enacting special protective laws for the most fragile and irreplaceable of our state's natural resources—the shoreline and wetland areas. During this time, the Supreme Court decided *Wilbour v. Gallagher*, 77 Wn.2d 306, 462 P.2d 232 (1969) (known as the "Lake Chelan case"). Owners of property seasonally inundated by Lake Chelan wanted to deposit fill on their land to raise the elevation of the property and avoid inundation by the lake. Neighbors and others objected to this deposit of fill and brought an action on behalf of the public seeking to prevent the fill. The court held that the property owners were not allowed to deposit the fill because it would interfere with the public's navigation and corollary rights. As a result of this decision, property owners were unsure of their right to use and develop periodically inundated land, including tidelands. These owners sought clarification of the rules applicable to shoreline development. The combination of the growing political support for shoreline regulation and the need for clarification of the rules of shoreline development resulted in the enactment of the Shoreline Management Act (SMA). Chapter 90.58 RCW.

The SMA includes significant regulatory requirements applicable to all major shorelines of the state: the ocean coastline, Puget Sound, the Strait of Juan de Fuca, lakes of 20 acres or larger, rivers and streams with flows of 20 cubic feet per second or greater, and their associated wetlands. The associated wetlands include: marshes, bogs, and the like; floodways; and the land 200 feet landward of the ordinary high water mark of the shoreline. *See* RCW 90.58.030(2). It is misleading to label these lands "wetlands" since most of them are entirely dry. The areas subject to direct SMA regulatory control are designated on maps which are adopted by the State Department of Ecology.

The SMA requires that cities and counties prepare and submit to DOE master programs covering areas subject to the SMA. These programs are a



1986 Annual Report

Washington State Bar Association

PULL-OUT SECTION

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Judy Collins Shirley Archer
Judy Davidson Penny Davis
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1986 Annual Report

Washington State Bar Association

by **Patrick C. Comfort**

It is my pleasure to report to you on the activities of your State Bar Association.

The Association's Annual Report is published at a "strange" point in time—midway through the Association's Fiscal Year and about a third of the way through the calendar year. However, that "strange" timing is in fact a benefit for the President making the Report. It is possible to look back upon a full year of activity and report on that activity from the viewpoint of a close and involved observer. It is also possible to look ahead at what is to come and what is hoped to be accomplished. It is a comfortable viewpoint with one "downside": The activities of a strong and vigorous organization such as our Association are so numerous and diverse that they cannot all be discussed in these few pages. We can only touch on a few of the many things which we believe to be significant. With that "caveat" I am pleased to present this Report for your consideration.

Tort Reform Proposed Legislative Changes

Proposed legislative change in our tort liability system in this state was undoubtedly the most controversial issue considered by the legislature in its regular session concluded in March. During the session Insurance Commissioner Marquardt appointed a Commission to study the current liability insurance situation and what impact, if any, the so-called tort "reform" measures would have on insurance coverage and premium costs if such legislation was enacted into law.

Early in the session the Association advocated that the entire package of tort liability measures be referred to the Marquardt Commission for an indepth and objective analysis. The legislature perceived otherwise and near the close of the session a number of tort "reform" measures were enacted under ESSB-4630. The Board of Governors, after receiving analysis and comment from multiple sectors of the Bar, directed that I inform Governor Gardner that the Association still felt these issues should be studied by the Marquardt Commission before being signed into law and, accordingly, we recommended that the Governor veto the entire bill.

We recognized, however, that a veto of ESSB-4630 in its entirety would be a difficult act for the Governor to do. Accordingly, if the Governor determined not

to veto the whole measure, we urged consideration of veto of Section 101 (accelerated waiver of physician-patient privileges); Section 301 ("Cap" on non-economic damages); Section 502 (Imputation of knowledge to a minor child); Section 801 (Periodic payment of judgments over $100,000.00); and Section 901 (repeal of negligence per se for statutory and regulatory violations).

Although the rationale for our request for veto was on multiple grounds, in the main the Board felt that such sections: established a procedural trap for the unwary (Section 101); were arbitrary and unfair (Section 301); presented an unconstitutional intrusion on basic rights (Section 502); were poorly drafted and established unworkable procedure (Section 801); and adopted poor public policy which would produce further court congestion and delay (Section 901).

Whether the net effect of the legislation will be good or bad for the people of this state is an argument which will be carried on for years to come—both in and out of the courthouses. But one thing is certain. Unless we find ways in which the entire reparation process may function less expensively and more efficiently, the issue of "tort reform" will be back before the legislature at its next session and at sessions following.

The Bar Staff

On the inside front cover of this Report you will find the names of 48 people—the members of the Staff of the State Bar Association. Somewhere in there you'll find the name of our Executive Director, John Michalik; but with all due respect to John and his skills and efforts, I'd like to tip my hat to the entire staff and commend them for the truly outstanding work they do *for us and on behalf of us.*

What do they do? Well, they handle countless public inquiries; they plan and administer two major bar examinations a year; they run a Lawyer Referral Service that makes a thousand referrals a month; they put on over 60 Continuing Legal Education programs for over 8,000 Lawyers every year; they support the work of 40 Bar Committees and 15 Sections; they administer a Legal Intern program and a Law Clerk program; they process close to 1,500 complaints against attorneys every year; they put on the best State Bar Convention in the country; they coordinate and administer law-related education programs for the public; they administer mandatory CLE and Trust Account Audit programs; they represent us in our legislative efforts; they administer member benefit programs ranging from insurance to credit unions to car rental discounts; they put out the monthly *Bar News* and dozens of special publications, like this Annual Report; they arrange Association meetings and conferences; they run a super fee arbitration program; they collect our dues, keep our books, pay our bills, keep this Association running and much more.

The point is that this is an extremely capable, dedicated and hard-working group of people who deserve our thanks and support. They make our programs go and they deserve our thanks.

Impaired Lawyers

It is a sad fact that dependency/addiction on and to alcohol and narcotics is present within the legal profession as it is in the populace in general. Statistics I have seen indicate that 10% or more of the working population may be alcohol or drug dependent. There is little reason to believe that the percentage is less among lawyers as a group. We see evidence of this in our admissions process,

in cases arising in our disciplinary system and in our observations of our fellow practitioners. It may be safe to say that the "normal" pressures which lead to alcohol and drug abuse are exacerbated in the case of lawyers, who face the heavy pressures of being responsible not only for their own welfare but also that of those whom they represent.

The problem of the impaired lawyer is a serious one—whether the impairment be due to alcohol, narcotics, senility, or other cause. It is of great concern to the Board of Governors. We not only have our Alcoholism Committee considering new directions in this area but we also have a special Task Force of the Board coordinating renewed and redirected efforts to establish an effective program. Definitive proposals will be presented to the Board this spring or early summer. These proposals will undoubtedly call for more extensive financial commitment and the possibility of adding a professionally trained counselor to the Bar Staff.

I am an enthusiastic supporter of this effort and have been personally involved in the development of the proposals now under study. We will proceed slowly and deliberately but with a definite purpose and resolve to move ahead on a sound and solid basis and to establish a program which will serve our members who are in need. I will be reporting to you on this effort in more detail in the coming months and I urge your support and cooperation.

Malpractice Insurance

Last year Lee Campbell appointed a Malpractice Insurance Task Force to study the problem of availability and cost of professional liability insurance for lawyers in this state. The Task Force has labored long and well and has submitted two interim reports to the Board of Governors during my term.

In the course of this study, the Task Force has received and tabulated a poll of the membership as part of a feasibility study related to the organization of a bar-related insurance company or the establishment of a liability fund. Over 5,200 lawyers responded to the survey and the Task Force is very appreciative of their cooperation. Results of the survey, some of which are fascinating to say the least, will be published in the near future and we won't repeat them here.

The Board of Governors has directed the Task Force to present two programs for review: A bar-related insurance company and a mandatory professional liability fund constructed along the Oregon example. In reviewing these programs, the Board intends to address the question of deductibles, the amount of capitalization required per lawyer, estimated annual premiums, legal ramifications of a mandatory program and/or mandatory capitalization and whether or not "opt out" provisions are feasible. Additionally the Board will consider the fundamental question of whether or not any action at all is called for.

A paramount question is whether every lawyer should be required to be insured for professional errors and omissions. If so, the two plans under consideration might be of equal merit. If not, a professional liability fund along the line of the "Oregon Plan" may not be feasible.

This matter is of widespread interest among the members of this Association and deserves the utmost attention. Comment and reaction is and will be solicited from each of you before the Board finally acts. The Board fully realizes that any plan to be successful will need the full support of a strong majority of our members. No matter what action is taken, we must be assured that professional liability insurance is available to every lawyer in this state who wishes to purchase coverage.

STATE BAR MEMBERSHIP
DECEMBER, 1985

Alabama State Bar	8,012	State Bar of Montana	2,500
Alaska Bar Association	2,277	Nebraska State Bar Association	6,500
State Bar of Arizona	8,552	State Bar of Nevada	2,406
Arkansas Bar Association	3,300	New Hampshire Bar Association	2,484
State Bar of California	97,000	New Jersey State Bar Association	15,515
Colorado Bar Association	9,500	State Bar of New Mexico	3,995
Connecticut Bar Association	8,200	New York State Bar Association	43,650
Delaware State Bar Association	1,350	North Carolina State Bar	10,000
District of Columbia Bar	43,468	State Bar Association of North Dakota	1,500
The Florida Bar	37,000	Ohio State Bar Association	18,000
State Bar of Georgia	17,000	Oklahoma Bar Association	10,695
Hawaii State Bar Association	2,342	Oregon State Bar	8,700
Idaho State Bar	2,300	Pennsylvania Bar Association	24,051
Illinois State Bar Association	26,469	Rhode Island Bar Association	2,900
Indiana State Bar Association	8,500	South Carolina Bar	5,620
Iowa State Bar Association	6,749	State Bar of South Dakota	1,722
Kansas Bar Association	4,300	Tennessee Bar Association	5,400
Kentucky Bar Association	8,700	State Bar of Texas	45,000
Louisiana State Bar Association	12,482	Utah State Bar	4,227
Maine State Bar Association	1,856	Vermont Bar Association	1,312
Maryland State Bar Association	10,700	Virginia State Bar	18,705
Massachusetts Bar Association	16,000	Washington State Bar Association	13,000
State Bar of Michigan	24,000	West Virginia State Bar	3,459
Minnesota State Bar Association	11,000	State Bar of Wisconsin	14,100
Mississippi State Bar	5,130	Wyoming State Bar	1,500
The Missouri Bar	15,000	**TOTAL MEMBERSHIP**	658,128

Association Finances

The financial position of the Washington State Bar Association continues to be very strong. This Report includes the financial statements for Fiscal 1984 and 1985 as prepared by our independent auditors. Those financial statements are basically self-explanatory.

Approximately four years ago, and under the leadership of then State Bar President Paul Steere, the Board of Governors embarked upon an ambitious program to solidify the Association's financial position and protect it for the future. I was serving on the Board's Budget Committee at that time and I well recall the goals we set and the commitments we made. Those goals and commitments have been consistently reaffirmed by the Board in the intervening years. The results of this effort are beginning to become evident and they are all positive.

For example, one of our goals and commitments was that of building the Client's Security Fund to a level, within five years, wherein it would become basically self-sustaining. That project is right on target. By early 1987 the return earned on investment of the Fund principal should be sufficient to maintain the Fund. The importance of this is two-fold. First, we assure the continuation of

this Association's ability to meet our voluntary, self-imposed obligation of providing a monetary means of relieving or mitigating pecuniary losses suffered by clients, and others, as the result of the dishonesty of members of the Bar in connection with those members' practice of law. This is extremely important. We do not believe your Association should follow the path of some bar associations which recently, for a variety of reasons, have severely curtailed their activities in this field. Second, as the Fund achieves a self-supporting level it will no longer be necessary to maintain the Fund through the use of general Bar Revenues. Those monies will be "freed up" for use in developing other Bar programs.

The Client Security Fund project is only one of the building blocks in the overall series of financial goals and commitments we continue to pursue. All are "on track" and bode well for our continuing financial health.

The Bar Examination

I suppose that nothing "within the Association" attracted more attention in the past year than the controversy over the July 1985 State Bar Examination—particularly the Ethics portion of that Examination and the ultimate review of the papers of all failing Ethics applicants. Much has been written on this subject, including my own column in the January 1986 issue of the *Bar News*. There are, however, three or four points which are worthy of note in summation.

First, we have recently concluded an extensive investigation and review of the entire July 1985 Ethics examination and remain convinced of the essential validity of that examination. Some corrective actions have been taken in connection with our Examination processes but these relate more to fine-tuning an already excellent system. Nothing revealed by the investigation and analysis has caused us to either question the validity of the July 1985 Examination or to order major changes in the examination process.

Second, the bottom line on the July 1985 Bar Examination is that, even after the complete Ethics review or "regrading", the overall pass rate on that examination was only 57%. This is disturbing in light of the consensus of persons within the Bar as well as independent analysts that the examination questions themselves were fair. We were not the only state to experience a low pass rate in the July 1985 examination—the pass rate in California was 45% and nearly a dozen other states have reported pass rates well below their normal levels. The results of the February 1986 Bar Examination will be announced in mid-May. They will not, however, provide a true indication of any "trends" or "patterns" since such large percentages of those taking that examination are repeaters and attorneys admitted in other states. We will be watching with greater interest the results of the July 1986 examination, when once again the majority of the examinees will be new graduates.

Third, as I mentioned in my January *Bar News* column, we were struck by the disparity of Bar Exam results among the graduates of our three in-state law schools. When such an obvious disparity of test results occurs among the graduates of one or more law schools—particularly in an area such as legal ethics and professional responsibility—one hopes it is an aberration. We are pleased to note that, just as we have investigated the Bar Examination with a fine tooth comb, the law schools are themselves currently reviewing and scrutinizing the adequacy of the education being provided our students. We commend their efforts.

Interest On Lawyer Trust Accounts (IOLTA)

On March 1, 1986 we passed an important milestone: The first anniversary of the effective date of the IOLTA program in Washington. It has been a tremendous first year for that program and its administrative agency, the Legal Foundation of Washington. Current projections are that IOLTA will generate close to $2,000,000 per year, and the Foundation recently announced its first series of grant awards involving the disbursement of some $1,250,000 in funds. This is truly a banner program and a feather in the cap of the legal profession in this state and its service to the public.

There is one dark spot in the IOLTA story: The brutal Christmas Eve attack which resulted in the deaths of Legal Foundation President Charles A. Goldmark, his wife Annie and their two young sons. Chuck was a driving force in the IOLTA program, a leader in his community and a leader in the Bar. He served in the State Bar in countless capacities—including acting as special counsel in a number of areas. He was a young, brilliant and rising star in our profession. His presence will be missed, but it will not be forgotten.

Public Affairs and Public Relations

In each of the last three or four Annual Reports, my predecessors have made a point of using space to review one of our stable, ongoing programs. This is in contrast to the discussion of current items like malpractice insurance, the Bar Examination and tort reform. I am pleased to continue that tradition in looking at our ongoing Public Affairs programs.

We have a lot going in this general area: So much that in the space we have here I can only give you a brief look at four or five of our programs.

(1) MENTOR—What a success story! MENTOR, as you know, is a program which brings together a high school class and a law firm in a close relationship. Members of the firm participate in classroom work and direct students through visits to the firm's offices and to both state and federal courts. We started MENTOR in 1984-1985 with five pilot programs. This year we have seventeen programs in progress involving an equivalent number of law firms and high schools across the state. Further expansion is on line for 1986-1987.

(2) "Today's Constitution and You"—Another great success heading toward its culmination in 1987 with the bicentennial of the United States Constitution. The WSBA, the Washington Commission for the Humanities and the Metrocenter YMCA of Seattle are the prime sponsors of this project. The State Bar remains strongly committed—in terms of dollars, attorney time and overall support—to the success of this project as we move toward 1987.

(3) "You and the Law"—Did you know that the State Bar Association provided the primary funding, as well as the editing and printing support, for this revised curriculum on Law and Justice in Washington State for Secondary Teachers and Students? Well, we did as a part of our continuing cooperative efforts with the State Superintendent of Public Instruction. This curriculum guide has now been made available in *every* secondary school in the state.

(4) "Citizen Rights" Pamphlet Program—We are now fast approaching having distributed nearly 180,000 pamphlets in this series involving topics such as "Landlord Tenant Rights", "Buying and Selling Real Estate" and "Wills". Many of these copies have been distributed, upon request and free of charge, to members of the public on a one-on-one basis. We have received excellent cooperation from newspapers across the state in publicizing new titles as they come out. In addition, many of you have purchased these pamphlets in bulk for distribution to your clients. Further expansion of the program may well take the form of corporate distributions as "stuffers" in employee pay envelopes.

(5) Our Association has been selected as one of the seven recipients of an ABA Bar-School Partnership grant. This outreach program promises to be an exciting

project under which we will improve law-related education programs for elementary and secondary students in this state.

In Closing

Fircrest, Washington is a residential community in Pierce County, just outside Tacoma. It has a population of 5,320, its own Mayor and five Council persons, two shopping areas and all the usual accoutrements of a community of its size. It is a great place to live, to raise a family and to practice law. I have done and continue to do all three of those things in Fircrest. I wouldn't have it any other way.

Now, while you might not feel that way about Fircrest, you probably have similar feelings about your own community—whether you hail from the big city or from a "Fircrest" of your own. We members of the Washington State Bar Association are scattered all over this state. We are engaged daily in a service profession and our efforts, collectively and as individuals, are directed toward the public good in general and the needs of our clients in particular. We are a high-visibility profession; much more is expected of us than of those in many other occupations and rightly so. We are looked to for leadership, praised if we succeed and decried if we stumble. We are a diverse group of 13,000 individuals lumped together under the collective title of "lawyer". It is a proud title and I firmly believe, despite our diversity, and whether from Seattle, Fircrest or anywhere else in this great state, that under the scope of that title we all share a deep and true commitment to those ideals of professional and public service that set us apart as "lawyers".

There can be no doubt that serving as President of this Bar Association is a singular honor and a proud achievement in a professional career. I doubt if any of my predecessors would disagree with that statement, and I feel honored to be in their company and to share that honor. This "lawyer" from Fircrest is proud of the "lawyers" of this state and of the opportunity to serve as your President.

Patrick C. Comfort,
President

1984-1985 Audit of the Washington State Bar Association

VON HARTEN & COMPANY
CERTIFIED PUBLIC ACCOUNTANTS
1411 FOURTH AVENUE BUILDING
SEATTLE, WASHINGTON 98101
(206) 682 2266

To the Board of Governors of the
Washington State Bar Association

We have examined the balance sheet of the Washington State Bar Association as of September 30, 1985 and 1984 and the related statements of revenue and expenses, changes in fund balances, and changes in financial position for the years then ended. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the aforementioned financial statements present fairly the financial position of the Washington State Bar Association at September 30, 1985 and 1984, and the results of its operations, changes in its fund balances, and changes in its financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

December 12, 1985

Von Harten & Company

Washington State Bar Association Statement of Assets, Liabilities and Fund Balances September 30, 1985 and 1984

	1985	1984
Assets		
Cash		
Checking accounts	$ 230,777	$ 102,181
Savings accounts	1,490,591	1,585,298
Accounts receivable	65,752	60,106
Office supplies	22,069	23,460
Deferred costs and prepaid expenses	110,409	86,679
Furniture, equipment and leasehold improvements (Notes 1b and 2)	192,893	154,694
Total assets	$2,112,491	$2,012,418
Liabilities and Fund Balances		
Liabilities and deferred revenues		
Accounts payable	$ 413,856	$ 425,955
Deferred revenue (Note 1c)	687,505	576,134
Equipment contracts payable (Note 3)	—	2,218
Deferred compensation (Note 6)	327,164	344,686
Total liabilities	1,428,525	1,348,993
Fund balances (Note 1a)	683,966	663,425
Total liabilities and fund balances	$2,112,491	$2,012,418

The accompanying notes are an integral part of these financial statements.

Washington State Bar Association Statement of Revenues and Expenses Years Ended September 30, 1985 and 1984

	1985	1984
Revenues:		
Membership dues	$1,987,584	$1,868,523
Continuing legal education	939,387	992,083
Bar examination fees	301,825	323,625
Bar news	272,090	249,794
Convention	184,073	186,326
Interest earned	162,900	161,221
Sections	169,707	123,383
Lawyer referral services	72,991	71,938
Other	88,193	61,012
	4,178,750	4,037,905
Expenses: (also see expenses by activity)		
Salaries	1,162,074	1,047,108
Payroll taxes and benefits	271,956	231,984
Rent and utilities	174,987	163,271
Postage, printing and office expense	327,185	254,116
Public relations and support activities	343,691	204,072
Miscellaneous	50,616	45,927
Depreciation and amortization	32,543	27,241
Direct activity expenses:		
Continuing legal education	679,082	666,582
Bar examination and admissions	227,344	222,409
Convention	234,433	230,967
Discipline	67,551	76,937
Bar news	249,477	223,745
Committees	79,046	58,686
Legislative	39,749	31,856
Sections	159,556	136,365
Client's security claims	33,927	89,687
Lawyer referral service	24,992	26,307
Total expenses from operations	4,158,209	3,737,260
Excess (deficiency) of revenues over expenses:		
General fund	(28,249)	366,728
Legislative fund	(156)	(1,105)
Section fund	26,369	1,076
Client's security fund	22,577	(66,054)
	$ 20,541	$ 300,645

The accompanying notes are an integral part of these financial statements.

Washington State Bar Association Statement of Changes in Financial Position Years Ended September 30, 1985 and 1984

	1985	1984
Factors increasing cash		
Operations:		
Excess of revenues over expenses	$ 20,541	$ 300,645
Add non-cash items		
Depreciation and amortization	32,543	27,241
	53,084	327,886
Increase in:		
Deferred revenue	111,371	7,900
Accounts payable	—	40,040
Decrease in:		
Office supplies	1,391	1,757
	165,846	377,583
Factors decreasing cash		
Increase in:		
Deferred costs and prepaid expenses	24,225	16,512
Accounts receivable	5,646	3,695
Furniture, equipment and leasehold improvements	70,247	71,519
Decrease in:		
Accounts payable	12,099	—
Equipment contracts payable	2,218	6,096
Deferred compensation	17,522	16,010
	131,957	113,832
Increase in cash	33,889	263,751
Cash balance, beginning of year	1,687,479	1,423,728
Cash balance, end of year	$1,721,368	$1,687,479

The accompanying notes are an integral part of these financial statements.

Washington State Bar Association Statement of Expenses By Activity Years Ended September 30, 1985 and 1984

	1985	1984
Revenue-Producing Activities:		
Continuing legal education	$1,032,164	$ 968,979
Bar examinations and admissions	439,709	413,648
Bar news	352,128	317,752
Convention	234,433	230,967
Sections	210,047	181,471
Legislative	149,763	142,374
Lawyer referral services	94,084	89,601
Other Activities:		
Discipline	651,307	583,160
Committees	135,340	123,919
Membership mailings and special projects	90,940	74,736
Public affairs	223,886	108,609
Conferences and meetings	149,293	138,523
Miscellaneous activities	208,979	137,452
Lawyer trust account audits	119,016	106,619
Legal intern and lawyer placement	33,193	29,763
Client's security claims	33,927	89,687
Total expenses from operations	$4,158,209	$3,737,260

Note: Each of the above accounts includes a pro-rata allocation of administrative and overhead expenses as shown on the statement of revenue and expenses.

The accompanying notes are an integral part of these financial statements.

Washington State Bar Association
Notes to Financial Statements
September 30, 1985

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

a. Assets and liabilities, and revenues and expenses are recognized on the accrual basis of accounting.

b. Furniture, equipment and leasehold improvements are stated at cost, less accumulated depreciation, computed on the straight-line method. Furniture and equipment are depreciated over their estimated useful lives of five to ten years and leasehold improvements are amortized over a ten year life.

c. Dues are recorded by the Bar Association as revenue in the applicable membership period. Seminar registration fees are recorded as revenue in the period in which the seminar is held. Accordingly, unearned dues and seminar fees are included as deferred revenue in the financial statements.

2. FURNITURE, EQUIPMENT AND LEASEHOLD IMPROVEMENTS

The following presents the amounts of furniture, equipment and leasehold improvements at September 30, 1985 and 1984:

	1985	1984
Furniture and equipment	$297,692	$248,322
Leasehold improvements	108,040	92,022
	405,732	340,344
Less accumulated depreciation	212,839	185,650
	$192,893	$154,694

Depreciation expense was $32,048 and $26,746 for the years ended September 30, 1985 and 1984, respectively.

3. EQUIPMENT CONTRACTS PAYABLE

The equipment contracts payable are summarized as follows:

	1985	1984
Contract payable to Xerox Corporation in monthly installments of $116.72 including interest at 16%. The contract is secured by the underlying equipment.	$ —	$ 116
Contract payable to Xerox Corporation in monthly installments of $435.94 including interest at 15%. The contract is secured by the underlying equipment.	—	2,102
	$ —	$ 2,218

4. LEASE COMMITMENTS

The Bar Association leases office space under a non-cancellable lease until June 30, 1987. The minimum rental commitments under the present lease are summarized below:

Year Ended September 30	
1986	141,432
1987	106,074

During the years ended September 30, 1985 and 1984, the Bar Association subleased a portion of its office space which resulted in a reduction of net rental expenses of $17,193 and $20,778, respectively.

5. CLIENT'S SECURITY FUND

It is the estimate of management that with current restrictions, conditions and limitations pertaining to various claims presently filed, the Bar Association's total exposure to the Client's Security Fund does not exceed $165,000.

6. DEFERRED COMPENSATION

Effective January 16, 1978, the Bar Association entered into an Employment and Deferred Compensation Agreement with its then Executive Director, G. Edward Friar. This agreement was, by mutual consent, amended on September 10, 1979 and again on September 5, 1980. The agreement requires monthly payments as a general obligation of the Bar Association upon termination of the employment of the said Executive Director. The vesting requirements of this agreement and its amendments were met on December 31, 1980 and December 31, 1981, respectively. Mr. Friar retired as Executive Director on December 31, 1981. The estimated balance due under the agreement and its amendments has been computed on a present value basis using actuarially determined life expectancy tables and interest rates and is reflected as a liability of the Bar Association in the financial statements. The total amount to be paid to the former Executive Director will depend upon his actual life span.

NOTES:

NOTES:

Contents

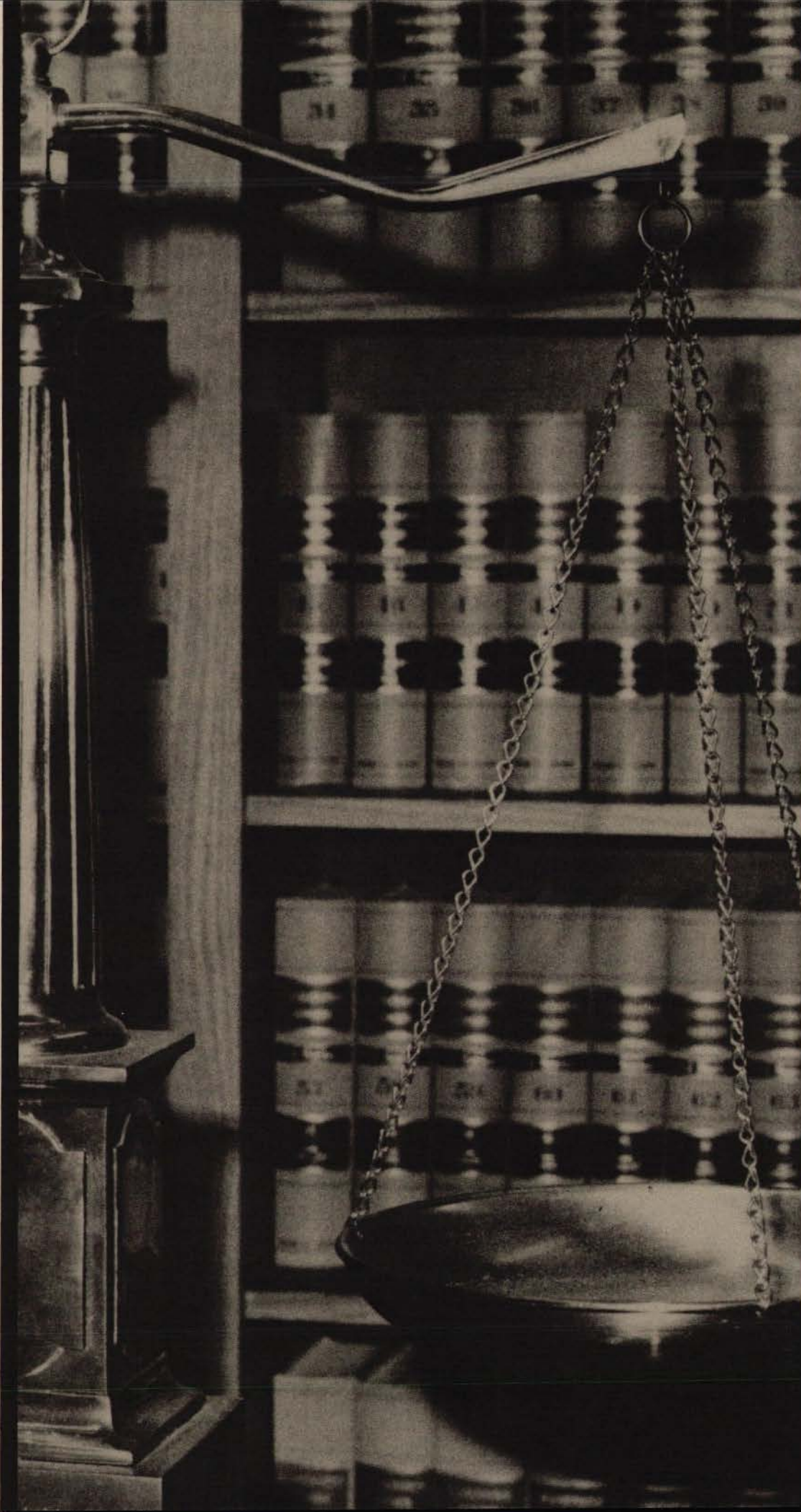
Direct Dial Telephone Numbers

Admissions
(206) 622-6853

Continuing Legal Education
(206) 622-6021

Legal Department
(206) 622-6026

General Information
(206) 622-6054



Washington State Bar Association

505 Madison Street
Seattle, Washington 98104

May 1986

FOR ADDITIONAL COPIES CONTACT
THE WSBA PUBLIC AFFAIRS DEPARTMENT

combination comprehensive plan and zoning code. They identify long-range plans for development of shorelines and establish specific zoning-type requirements. The SMA regulations are an overlay on local zoning and other land use regulation; that is, they apply in addition to other regulations. All development on the shorelines must be consistent with the applicable master program. RCW 90.58.140(1). A substantial development permit is required for any development of which the total cost or fair market value exceeds $1,000 (the $1,000 threshold will rise to $2,500 pursuant to SSB 4572, recently enacted by the Legislature and signed by the governor) or which materially interferes with the normal public use of the water or shorelines, with certain exceptions. RCW 90.58.030(3)(e); RCW 90.58.140(2). *See generally*, Settle, *Washington Land Use and Environmental Law and Practice*, Ch. 4 (1983).

III. The Appearance of Fairness Doctrine

In the mid-1960s, Skagit County approved a proposal to build an aluminum plant on Guemes Island, a controversial proposal which was opposed by island residents. During the course of its deliberations, the county planning commission held a public hearing, followed by a meeting in executive session to which project proponents, but not project opponents, were invited. The opponents challenged the commission's meeting with the project proponents as being unfair, and the Supreme Court agreed with the opponents, holding that the meeting violated the "appearance of fairness doctrine". Thus was the doctrine introduced to the field of land use regulation in Washington. *Smith v. Skagit County*, 75 Wn.2d 715, 453 P.2d 832 (1969). Stated broadly, the doctrine provides that an agency's decision-making process must not only be fair, but it must also appear to be fair. The Legislature has recognized the existence of the doctrine and limited its scope by statute. Chapter 42.36 RCW.

The doctrine applies to actions or proceedings that meet both of two criteria: (1) a public hearing must be required by law; and (2) the proceeding must be quasi-judicial and not legislative in nature. *See, Westside Hilltop Survival Committee v. King County*, 96 Wn.2d 171, 634 P.2d 862 (1981); RCW 42.36.010. A quasi-judicial proceeding is one which is relatively limited in scope—in the nature of specific policy application rather than broad policy making—and which affects a few identifiable parties rather than the public at large. For instance, the doctrine generally does not apply to the adoption of a comprehensive plan or area-wide zoning ordinance, but it generally does apply to a rezone of a specific parcel of property.

Violations of the doctrine have been based on unfairness in the conduct of proceedings and on various forms of decision-maker bias. A common example is *ex parte* contacts between decision makers and interested parties. *Smith v. Skagit County, supra;* RCW 42.36.060. In proceedings subject to the doctrine, contacts between decision makers and inter-

ested parties should generally occur in a duly announced public hearing or in a written communication which becomes part of the public record. One form of impermissible decision-maker bias is the personal interest of a decision maker, where the decision maker stands to gain or lose personally by the decision. Thus, the doctrine has been violated by a decision maker's ownership of land affected by a permit decision. *Buell v. Bremerton*, 80 Wn.2d 518, 495 P.2d 1358 (1976). *See generally*, Settle, *Washington Land Use and Environmental Law and Practice*, Ch. 5 (1983).

Postscript

The environmental revolution of the late '60s and early '70s left indelible marks on Washington law. Over time, these marks have grown from their revolutionary roots to become established foundations of Washington land use and environmental law.□

Yakima Teacher "Busted" as Students Watch!

by **Jo Rosner,**
Attorney/Educator

Tom Moore, a civics class teacher at Davis High School in Yakima, was "arrested" before the astonished eyes of his 30 senior class students. "Accused" of vandalizing his neighbor's car, Moore was taken to jail, "booked", and "arraigned" before Superior Court Judge **Howard Hettinger.**

Although the event was staged as part of the law-related education program, MENTOR, the students thought it was real—at least at first! They followed the arresting officer and their teacher to the Yakima County jail, watching while Moore was "booked" and fingerprinted.

Bob Tenney, from the Yakima law firm of Halverson & Applegate, is Davis High School's MENTOR partner. He and Tom Moore planned the event so that Moore's students could witness law in action. Tenney arranged for deliberate procedural errors during the "arrest", so that he could later explain what the correct procedures should have been.

Judge Hettinger's courtroom became the scene of a mock trial of Moore, with the Yakima County Deputy Prosecutor arguing for admittance of certain evidence, and the "arresting" officer giving statements.

Halverson & Applegate is one of 17 law firms now participating in MENTOR, the WSBA's law-related education project, which began with five pilot sites in January 1985. The concept pairs law firms and high school social studies classes, enabling students to interact with and learn from attorneys from "their" firm.

Each program is unique, and creative efforts such as Yakima's are part of the enriching experiences being produced by the MENTOR/lawyers and teachers throughout the state.

LRE Update is a regular column featuring news and notes of law-related education (LRE) activities. The author welcomes your comments.

Mid-Year Season

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

Each year several of the Washington State Bar Association's Sections schedule Mid-Year Meetings and Seminars for the benefit of section members and others whose interests fall in the subject matter areas which are of concern to these groups. Five such programs are scheduled during May.

The Real Property, Probate & Trust Mid-Year will be presented on May 2, 3 and 4 in Richland at the Hanford House. General Chairperson **Edward W. Kuhrau,** assisted by Probate & Trust Subsection Chairperson **Donald K. Querna** and Real Property Subsection Chairperson **James K. Hayner,** has designed a program consisting of both concurrent and general sessions. On May 2 the real property sessions will cover Historical Preservation, Lessor's Remedies, Condominiums, and Liens and Mortgages in an Agricultural Context. Probate and trust sessions that afternoon will include presentations dealing with Post-Mortem Planning for the Small, Closely Held Corporation; Attorney's Conflicts of Interest in Estate Planning and Administration; Insurance Planning; and Family Income Shifting After the Tax Act of 1986. Topics on May 3 will include Avoiding Foreign Probate, Sales of Remainder Interests in Real Property, Selected Structuring Techniques and Strategies in Real Estate Syndication and Securitization, and Fiduciary Management with an Emphasis on Corporate Style. Sessions on May 4 on the real property side will be Current Title Insurance Issues, The Recording Statute, and Recent Developments. On the probate and trust side, topics include Professional Incorporations, Retirement Plan Update, and Terra Incognita of the Probate Laws. This program is approved for 11.00 hours of CLE credit.

The Trial Practice Section Mid-Year has been described in a previous Clearinghouse Column. It will be held in Vancouver, B.C., at the Hotel Meridien on May 8 and 9. Featuring respected Canadian and American jurists and a fascinating presentation by **Irving Younger,** this program has been approved for 11.00 CLE credits by the Washington State Board of Continuing Legal Education.

On May 16 and 17, the Family Law Section will hold its Mid-Year at the Sea-Tac Red Lion Inn. Approved for 11.50 hours of credit by the Washington State Board of Continuing Legal Education, this program will include coverage of the following topics: Military Pay Structure and Benefits, a Workshop Period regarding Military Benefits, New Concepts in Community Property, Legislative Update and Projections, the Domestic Violence Act: How Is It Working?, a Workshop Period dealing with the Domestic Violence Act, an Update on the Law Regarding Cohabitation, Joint Custody in Practice, and a Synopsis of the March 1986 Seminar on New Perspectives in Paternity and Child Support Litigation. Program chairpersons for this event are **Jenifer Schramm** and **Robert B. Taub.**

The Environmental and Land Use Law Section Mid-Year will be held on Orcas Island at Rosario Resort on May 29, 30 and 31. Program Chairperson **Joel M. Gordon** has recruited a faculty that will provide a seminar approved for 11.00 hours of CLE credit. Topics to be covered following a keynote address by **Andrea Beatty Riniker** (Director, Washington State Department of Ecology) are: Recent Developments in the Law, Habitat Protection, The National Environmental Policy Act in 1986, Advocacy Skills, Projected Trends in Washington Planning and Land Use Regulation, and Vested Rights.

The Corporation, Business & Banking Section Mid-Year will be held in Yakima this year on May 30 & 31 and June 1 at the Yakima Convention Center. Program chairperson for the 1986 edition of the Mid-Year is **Paul M. Larson.** He has assembled a faculty to address the following topics: Panel Discussion of Current Methods for Financing New or Expanding Businesses, Documentation of Financing, Pitfalls in Loan Documentation and Administration, Protecting and Fostering Growth of the Entity, Advising Directors and Officers, Financial Statement Analysis—Accounting and Auditing Considerations, and Executive and Employee Fringe Benefits (Fringe Benefits; Flexible Benefit Plans-Cafeteria and 401 (k) Plans; Deferred Compensation and Stock Options). Concurrent sessions will be offered on June 1 to appeal to various subsection interests; these include a choice between Nonprofit Corporations or Securities, between Corporation Law or Partnership Law-Section 704 IRC, and between Franchise Law or Financial Institutions—Legislative and Regulatory Update. This program has been approved by the Washington State Board of Continuing Legal Education for 12.50 credits.

For further information about these programs, please contact Sharon Clemence (Trial Practice Section Mid-Year), Colette Cao (Family Law Section Mid-Year and Environmental and Land Use Law Section Mid-Year), or Debbie Kirchhauser (Corporation, Business & Banking Section Mid-Year and Real Property, Probate & Trust Section Mid-Year) at the Washington State Bar Association, 505 Madison Street, Seattle, WA 98104 or telephone (206) 622-6021.

APPROVED CLE COURSES

WASHINGTON STATE BAR ASSOCIATION

Real Property, Probate & Trust Section Mid-Year Meeting and Seminars
11.00 credits **$135**
MAY 2-4 Richland (Hanford House)

Trial Practice Section Mid-Year Meeting and Seminars (Pacific Northwest Regional Litigation Conference)
11.00 credits (U.S.) **$195**
MAY 8-9 Vancouver, B.C. (Hotel Meridien)

Family Law Section Mid-Year Meeting and Seminars
11.50 credits **$145**
MAY 16-17 Sea-Tac (Red Lion Inn)

Environmental and Land Use Law Section Mid-Year Meeting and Seminars
11.00 credits **$195**
MAY 29-31 Orcas Island (Rosario Resort)

Corporation, Business & Banking Section Mid-Year Meeting and Seminars
12.50 credits **$170**
MAY 30-31 Yakima (Convention
JUN 1 Center)

Obtaining Permits and Approvals: Advice for the Developer's Advocate

courtesy of photographer, Karen I. Ellentuck

by **Peter L. Buck** *and* **Amy L. Kosterlitz**

Zoning law is often thought of as boring, dry and routine. Actually, it is none of these. It is definitely not boring. You attend public hearings that are as heated as any prize fight and often as amusing as a circus (unless your client is the one asked to jump through the hoops of fire). It is also not dry. You may be asked to wade through all the puddles on your client's property in hipboots to determine whether they are valuable wetlands protectable under the shorelines act. Nor is it very routine. In fact, because rules of discovery or evidence seldom apply to local land use proceedings, they are full of surprises and more akin to guerrilla warfare than a trial. In summary, zoning law is an area of practice full of excitement and challenge, definitely not for those faint of heart. What follows is a brief summary of the process that the developer's advocate must go through to assist a client in obtaining desired permits and approvals.

I. You Mean I Can't Just Do What I Want To With My Property?

The land use regulatory process comes as a rather unpleasant surprise to a number of property developers. Thus, early client counseling should be used to explain the need to maintain flexibility in project design and timing during the permit and approval process. You as the developer's advocate should stress that your client must have a clear understanding of the following: (1) what is desired, (2) what it will take to make the project work economically, and (3) the sometimes illogical and frustrating ground rules which govern approval processes.

In your initial client contacts, familiarize yourself with all aspects of the development proposal and the track record, experience and reputation of the proponent and any consultants. Most permitting processes involve local politics, so your client's background will be relevant to your evaluation and advocacy of the proposal. Early evaluation of the client also will enable you to get a sense of the client's budgetary and other constraints and of ability to carry through on the plans.

Most clients want you to proceed immediately with advocacy, and a familiar refrain is, "When can I get my permits?" A more valuable initial role for you is to start with a careful analysis of the law applicable to the local jurisdiction or state agency. For most localities, this would include: the comprehensive plan map and text; zoning code map and text; text of other applicable ordinances, *e.g.*, shoreline master program map and text; SEPA ordinance; subdivision ordinance; moratoria; interim development regulations; latest draft of emergent land use restrictions for the area; procedural ordinances; enabling legislation; and other applicable state regulatory overlays and governing case law. This research gives you an

idea of the permits and approvals that will be required and the agencies that will be involved. This analysis also should reveal whether there are obvious obstacles or time constraints, *e.g.*, whether rights to develop must vest before more restrictive regulations are imposed.

Your role as an advocate also requires an understanding of numerous nonlegal matters. There are several steps that should be taken to evaluate a proposed project. As a first step, inspect the subject property. Walk around the site. Pay particular attention to noise, traffic patterns, topography, vegetation, soils, bodies of water, views, and nearby uses. This will give you a sense of the property's environmental sensitivities and of the problems that could arise. Second, examine the actual development pattern of the area and the proposed use in light of that pattern. This is critical because it gives a feel for the appropriateness of the proposal, the likely conflicts with nearby uses, and what the cumulative impacts of development in that area may be. Third, find out early in the process which staff members and decision makers will be responsible for key approvals and assess their likely attitudes towards the proposal. Attempt to obtain a history of their reaction to similar proposals; review prior staff recommendations, minutes of hearings, applicable decisions, or more informally, talk to the consultants for the prior proposals. Fourth, determine the source and extent of potential opposition to the proposal. This can sometimes also be determined by looking at the jurisdiction's files on other proposals in the area or by talking to staff. A fifth step, and one often ignored by project proponents, is to identify individuals and organizations that may lend support to the proposal.

When you have completed the above research and investigation, determine what procedural requirements must be followed to obtain each of the required governmental approvals and the time periods necessary for each of them. These procedures, which are often complex and overlapping, should be outlined and even diagrammed, for example on a Critical Path Method (CPM) drawing. An effective CPM will take into account various nonprocedural matters, such as community relations. Be continually aware of strategy considerations. Periodically update the CPM as appropriate. However, keep in mind that a CPM that looks like a misbegotten spider web is of marginal utility.

After the initial review of a proposal has been made, it is important to

present a more complete analysis to your client. This analysis should include: (1) a detailed outline of procedural steps to be followed (including any CPM which has been developed); (2) a prediction of the time necessary to accomplish the procedural steps, including the time which could be consumed by litigation or appeals; (3) the perceived environmental or other sensitivities and the type of additional consultants that may be required, such as soil or traffic engineers, surveyors, or wetlands biologists; (4) an estimate of costs for the necessary legal and consultant fees; (5) an analysis of the decision makers' attitudes and a prediction of the chances of success; and (6) a prediction of the likelihood of challenges from citizens or environmental groups. This will enable your client to make a decision whether or not to proceed and, if proceeding, to decide what resources to commit to the process.

II. Have You Hugged Your Local Planner Today?

One of the most important steps in the land use process is the staff recommendation, even though it is not a step contemplated by statute or most local ordinances. The ultimate decision on an approval will almost always coincide with the staff's recommendation. You should thus meet with the staff as often as possible to personalize your project and to explore any problems staff may have in order to address these and elicit support for the proposal. You should also be prepared to modify the proposal and add mitigating conditions based upon staff attitudes. It will help the staff to recommend approval of your project if they feel that they have played a role in the project design. It is critical that you ascertain when the staff report will be issued and make every effort to obtain it as early as possible. This will provide a greater opportunity to change staff opposition before the hearing and to plan your response to staff objections at the hearing.

In many cases, you can submit a hearing brief or other information to the hearing body before the public hearing to inform the officials about the proposal. Utilize this opportunity to build support and to preempt potentially difficult questions at the hearing.

III. Everything You Wanted To Know About Procedural Pitfalls But Were Afraid To Ask

More land use cases are lost in litigation due to procedural errors than to substantive defects. Therefore, during the public hearing process you must be constantly aware of procedural matters. A few key legal pitfalls are illustrative.

First, to satisfy the constitutional mandate for procedural due process, each required permit has notice requirements for public hearings. The notice requirements applicable to a particular land use procedure may be found in the enabling legislation or local ordinance and are often supplemented by the courts. While it is generally the local government's responsibility to give notice, it is your client who will suffer if correct procedures

are not observed. *See, e.g.*, RCW 36.70.590; *Barrie v. Kitsap County*, 84 Wn.2d 579, 584-86 (1974).

Second, the quasi-judicial nature of hearings requires that the integrity of the process be safeguarded. If violations of the appearance of fairness doctrine, such as certain *ex parte* contacts, occur before or during the hearing process, the governmental approval involved may be judicially invalidated. Careful attention must be given to the appearance of fairness doctrine, as it has undergone substantial modification in legislation, and recent court decisions indicate disillusionment with the doctrine on the part of some justices. *See*, RCW Ch. 42.36; *Zehring v. Bellevue*, 103 Wn.2d 588 (1985); *Harris v. Hornbaker*, 98 Wn.2d 650 (1983).

Third, the need for a full and complete record is especially acute in administrative land use and environmental proceedings because judicial review is often limited to the record before the administrative agency. In *Barrie v. Kitsap County, supra,* at 586-587, the court held that lack of a verbatim transcript of public hearings would lead to an automatic invalidation of the agency's action.

Fourth, the importance of anticipating and then meeting the requisite burden of proof should not be underestimated at any stage in the land use and environmental decision-making process. No matter how informal these proceedings may be, the record on review will often be that which was made before the hearing officer or legislative body. Where a writ of *certiorari* is sought to review any decision, Washington courts have repeatedly held that they will confine their review to the record before them and will not go beyond that record to admit additional testimony. *See, Bay Industry, Inc. v. Jefferson County*, 33 Wn. App. 239, 240-41 (1982); *Bishop v. Town of Houghton*, 69 Wn.2d 786, 793 (1966).

A fifth example of the need for procedural vigilance is in the area of findings of fact. To provide an adequate record for review and to support a specific result, local land use decision makers are required by statutes, ordinances and case law to make findings of fact and to base their conclusions on them. *See, e.g.*, RCW 36.70.600; *Parkridge v. Seattle*, 89 Wn.2d 454, 461 (1978).

If a procedural problem jeopardizes your project, the municipal attorney may be an important ally. This attorney will be concerned about making a good record of any municipal decision and is in a position to ensure that the municipality follows the necessary procedures.

IV. Since We're Neighbors, Let's Be Friends

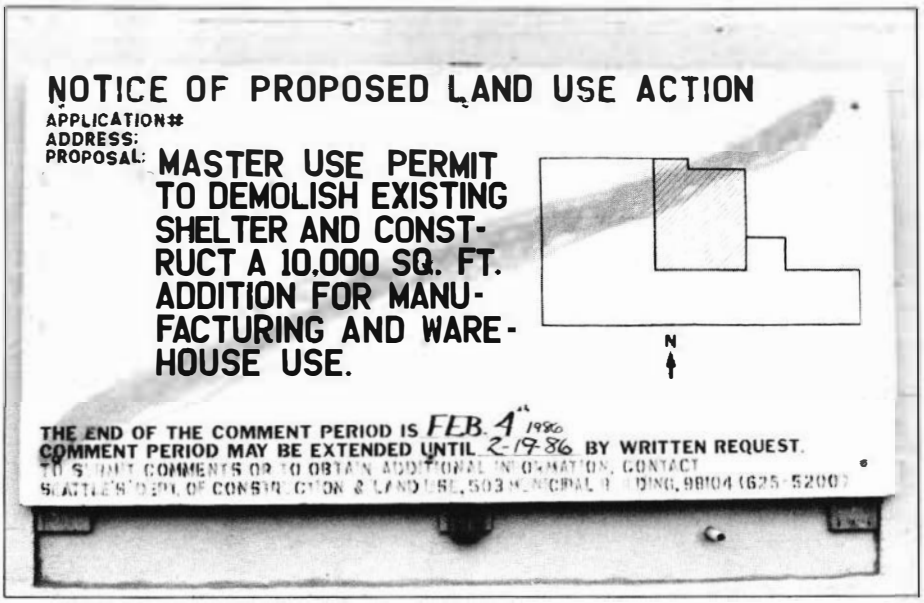
It is usually best to meet early on with citizens and environmental groups who may be concerned about the project. One of the primary reasons to have such a meeting is to explain the project and to alleviate unfounded concerns. Often a group of citizens will have unfounded fears based on a misunderstanding of what is proposed.

Legitimate concerns of citizen groups should be identified as early as possible, and solutions should be found. Just as with agencies, an environmental design process in which concerned citizens participate can be utilized to modify a project to make it more acceptable. It often will not be possible to eliminate all opposition. Nevertheless, if even fifty percent of the opposition can be neutralized, it may weaken the remaining opposition to the point where it is not a serious problem. For that reason, it is worthwhile to have meetings to reduce concerns through education or project modification, even if only part of the opposition can be mollified.

As veterans of land use battles know, obtaining governmental approval is sometimes not enough to allow a project to go forward. Substantial delay can occur if permits are challenged in administrative appeals or through litigation. In many circumstances, there are opportunities to settle such land use disputes. Whenever this can be done successfully, it saves massive amounts of time and expenditures. Although emotions frequently run high in land use disputes, inevitably a basis for compromise can be found, typically through some project modification. Therefore, lines of communication with project opponents should always be kept open, and the potential for settlement should never be rejected.□

Peter Buck and Amy Kosterlitz are partners in the law firm of Buck & Gordon. Their practice is concentrated mainly in the areas of land use and environmental law and civil litigation. While they primarily represent developers, who range from national corporations to private individuals, they also represent municipalities, such as San Juan County, and citizens' organizations, such as a large group concerned about the toxic impacts of the Midway landfill.

Representing Citizen Groups In Land Use and Environmental Disputes



Courtesy of photographer, Jeremy Wilkinson

by **Peter J. Eglick**

Land use planning, environmental regulation, and zoning have long been sources of "considerable controversy," as Justice Brachtenbach explicitly recognized in *Lutz v. Longview*, 83 Wn.2d 566, 567, 520 P.2d 1374 (1974). Where land use is involved, stakes—and emotions—often run high.

The lawyer representing citizen groups in these disputes must combine the skills of counselor, lobbyist, trial lawyer and appellate advocate. These will be brought to bear in a process which frequently starts at a small hearing in front of a local council or commission, proceeds to a quasi-judicial hearing board or hearing examiner, and ends up in a trial or appellate court. As the matter progresses, costs escalate and, frequently, the underlying issues of planning or environment are lost in a welter of legal technicalities that have little to do with the real dispute. In light of the complexities encountered along the way, it is impossible in a short article to provide a complete catalogue of advice for the citizens' group attorney. What follows are highlights.

Organization

It is a good idea to ask your client group to organize as a non-profit corporation under Washington law. This will provide a framework for establishing goals and deciding on strategy in an organized manner. The Washington Supreme Court has held that non-profit corporations can represent the interests of their members, so a non-profit corporation whose directors and board members have interests sufficient to provide standing may itself participate in representing that interest. *See SAVE v. Bothell*, 89 Wn.2d 862, 867, 576 P.2d 401 (1978).

Clients will not always agree to do so, but it is helpful to review public pronouncements on a particular issue before clients make them. Tempers sometimes run hot in public debates on disputed projects. It is important that your clients get across that they are responsible spokespersons for the opposition point of view and that their legitimate views are couched as sincere opinions rather than statements of absolute fact, unless they can support them in that vein.

Working with Government Staff

Your client's effectiveness in a land use or environmental dispute is often dictated by its ability to work with local government staff. Unfortunately, this is not always possible, depending on staff's approach. As one county planner has said, "My job is to oil the machinery to make sure that applications are processed smoothly and approved." This leaves little room for critical participation by concerned citizens. To the extent that citizens look to agency planners to bring skepticism and enlightened scrutiny to ap-

plications, they (and you) may be disappointed. Citizens with criticisms or questions may be viewed as interlopers interfering in applicant/staff interaction, rather than as legitimate parties to the process.

What applicants and staffers often forget is that citizen input can be credited with positive, substantive results in many cases. From the largest white elephants to the smallest multi-family housing project, citizens identify problems, offer solutions and help applicants and governmental entities avoid serious errors. The project that never gets built because of citizen opposition may well be the one that should never have been built and that would have been uneconomical in any event.

Nonetheless, although planning is no more an exact science than law, planners may be even less amenable to lay critiques than are lawyers. Moreover, while your client's ability to spend money on your time or the time of another expert to consult with and maintain rapport with agency staffers is limited, most project proponents are fully prepared to do this and well-educated as to its benefits.

Some client groups are fortunate enough to include experts within their ranks. Others raise the funds to hire experts to consult with agency staffers. Most, at least initially, appoint one or two members to a liaison team specifically assigned to touch base with agency staffers on a regular basis, maintain rapport, check the file, and attempt to become as much as possible a part of the process. The client group that fails to do this will be at a real disadvantage, even if the outcome of the staff deliberations is a foregone conclusion.

Jobs v. The Law

Even when technicalities are overcome, and the principles of planning or environmental impact that prompted the client's concern are addressed, citizen group lawyers often find themselves litigating parties not listed on the case caption. The briefs may address environmental impact, potential for pollution, harm to wildlife, or inconsistency with adopted plans or shoreline master programs. However, the unwritten subtext often concerns a jurisdiction's inability to resist any project, however misguided, if its proponents claim for it a potential for new jobs or boosting the economy. The case formally known (hypothetically) as "Citizens for a Clean Environment v. Pollution, Inc." may be more accurately captioned "Environment v. Economy".

Williams Lake, Alpine Lakes Wilderness Area, courtesy of photographer, Newton Morgan

The citizens' group lawyer must always meet the economic subtext utilized by project proponents even if it is not an explicit issue in a case. Remind decision makers that poorly planned or environmentally risky projects spawn impacts which may be a drag on the economy in the long run (someone has to pay to clean up pollution); may displace another already strong segment of a local economy (polluting industry may displace active shellfishery); or may eliminate the very positive features upon which the project seeks to capitalize (scenic vistas may be destroyed by overdevelopment, thus reducing tourism). Even where such set-offs are not apparent, the issue should be addressed. For example, wildlife refuge or wetlands habitat may have no direct economic value, but their indirect value should be cited and explained. If the citizens' group lawyer does not address this subtext, the case will often be lost, regardless of its legal merits.

Standing and Exhaustion

These are not physical symptoms indicative of your client's well-being. They are technical defenses raised in land use or environmental cases. Project proponents, understandably not eager to have a court address the merits of a particular challenge, raise questions concerning standing and exhaustion of administrative remedies to avoid them. Therefore, it is often the fate of the lawyer representing citizen groups to spend more time researching the intricacies of standing raised by opposing counsel and less time addressing the substantive questions that should be resolved.

Although the Washington courts have been relatively generous in according standing to citizen groups, they have occasionally rejected claims when the sole basis for standing is one of loss of profit without regard to other environmental or land use factors. *Compare SAVE v. Bothell*, 89 Wn.2d 862, 576 P.2d 401 (1978) *with CORE v. Olympia*, 33 Wn. App. 677, 657 P.2d 790 (Div. 2, 1983). However, even where conventional concepts of standing do not apply, Washington courts have long recognized the right of taxpayers to challenge governmental action which seriously affects the public interest, so long as certain preliminary steps are met (or shown to be obviously futile). *See, e.g., Farris v. Munro*, 99 Wn.2d 326 (1983).

Exhaustion questions are also not insurmountable for citizen group plaintiffs, although our Supreme Court has been harder on citizen group challengers who failed to touch a base than on a frustrated project proponent who circumvented the normal administrative process. *See South Hollywood Hills Citizens v. King County*, 101 Wn.2d 68 (1984) (citizens' group failure to exhaust administrative remedies fatal to its appeal); *Orion Corp. v. State*, 103 Wn.2d 441 (1985) (exhaustion not required where resort to administrative procedures would be futile).

Limitations

Practitioners of land use and environmental law deal with limitations on actions that provide days, rather than years, to file appeals and commence actions. Often, these limitation periods are found only in local ordinances or must be applied by analogy rather than by reference to a particular statute. Not surprisingly, disputes

arise over whether the appropriate analogy has been applied. *See Akada v. Park 12-01 Corporation*, 103 Wn.2d 717 (1985). Even in areas where there are no specific limitations by analogy or otherwise, citizens' groups should quickly move to ascertain the facts and determine when and where filings are necessary.

This is not always easy. The Washington Supreme Court described the problems in moving swiftly to meet the challenge presented by a particular project:

> Often what is everybody's business is nobody's business. In the face of serious defects in a rezone action, to estop a community challenging that action solely because a developer moved with dispatch while challengers were getting organized, raising funds, selecting an attorney and the like, causes us some hesitation.

Hayden v. Port Townsend, 93 Wn.2d 870, 876 (1980). Unfortunately, Washington courts have not always recognized this in addressing alleged transgressions of limitation periods.

Limitation issues also have implications for the doctrine of necessary parties. This doctrine has been applied with particular severity to citizen plaintiffs in land use actions. *See, e.g., Cathcart v. Snohomish County*, 96 Wn.2d 201 (1981); *South Hollywood Hills, supra.* It is wise, therefore—but not always logically or humanly possible—to name and serve every potential necessary party to land use litigation. One result of this (pending a return to balance in the cases) may be that persons who really do not need to be part of a dispute will be named by virtue of the cases' apparent requirements.

Settlement

The issues raised in environmental and land use disputes often involve clashes in values as well as legal disagreements. There may be concrete disputes about the nature and extent of environmental impacts, the appropriateness of a particular design for a project, or the legality of a process by which a particular project was proposed or approved. However, there may also be additional agendas. Citizen group opponents may disagree with the basic premises underlying a project (*e.g.*, the appropriateness of nuclear power). Project proponents, for their part, may believe that public/citizen input is (or should be) irrelevant to a government decision on a particular application. They may think that zoning and land use planning are pernicious intrusions on the absolute right to use and hold property, regardless of police power concepts.

You may be able to counsel your clients as to the appropriate resolution of the legal issues, methods by which environmental impacts may be reduced, or other mundane aspects of a dispute. However, it may be impossible to settle a case in which a clash of values is at the core. One side or the other may be unwilling to bend and appear to compromise its principles. Unlike a case where the likelihood of dollar recoveries may be calculable and provide a basis for settlement, land use negotiations often involve far more intractable issues.

Settlement discussions in these cases sometimes also result in surprising ethical issues. Citizen group attorneys may be asked to agree not to represent anyone else against the project proponent. The offer (or the acceptance) appears to violate RPC 5.6 ("A lawyer shall not participate in offering or making: . . . (b) An agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.").

Conclusion

Representing citizen groups in environmental or land use disputes is rarely as lucrative as representing project proponents. However, there are additional benefits. The spirit of volunteerism is alive and well in many citizen groups. While project proponents may have their eye on the bottom line and a golden ring at the end of the ride, citizen participants work for less tangible rewards. They are often, therefore, exceptional people. The retired marine biology teacher concerned about degradation of Washington shorelines, the physician crusading against pollution of a pristine bay, the community activist trying to save low-income housing from demolition—all display selfless dedication in an area where clients are not always described in those terms. □

Peter J. Eglick is a Seattle attorney and a frequent lecturer on land use disputes. He is a member of the Board of Trustees of the WSBA Land Use & Environmental Law Section and represents individuals and citizen groups throughout the state.

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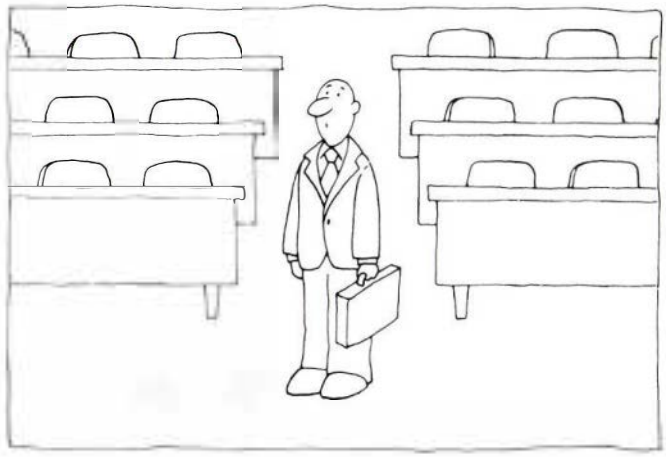

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The Washington State Environmental Policy Act

Reviewed by **Alexander W. Mackie**

In 1971, the Legislature passed the State Environmental Policy Act (SEPA) regulating governmental actions. In 1973, the Supreme Court advised the world that governmental actions included any public approval of private projects, and thus was launched the environmental regulatory era in the State of Washington.

The evolution of SEPA was rapid and wide-ranging as more and more agencies were confronted with situations which required SEPA analysis. Battles were fought over whether SEPA was an information process or a substantive regulation; whether requirements could be imposed based upon specific and adopted policies or upon a more general notion of environmental protection. The Legislature and the Department of Ecology were involved in a regular process of statutory and regulatory amendments to "change", "clarify" or "simplify" SEPA depending upon your point of view. Lawyers were caught in an ever-changing world in which procedural rules were vague and contradictory and substantive rules were all but non-existent. Courts, meanwhile, were emphasizing an expansive view of the scope and reach of the regulation without shedding any real light on the substance of compliance.

The situation today has reached the point where few claim any real mastery of the body of law surrounding SEPA, and even the authors of the current regulations are frank to admit that some regulations are all but incomprehensible. (The regulatory appeals section defies a rational or consistent application or interpretation.)

A new book due on the market this spring, Settle: *The Washington State Environmental Policy Act,* Butterworth Legal Publishers (1986), provides a clear and rational discussion of this otherwise arcane and emotion-laden field. Professor Richard L. Settle has now done for SEPA what his earlier book, *Washington Land Use and Environmental Law and Practice,* Butterworth Legal Publishers (1983), did for land use practice in Washington. In his new book, Professor Settle has provided a compendium which not only sets out the present laws and regulations in an orderly fashion, but also provides the reader with an understanding of the SEPA case law.

Professor Settle leads his reader through the key concepts of SEPA. The "actions", "exemptions" and "threshold determinations"—SEPA's jurisdictional lexicon—are all described in terms which are easy to understand and in a context which helps the reader to understand.

Most of the cases subject to SEPA analysis involve only a "checklist" and a "determination of nonsignificance" or a "mitigated determination of nonsignificance." The book clearly outlines not only the process involved in the negative determination cases, but also the judicially declared touchstones which are used to determine the propriety and consequences of such determination.

The heart of the SEPA process is the requirement for an environmental impact statement (EIS) in connection with projects in which ". . . there is reasonable probability it will have more than a moderate effect on the quality of the environment."

Professor Settle discusses the basic requirements for constructing an EIS, including the scoping process, the draft and final environmental documents, the proper use of environmental documents and ultimately the "rule of reason" test by which courts are to measure legal adequacy.

Not surprisingly, Professor Settle's book does not tell us how to discuss in the 30 to 50 pages specified by the SEPA regulations (WAC 197-11-425) as "normal" for EISs:

> . . . significant short-term and long-term environmental impacts, significant irrevocable commitments of natural resources, significant alternatives including mitigation measures, and significant environmental impacts which cannot be mitigated . . . (RCW

43.21C.031).

Nevertheless, Professor Settle's book is a welcome addition to the field. It provides a single source for all of the cases, regulations and significant developments surrounding the Washington State Environmental Policy Act. The book is to be published this spring in loose leaf and is to be supplemented periodically to avoid the instant obsolescence of existing material which results every time the Court of Appeals tackles a new case. The book will be an invaluable handbook for all of us who must live and work in SEPA-dominated fields.

Alexander W. Mackie is an attorney in Olympia, Washington with the firm of Owens, Weaver, Davies, Mackie & Lyman. He has been active in environmental and land use law since 1975 and was a director of the Environmental and Land Use Law Section of the Washington State Bar Association (1982-85).

Environmental Law: Air & Water

reviewed by **James R. McCurdy**

For the environmental law practitioner, William H. Rodgers, Jr., needs no introduction. Professor Rodgers, since publication of his hornbook in 1977, has guided law students and attorneys alike through what one practitioner-commentator terms the "wilderness" of environmental law. Complementing Rodgers' hornbook are his timely and insightful law review articles exploring the more troublesome areas of the environmental field. See, *e.g.*, "Judicial Review of Risk Assessments . . .," 11 *Envt'l. L.* 301 (1981); "Benefits, Costs, and Risks: Oversight of Health & Environmental Decision Making," 4 *Harv. Env. L. Rev.* 191 (1980).

Volumes I & II, *Environmental Law: Air & Water*, follow in the Rodgers tradition. The two initial volumes of the treatise (to be published in spring 1986) are comprehensively researched, well written, and of near infinite value to the attorney. Both the general practitioner and specialist will find the treatise a welcome addition to the firm library.

The treatise focuses upon three general areas of environmental law: nuisance law, air pollution, and water pollution. Nuisance law, Rodgers feels, is the "heart and soul" of environmental law. But the nuisance sections (Chapter 2) are more than a backdrop against which to read the air and water pollution chapters. The discussion of nuisance law is a treatise in itself. Practitioners who never confront an air or water pollution problem will find the nuisance law portion worth the price of the set.

The principal acts of Congress governing air and water pollution, the Clean Air Act and the Clean Water Act, are notoriously complex. Environmental law, for this reason, is likened to the "black hole of space"---once one is sucked in, one never gets out. Rodgers' treatment of air and water pollution provides the navigational tools to reach the light of the world once again. The effort is monumental, as are the likely results of the treatise on the practice of law in the area.

Sections dealing with the law respecting air and water pollution constitute the bulk of the 1,220 pages (air pollution requires 41 subsections, and water pollution requires 43 subsections). Discussed in addition to the Clean Air Act and Clean Water Act are the Rivers & Harbors Act of 1899 (Sec. 13 and Sec. 404---dredge and fill material), the Safe Drinking Water Act, and state regulation of air and water pollution. The interplay of various regulatory efforts is handled well.

Perhaps more important than the comprehensive treatment of the subject area is the Rodgers method. The treatise does more than dissect these intimidating statutes. The attorney is taken on a journey through the administrative process, viewing the technical and complex decisions imposed on the administrator. The available options, competing grounds of argument, and probability of results are well identified. Statistical data places the reader in the real world of environmental law practice. Rodgers is outstanding, as usual, in dealing with judicial review of administrative decisions.

James R. McCurdy is an associate professor of law at Gonzaga University Law School, where he teaches natural resource law, negotiating environmental cases, water law, and other courses.

EAST KING COUNTY REPORT

by **DOUGLAS W. HARRIS**

Recent Arrivals: **Sherman Knight** has joined the firm of Cafferty, Lawrence & Durkee as an associate. Sherman will be doing primarily construction law using his background in architecture. I also hear he's pretty mean on the slopes. **Richard Bernstein**, recently of Kargianis & Austin, has moved over to Bellevue to become of counsel with the office of **Don M. Gulliford**. Finally, **Ronald L. Cohen** has opened his office at 304 ONB Plaza in Bellevue.

Activities: The annual "Spring Function" will be at Longacres this year on May 30. You should have received your invitations to this already. It was decided that losing money at the track would be more fun than having dinner and listening to some local "personality" speak on the impact of the legal profession on everyday life. I think the first race starts at 4:30 with buffet to follow around 7:00. We have the Paddock Room reserved complete with window seats so you can watch your horse lose in comfort.

ISLAND COUNTY REPORT

by **CHRIS L. CUSTER**

The **Howard A Patrick** Roast led off the New Year's festivities in Island County. The banquet dinner at the Oak Harbor Yacht Club was heavily attended by the Island, San Juan and Skagit Bars. The 200 present shared uproarious laughter as ten roasters pontificated on Patrick. Guest speakers included Judges **Walter Deirlien, Jr., Harry Follman** and **Gene Anderson** of Skagit County and attorneys **George MacIntosh** and **Al McBee** (admitted to practice, 1924) also of Skagit County. Other dignitaries present included Judges **Richard Pitt** and **Merele Wilcox** of Island County, **Keith Callow** and **Solie Ringold** of the Court of Appeals and state representatives **Pat McMullen, Mary Margret Haugen** and **Sid Larson.**

The highlights of the evening included Judge Anderson's impersonation of Judge Patrick's litany of compliments to an attorney he is about to decide against and Judge Patrick's splendiferous, verbose rebuttal. A memorable evening for the Islands' inimitable Superior Court Judge. Special mention should go to MC **Ed Beeksma** and introductory speaker **Ted Zylstra** of the WSBA Board of Governors.

PIERCE COUNTY REPORT

by **ROBERT W. MARSDEN**

John M. B. Crawford recently received a Ph.D. in legal philosophy from the University of St. Andrews at St. Andrews, Scotland. Crawford's thesis was on criminal intent.

James Gallagher, Stephen Klein and **Douglas Schafer** have joined the firm of Graham and Dunn. All three had been with the firm of Johnson, Lane and Gallagher.

Barbara J. Stratton has become an associate in the office of Jon Blado. Stratton was a clerk with the Court of Appeals, Division II, and an associate with Dolack, Hansler, Burrows, Dayhoff, Barline and West.

From the sports scene: Kudos to **Mike Turner,** who refereed the boys' state high school AAA championship basketball game.

SEATTLE-KING REPORT

by **JAMES L. VARNELL**

Office Moves. **John E. Keegan** and **Thomas A. Goeltz** have joined the partnership of Davis, Wright, Todd, Riese & Jones, and **Craig A. Gannett** has joined the firm as an associate. Mills & Cogan announces that **Blair B. Burroughs** has become a member of the firm and that **James A. Miller** and **Thomas S. Linde** have become associates. **P. Warren Marquardson, Marianne Schwartz O'Bara, Robert M. Kane, Jr.** and **Judd R. Marten** have become partners in LeSourd & Patten, and **Pitman B. Potter** has become an associate there. **Gary L. Brown** (U of W Class of 1971) has opened his office in the IBM Building. **Patricia A. Willner** and **Todd C. Nichols** have become associates of Francis & Ackerman. **Donald E. Mirk** (formerly known as South King County's "King of the Links") has become of counsel to Barney & Weiner, P.S.

Katrin E. Frank (whom this correspondent was fortunate to sponsor in 1984 as an APR Rule 9 intern) has joined MacDonald, Hoague & Bayless as an associate. **G. Val Tollefson, W. Craig Smith, Arthur W. Harrigan, Jr.,** and **David Danielson** have formed a partnership with offices in the First Interstate Center. **Karl B. Tegland** has joined Treece, Richdale, Malone & Corning, Inc. **John F. Sullivan** has become an associate of Inslee, Best, Chapin, Doezie & Ryder, P.S. **Albert J. Velarde** and **Dean Browning Webb** have formed a firm. **Marcia Fujimoto Louie** has relocated her office to the First Interstate Center. **Ann E. Kruse** has opened her office in Woodinville. **Loren D. Prescott, Jr.** has joined Reaugh & Prescott, P.S. **Richard A.** ("Mr. E.P.A.") **DuBey** has opened his office in the Bank of California Center. **Alastair K. Maxwell** writes that he has moved continents, is working with the Robert W. H. Wang law firm in Hong Kong and would be happy to see any of his friends over there.

Preston, Thorgrimson, Ellis & Holman announces the following: **Stephan H. Coonrod, Holly Keesling Towle, Robert B. Mitchell, Douglas H. Rosenberg, Joseph K. Donohue, Paul R. Romain, Alan R. Yuspeh** and **Robert S. Jaffe** have become partners; **Craig J. Gehring** has become of counsel to the D.C. office; **John C. Bjorkman, Jeanne E. Berwick, David C. Hall** and **Karen Reed** (Seattle office), **Michele Straube** and **Thomas P. Amodio** (Anchorage office), and **Douglas G. Samuelsen** and **David E. Fennell** (Portland office) have become associates of the firm.

Samuel J. Stiltner has relocated his office to the Central Building. **John C. Huston** has become of counsel to Carney, Stephenson, and **Gary P. Tober, Patricia L. Bostrom, David C. Bratz** and **Ian A. Rodihan** have associated with the firm. Siderius, Lonergan & Crowley announces that **Kellis M. Hinkson** is now associated with the firm. Skellenger, Ginsberg & Bender announces that **William Lothian Sells, Jr.** has become a principal of the firm, which has opened a branch

office in Anchorage. **Gordon S. Jones** and **Sharon E. Burrows** have formed a partnership with offices in the Colman Building. **John M. Junker** (esteemed criminal law professor at the U of W) is of counsel to the firm. **Carleton H. A. Taber** has become an associate of Lohrmann, Parker & Wolfram. **Phil Mahoney** and associate **Thomas M. Ikeda** have moved to the Arctic Building along with **Timothy O'Malley Fogh** and **Michael S. Hayes. Timothy R. Osborn** has joined Bogle & Gates.

Mergers: Bellevue's Drake & Whitely has joined Foster, Pepper & Riviera. Sax & MacIver has combined its practice with the newly-named firm of Karr, Tuttle, Koch, Campbell, Mawer, Morrow & Sax. **William J. Price, Thomas M. Fitzpatrick** and **James D. Gradel** have become members of Karr, Tuttle, and **Peter H. Haller, James S. Irby, Molly B. Kenny** and **Scott A. Milburn** have become associates of the firm. **Samuel C. Rutherford** and **John I. Weston, Jr.** have opened their office in the Pacific Building with branches in Omak, Wenatchee and Chelan with staffing including **Hollis C. Holman, Brent E. Anderson** and **James R. Doran. Jerald E. Nagae** has become a partner in Christensen, O'Connor, Johnson & Kindness, and **Daniel D. Crouse** and **Saralynn Mandel** have become associates. **Michael A. Utt** has opened an office in the Columbia Center.

Scene Around Town. **Steve Werts,** former Seattle attorney and chauffeur, was seen slumming in Tacoma. **Jim Schermer, Lawrence** (not Larry) **Mosler** and **E. Gary** ("if he can see the rim, he'll fire it up") **Donion** are still dribbling around. **Mike Liles, Jr.** has shown that, even after seven years of undergraduate and law education at Harvard, he hasn't forgotten his Chattanooga and bluegrass background, performing as an accomplished mandolin player in Bellevue before half of the Bogle & Gates staff. Finally, at a recent securities law seminar, it was noted that both **Kevin Davis** and **Meredith Copeland** were awake.

Honors. Commissioner **Stephen M. Gaddis** was elected president-elect of the Family Law Section of the Washington State Bar Association. **Ken Weber** will serve as president for the 1985-1986 term with **Mary Wechsler,** secretary-treasurer.

SKAGIT COUNTY REPORT

by **WM. H. NIELSEN**

Brian Paxton of Haberly and Paxton was recently acclaimed by the local chapter of the Legal Secretary's Association to be "Boss of the Year". Protests have been flooding ever since. Other than that, the bosses' night banquet was a smashing success.

One of the non-participants, as usual, was **Doug Owens** from Anacortes. Of course, the fact that he was taking his annual sojourn in Mexico was a contributing factor. Other people may have been taking small trips along the way as well but I wasn't here to find out.

During March, **Pat McMullen** of McMullen, Reed, Reilly and Weyrich

had his usual successful Saint Patty's Day party and also moved the location of his office. The bad news is that he is still in Sedro Woolley. Both of these major events occurred shortly after his escape from the insurance lobby clambake f/k/a legislative session. Citizens who voted for annual sessions of the legislature some years ago must be feeling a great deal of remorse.

Featured speakers at Sheriff **John Boynton's** retirement dinner recently were Superior Court Judges **Harry A. Follman** and **Walter J. Deierlein, Jr.**, and Prosecuting Attorney **Tom Moser.** Judge Follman definitely got most of the static. It did seem fitting, given his treatment of Skagit County Bar members over the years.

SPOKANE COUNTY REPORT

by JUDY J. FOSTER

Over 40,000 persons finished the 2nd largest "fun run" in the U.S. this year. Spokane's Bloomsday 1986 is now a memory (though the sore feet, aching legs, and squeaking joints remain). Several Spokane firms had firm T-shirts, and this year the Spokane Bar provided T-shirts to members and their families. Members voted on which of five legal sayings they wished imprinted on the shirts. The overwhelming favorite: "This is a legal runaround." Some 75-100 individuals ran for the Spokane Bar. Congrats to all of you!

Six members of the Spokane Bar were honored at the annual dinner for achieving the 50 year mark—being admitted to the practice of law since 1936: **William E. Cullen, William A. Davenport, Ralph Edgerton, John Huneke** (who ran Bloomsday), **Leslie Johnson** and **Kathleen Taft.** Over 125 attorneys and guests feted the honorees at The Spokane Club. The Hon. **Michael Donohue** was emcee. The John Heath Players provided entertainment and a skit.

What's New! As May gets under way, it's time to look forward to the election of officers and trustees for the Spokane Bar Association. To have your name placed on the ballot for the June 6 election, notify the SBA office (509) 456-6032. Three trustee slots are open this year.

Although it may not be "new" to some of you, our *pro bono* program has a new dimension: Assisting Superior Court judges and Family Court commissioners in appointing guardians ad litem in family law cases where a child's paternity is at issue. If you have not signed up for a *pro bono* referral, or if you want more information on the program, call the office (509) 456-6032.

On the Move! **Byron Powell** is now at 3021 Regal. **James T. Solan** has opened his own office in the Park Center Bldg. **William Iunker, Melvin Champagne & Michael D. Dobbs** have new offices in the Delphi Bldg. **Jonathan Rascoff** and **Hugh J. Kelly** have located in the Chronicle Bldg. **Carolyn Louthian** has relocated to E. 1120 First St.

DISCIPLINE

Censured

Pasco attorney **Joseph E. McGough** (admitted 7/28/76) has been ordered to receive two Censures. McGough stipulated to the receipt of one Censure for failing to establish a collection account as he had agreed to do and failing to account to his client for funds received and disbursed on her behalf. He stipulated to the receipt of the second Censure for his failure to cooperate with the investigation of this matter.

IN MEMORIAM

Joseph B. Loonam, an Assistant Attorney General with the Department of Transportation since 1964, died January 30 at the age of 59. He was graduated from Georgetown University School of Law. Before joining the Attorney General's Office, he was the Director of the Division of Insurance for the State of Alaska.

Remembrances to the Loonam Family Educational Fund established by his colleagues in the Attorney General's Office, 1023 South Adams, G-44, Olympia, Washington 98501.

H. Gordon Chute, 87, died in Yakima in March. The Minnesota native grew up in Two Rivers, WA, where he moved at the age of 3. After serving in the Army during World War I, he was graduated from the University of Washington Law School and practiced law in Seattle in the 1930s. He had a varied life as a sailor on a steamship in China for several years, a farmer in Outlook in the late 1930-1940s, and a sheepherder and cowboy in Yakima in the late 1940s. He was also worked on a tugboat on the Columbia River. When he was 65, Chute moved back to Seattle and donated his time as a retired lawyer. He received an honorary doctorate in law from the University of Washington.

WASHINGTON WOMEN LAWYERS

WWL chapters have been active in recent months.

Capital Chapter president: **Helen Hannigan** (206-753-5100). The chapter is updating a job book including information on members' jobs. Featured guests and speakers in recent months have been Judge **Carol Fuller; Chris Gregoire,** Assistant Attorney General, who spoke on comparable worth; and Supreme Court Justice **Barbara Durham.**

Pierce Chapter president: **Vicki Hogan** (206-383-3381). The chapter developed a "Shadow Day" program through U.P.S. Law School, which allows students to observe attorneys at work. The chapter has over 200 members.

St. Helens Chapter coordinator: **Susan Stauffer** (206-694-9525). The chapter holds monthly lunch meetings. **Susan Starbuck** presented the Washington Women Judges History project.

Seattle/King County Chapter president: **Elsa Cole** (206-543-4150). Chapter meetings, held the first Tuesday of each month in the Dexter Horton Bldg., 2nd & Cherry, 12th floor, featured presentations on settlement conferences by Superior Court Judges **Gerald Shellan** and **Anne Ellington,** the Tort Reform Act, and alternative legal practices.

Snohomish Chapter president: **Carol Weibel** (206-259-0668). The chapter is considering participating as a "mentor" in the WSBA MENTOR Program. Weibel is interested in investigating part-time work options, maternity leave benefits available to women, and conducting a statewide survey comparing male and female salaries.

Spokane Chapter president: **Joan Antonietti** (509-467-0386). **Pat Crandall,** a partner in Lukins & Annis, P.S., is organizing a delegation of persons interested in the women's movement within the legal profession to visit the People's Republic of China. The exchange visit will focus on the role of women in the 1980s in China and the U.S. Call Pat at 509-455-9555 for more information.

Whatcom Chapter president: **Karen Lerner.** Monthly meetings, held at members' homes, typically feature a speaker or scheduled activity.

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Karl B. Tegland, author of treatises on evidence and procedural law, is available for referral, consultation, or association on appellate arguments and briefs.

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For Sale: RCWA current. (206) 778-0033.

Used law books – bought & sold. Appraisals by qualified expert. John Teskey Law Books Law Library Services. Call Seattle (206) 325-1331; Portland (503) 644-8481.

For sale: Complete sets of California Reporter, Sutherland on Statutory Construction, Federal Rules Service and other miscellaneous volumes. (509) 962-6811 – Ext 301.

WANG WP30 SYSTEM – For sale; Complete – Archive Disk Drive; CRT 500 Terminal; Diablo Printer w/Sound Cover – $4,000. Maintenance transferrable. Call Donna at (206) 622-1264.

For Sale: Panasonic KX-E603 Typewriter, $700.00; Ricoh FT 3020 copier, $1,800.00; Televideo TS 1605 Computer with software (IBM Compatible), $2,000.00; Transtar 140 quality legal printer, $1,500.00; Washington 2d, $1,700.00; Appellate, $600.00; Washington Practice, Volumes 1-8, $250.00. Call (206) 647-0650, days.

Law Books for Sale: – Corpus Juris Secundum. Excellent condition. Current thru 1978. Best Offer. Call Lee at (206) 623-6042.

Wollochet Bay Waterfront. Medium bank. Descending decks to moorage. Adult living in uniquely designed home with all amenities. 2 bedrooms, 2 baths, plus guest apartment. Magnificent view, 5 minutes to Narrows Bridge, 45 minutes to Seattle. $289,000. (206) 851-9087, owner.

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.

For sale: WANG OIS-50 w/two workstations, CPU and DW-55 printer w/sound hood. Great opportunity to purchase the Cadillac of word processors for less than cost. Current software. Continuous WANG maintenance agreement. Complete set RCWAs and large oak secretarial desk. Contact Elizabeth at (206) 587-0050.

Books: AmJur 2d, $1200.00. Excellent condition. Needs updates. (206) 623-8388.

Wanted: IBM Mag Card II, good condition, must be under maintenance contract. Call (509) 787-4545.

USCA, 228 Vols; ALR – 1st, 2nd, 3rd, 4th, w/Digest, Word Index, Later Case Service, Blue Book, 467 Vols. Best reasonable offer. (206) 694-1571, Vancouver.

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Space sharing – beautifully ap-

pointed view office space for 1 or 2 attorneys, plus secretarial space, 16th Floor, Marsh & McLennan Bldg. Includes furnishings, receptionist, library, conference room, copier, file room, kitchen facilities. Computer with customized legal billing package available, parking available. (206) 624-1199.

First Interstate Center – Several view offices for lease in professionally designed suite. Full services available. Contact Sherrie at (206) 624-9400.

New Professional Building office spaces to be available in late summer. Excellent location in growing area. Bothell-Everett Highway S.E. (527) and Maltby Road (at Thrasher's Corner). Tel: (206) 481-5919 or (206) 485-6858.

Office space: Fifth Avenue Plaza, 35th Floor, three offices available with northwest views. $800 to $1,000 depending on size. Includes secretarial space, receptionist, and library. Full services available. Call Steve Ann, (206) 623-2468.

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Ogden, Ogden, Murphy & Wallace seeks trial attorney with up to three years' experience. Superior academic credentials, excellent research and writing skills are required. Send resumés in care of Administrative Director, 2001 Sixth Avenue, 23rd Floor, Westin Building, Seattle, Washington, 98121.

Labor & industries lawyer for Seattle firm. Replies confidential. Labor & Industries Lawyer, 219 First Ave. N. Seattle 98109.

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Medium-sized Yakima law firm engaged in general and trial practice, seeks attorney with one to three years' experience. All inquiries confidential. Reply to Box 10, WSBA.

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Karr, Tuttle, Koch, Campbell, Mawer, Morrow & Sax seeks lawyers with trial experience for work in asbestos litigation. Qualified applicants should send a current resumé to the Hiring Coordinator, 1111 Third Avenue, Suite 2500, Seattle, Washington 98101.

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