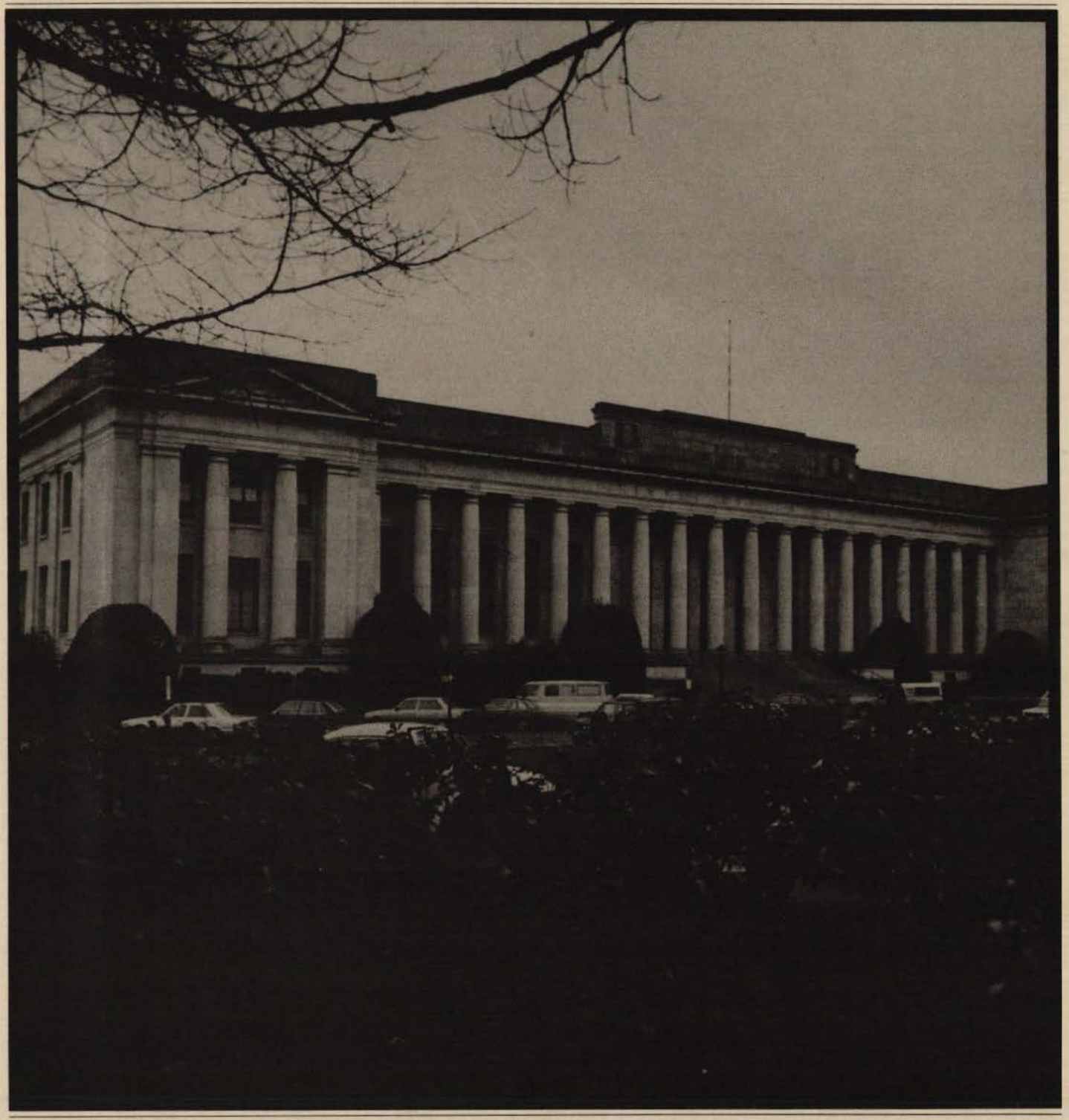
Washington State Bar News
Vol. 40, No. 7, July 1986



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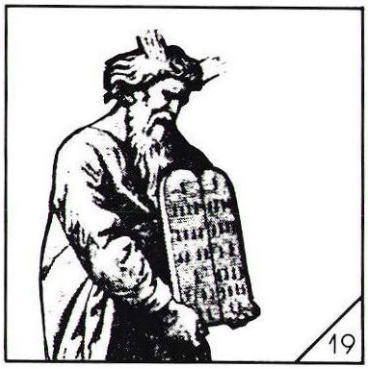
Vol. 40, No. 7, July 1986

FEATURES

The Board of Governors' June meeting occurs as the July issue is at press. News of both the June and July meetings will appear in the August issue.

ART CREDITS

COVER: The Temple of Justice in Olympia. 1984 photo by **Ron Allen.**



IN THE NEWS

DEPARTMENTS

Published by
WASHINGTON STATE BAR ASSOCIATION
505 Madison Street Seattle, Washington 98104
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JENNIFER KLAMM, *Production Manager*
DENNIS M. EAGAN, *Advertising Manager*

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R. WAYNE WILSON, *Director of Public Affairs*

PUBLISHED the last day of the month before cover date. Editorial deadline 25th day of month for *second* issue following. Direct correspondence to *Washington State Bar News*, 505 Madison Street, Seattle, WA 98104, telephone (206) 622-6054. All editorial material, including editorial comment, appearing herein represents the views of the respective authors and does not necessarily carry the endorsement of the Association or the Board of Governors. Likewise, the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement. SUBSCRIPTION, included in active membership, is $12.00 a year for inactive members and $24.00 a year for nonmembers. Single copies $5.00; article reprints $4.00.

CASELAW CAPSULES

Notes From the Academy

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

Administrative Law When there is dispute over inferences to be drawn from facts or over meaning of statutory term, error of law (de novo review) standard applies upon judicial review of agency decision. This rule, as applied, allowed superior court to reverse agency in its decision to deny unemployment compensation. ***Grier v. Department of Emp. Sec.***, 43 Wn. App. 92, 715 P.2d 534 (3/6/86).

—J. M. Vaché

Evidence *Case 1.* Accomplice to aggravated first-degree murder told cellmate that accused committed the crime. After accomplice refused to testify, trial court allowed cellmate to testify to accomplice's statements. Court of appeals held: (a) accomplice's testimony was admissible under hearsay exception for statements against penal interest; (b) defendant was not denied right of confrontation because testimony was sufficiently reliable when tested against seven guidelines drawn from federal cases; (c) testimony's reliability was not to be judged by whether prosecution had offered other evidence of guilt, despite three Washington Supreme Court decisions in which other evidence of guilt was considered for judging reliability; and (d) admissibility was not to be determined on basis of likely effect of the evidence. On last point, court rejected defense argument that evidence should be inadmissible under confrontation clause if it is crucial to prosecution's case and devastating to defense. Court concluded there was no such rule. (Presumably, likely effect of evidence may still be considered on appeal on issue of whether error in admitting evidence is harmless.) ***State v. Edmondson***, 43 Wn. App. 443 (4/14/86).

Case 2. In expansion of *Hillmon* doctrine, state was properly allowed to introduce evidence that after talking on telephone, victim had said that caller was defendant and that victim intended to go to meet defendant at certain location. Though hearsay, evidence was admissible under ER 803(a)(3), to show victim's state of mind. Evidence was admissible not only to prove victim went to the location but also to implicate defendant. Evidence did not violate defendant's right to confrontation because victim was unavailable to testify and evidence was within "well established" hearsay exception. ***State v. Terrovna***, 105 Wn.2d 632, 716 P.2d 295 (3/13/86).

—K.B. Tegland
(former U. of W. faculty member)

Local Government Law Conveyances of parcels of land from a larger tract, ostensibly to take advantage of short-platting exemptions, but actually purposeful

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Partners Kent Carlson, Joel Starin and Dick Ford in Preston Thorgrimson's 54th floor reception area.

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—Event Chairperson

attempts to avoid platting ordinance requirements, were illegal. However, under narrow reading of RCW 64.60.020(2), county could not recover attorney fees. ***Gerard v. San Juan County***, 43 Wn. App. 54, 715 P.2d 149 (3/3/86).

—J. M. Vaché

Planning and Zoning Variance to have building lot width reduced from 75 feet to 50 feet not justified by fact that other buildings were on 50-foot lots as nonconforming uses. No "hardship." Court said "we decline to follow" ***Sherwood v. Grant County***, 40 Wn. App. 496, 699 P.2d 243 (1985) (though it seems *Sherwood* is distinguishable). ***St. Clair v. Skagit County***, 43 Wn. App. 122, 715 P.2d 165 (3/10/86).

—W.B. Stoebuck

Real Property *Case 1.* Driveway easement across parcel *A*, appurtenant to parcel *B*, may not rightfully be used to serve dwelling house that is on boundary of *B* and adjoining parcel *C*. Easement appurtenant may be used to serve only land to which it is appurtenant. However, in this case, balancing the equities, trial court did not err in denying injunction to owner of servient parcel *A*. Two judges dissented (and seem to have the stronger position). ***Brown v. Voss***, 105 Wn.2d 366, 715 P.2d 514 (3/6/86), *reversing* 38 Wn. App. 777, 689 P.2d 1111 (1984).

Case 2. Reservation of strip of land to railroad company, marked on plat "reserved for railroad," was reservation of fee estate, not merely of easement. ***Roeder Co. v. Burlington Northern, Inc.***, 105 Wn.2d 269, 714 P.2d 1170 (2/27/86).

Case 3. Even though tax sale under RCW Chap. 84.64 creates new title that, in general, is free of encumbrances, it does not extinguish restrictive covenants. This is not because restrictive covenants are "easements" that, under the exception contained in RCW 84.64.460, survive tax sale. Rather, restrictive covenants survive as a matter of "common sense," because to extinguish them would adversely affect other parcels, not involved in the tax sale, that have benefit of the restrictions. Appears to be case of first impression in Washington. ***City of Olympia v. Palzer***, 42 Wn. App. 751, 713 P.2d 1125 (2/5/86).

—W. B. Stoebuck

Torts *Case 1.* Employee who was a guest at his company's party at hotel became intoxicated, left party and injured plaintiffs in automobile accident. *Held:* (a) Both employer and hotel may be liable for plaintiffs' injuries if employee guest was served alcoholic drinks while obviously intoxicated. (b) Evidence of his conduct after leaving party, as well as evidence of number of drinks served him, is admissible as bearing on question of his state of intoxication at party. Decision containing multiple opinions leaves doubt about basis of employer's and hotel's liability and about extent of holding. Decision is important and should be studied. ***Dickinson v. Edwards***, 105 Wn.2d 457, 716 P.2d 814 (3/27/86).

Case 2. Statute of limitations begins to run once plaintiff is aware of all elements of cause of action for failure to warn of dangers of prescription drug overdose, even if plaintiff is unaware of full extent of her injuries. ***Steele v. Organon, Inc.***, 43 Wn. App. 230, 716 P.2d 920 (3/25/86).

Case 3. Plaintiffs sought negligence damages from state for cows destroyed in state-administered program of Brucellosis control, conducted under statutory authority. *Held:* (a) Most plaintiffs could not recover against state, either on legislative intent exception to public duty doctrine or special-relationship exception. (b) But two plaintiffs who alleged state agents had advised them their cattle were disease-free and that they did not need to take additional precautions, did establish special-relationship exception. ***Honcoop v. State***, 43 Wn. App. 300, 716 P.2d 963 (3/31/86).

—J. T. Richardson

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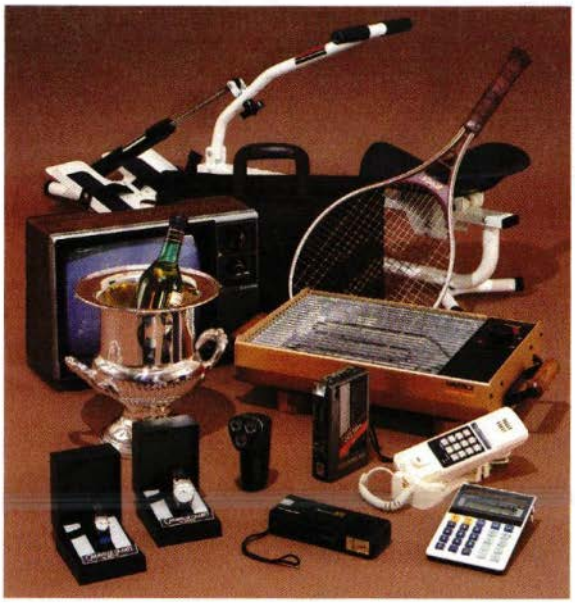

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Interested in becoming involved? . . . In deriving the positive benefits provided by this unique type of exposure?

The Washington State Bar Association has made it easy for you with the newly launched, state-wide WSBA Speakers Bureau. The Speakers Bureau was established to fulfill the many public speaking opportunities available to lawyers year 'round, throughout the state. Operated as a program of our Public Affairs Department, the Bureau receives requests for speaking engagements and matches them by topic and geographic location to WSBA members on the Speakers Bureau Panel. For information on how to become a panel member, see the WSBA Speakers Bureau advertisement in this issue of the *Bar News* on page 6.

The Speakers Bureau has been in operation for less than three months. How has the public reception been? Phenomenal! One introductory mailing of 3,000 brochures was made in mid-April to service organizations, citizen groups, schools, the news media, and other possible sources of speaking requests. Since that time, and without any further promotion, we have received a steady flow of requests, now averaging more than one per day. The WSBA Speakers Bureau coordinates closely with local bar associations which have their own speakers bureaus. Still, in our first two months of operation, the WSBA Speakers Bureau filled more than 80 requests for speakers. And they just keep coming.

We receive so many requests, in fact, that *we need more panelists.* I urge you to consider this prime opportunity to represent the legal profession and yourself before interested audiences on a regular basis. You'll be providing authoritative information, helping to demystify our legal system, and presenting yourself before a variety of people.

The promotional brochure which was originally sent out to interested groups listed some five dozen topics which could be selected (although we always try to accommodate requests for speakers on *any* topic). When you join our Speakers Bureau Panel, you indicate the topics about which you would be interested in speaking, your geographic and time limits, and preferred types and sizes of audiences. When we receive a request for a speaker, we complete the arrangements according to those preferences. Our selection system is computerized to assure the best match of speaker to engagement, and to rotate speaking opportunities so that each panelist has an equal opportunity of being selected.

What kinds of requests do we receive? You would be amazed at the variety of topics and geographic locations represented. Here is a sampling of groups and topics: Puyallup Business & Professional Women's Club ("Estate Planning"); Olympic College "Women in Transition" workshops ("Family Law"); Assn. of Washington Cities/Labor Relations Institute ("Creating a Safe Workplace—Legal and Practical Issues"); EDP Auditors Association ("Computer Law—Communications Hackers"); Marysville Chamber of Commerce ("Employee Rights"); Kent Library ("Starting a Business/Small Businesses"); Fort Steilacoom Community College paralegal class ("Humor in the Courtroom"); and various schools (presentations on "Death & Dying," "Alcohol & Drugs," "Consumer Law," and "Careers"). The list goes on and on.

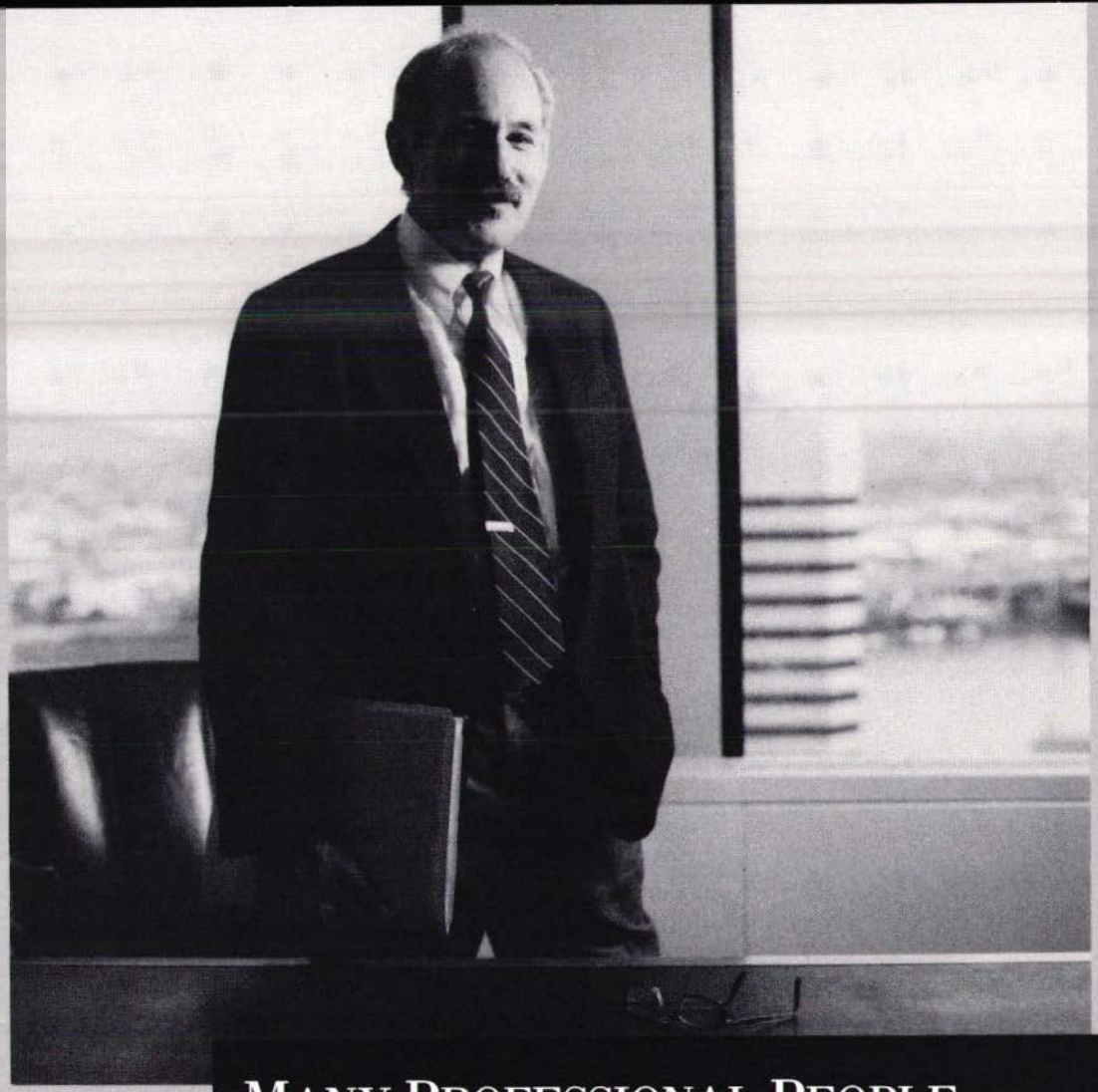
Additional benefits sometimes result from initial speaking engagements. A Chelan radio station, for

example, is tapping into the Speakers Bureau for a series of talk show guests. Prolonged goodwill has been generated through the handout of the WSBA's series of Citizen Rights pamphlets to audiences. The pamphlets are provided to speakers upon request.

The State Bar monitors the evaluation of presentations by both the sponsor/host organizations and by our speakers. Our presenters have consistently earned high marks for their efforts and have enjoyed the experience.

The Speakers Bureau bandwagon is rolling! I urge you to jump on. There is no time better than the present to become a part of this popular and growing public service program. The groups before which you appear will appreciate your efforts, and the personal satisfaction and potential professional benefits you will receive are immeasurable. Take advantage of this prime opportunity to serve the public and your profession in a most gratifying way.

Bob Comfort



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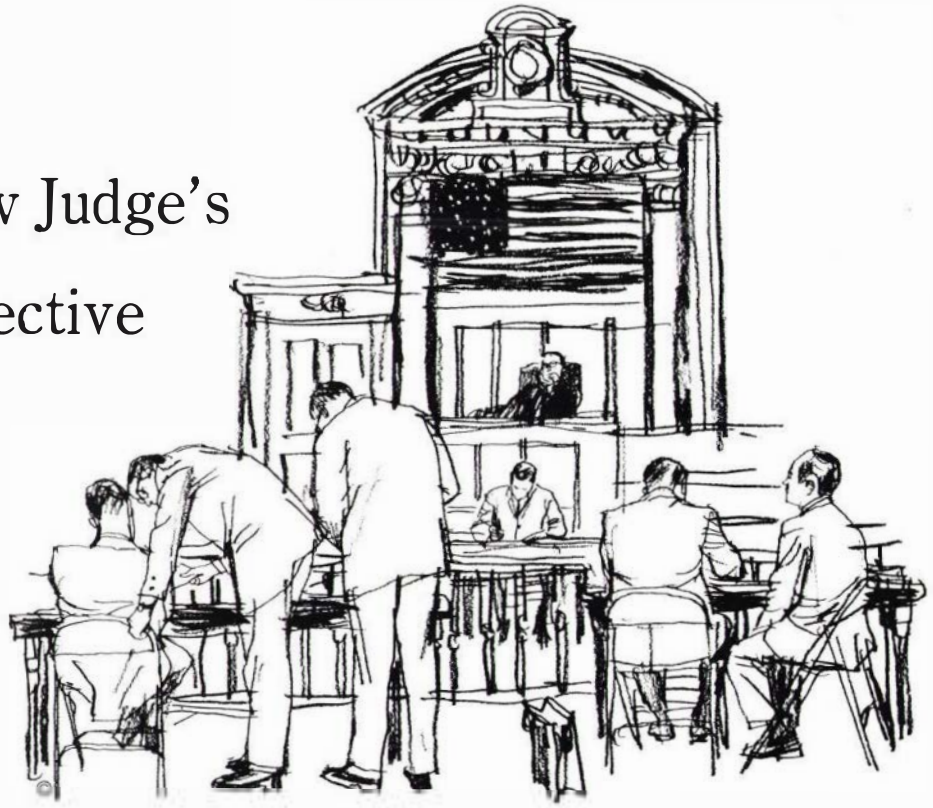
A New Judge's Perspective On The Jury Trial: SOME CHANGES WHOSE TIME MAY HAVE COME



by **Hon. David A. Nichols**

As a judge who took office one and a half years ago, I hope it is not risky business to presume I have ideas of value to impart to the bench and bar on the conduct of jury trials. With a respectful bow to my seasoned colleagues, who may wonder whether I should gain more experience before advocating major alterations in the way we do business in the courtroom, I nevertheless put pen to paper in the fear that when I get too well used to things, I may be too comfortable to want to change them.

General Attitude Toward Jurors

Jurors are traditionally treated in a manner which creates for them a sterile environment in which they are totally isolated from the circumstances of a given case, except for the evidence heard from the witness stand and the admitted exhibits. They are not permitted to hear arguments on the admissibility of evidence, get background information, ask questions, or even keep track of what they hear on paper. Because they fear "commenting on the evidence," judges and counsel rarely deviate from the script as we learned it. The result is that jurors often have scant understanding of the mysteries of the system and feel that they are treated as intellectual invalids. The assumption is that any departure from accepted norms will "taint" the jurors and render them incapable of deciding a case within the meaning and intent of the instructions.

From my earliest days as judge I have invited jurors into chambers after the verdict has been rendered. It has become clear to me, in fact, that the more the jurors are informed of what is occurring each step of the way, the better able they are to avoid speculation, concern, and the irritation which invade the jury room otherwise. I talk with the jurors to increase their understanding of why we proceed as we do.

Juror Questionnaires

In Whatcom County, all venirepersons are mailed a questionnaire to fill out and return. I expanded this procedure to cover areas customarily of interest to counsel in voir dire. As we all know,

> A voir dire examination should be conducted for the purpose of gaining knowledge to enable an intelligent exercise of peremptory challenges and for discovering bases for challenge for cause.
>
> —ABA Project on Minimum Standards for Criminal Justice; CrR 6.4.

The questionnaires, if available to counsel at the time of voir dire, provide a reasonable basis upon which to inquire into juror bias.

I have begun to go one step further. In appropriate cases, I encourage counsel to submit written questions ahead of time in a form which the jurors can fill out when they are actually seated. This is especially helpful in cases with sensitive issues such as homosexuality, psychiatric problems, race, sex crimes and the like. If these areas are ventured into orally, the likelihood of honest answers is quite diminished.

In a recent involuntary commitment trial, jurors were questioned

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David A. Nichols is a Whatcom County Superior Court Judge who was elected to the bench in January 1985.

in writing whether they had ever been involved in such a proceeding. Had there been any positive responses, we would have adjourned to chambers to complete the voir dire.

In a case in which the victim of an assault was homosexual, we conducted the entire voir dire in chambers. We found several jurors involved with homosexuality in one way or another.

In devising a new questionnaire, I would appreciate any suggestions from attorneys on what information would be helpful to them. The monograph William Goodloe wrote while a King County Superior Court judge, *Jury Selection Manual*, Goodloe Press, Seattle (1976) is very useful. It includes pages of excellent questions relating to particular cases. See also Judge Robert Winsor, "Voir Dire Examination of Jury Panel," July 1980, *Bar News*, p.34.

Voir Dire

Trial counsel spend most of their energy softening the panel to their view of the case—an understandable but illegal strategy. Judges find voir dire excruciating mostly due to the repetitive and uninformative questioning employed by lawyers. Many of the questions asked would be objectionable if the rules were conscientiously applied. For example, if a juror admits that he could not try the case fairly, it is improper to inquire for which party he is biased. The very common question, "After hearing all the evidence in this case and the instructions, if there remains in your mind a reasonable doubt regarding the guilt of the defendant, would you return a verdict of not guilty in his favor?" was found improper in *State v. Bokien*, 14 Wash. 403 at 410 (1896). Why? The question stated a hypothetical not going to a juror's actual state of mind.

Other voir dire questions are subject to objection. These include: questions already asked; questions touching on instructions anticipated; disguised argument; legal terminology and knowledge of the law; questions which are grossly unfair or embarrassing; questions solely to establish rapport; or long, narrative statements which are essentially lectures.

Some judges do a substantial part of the questioning a la the federal model. This system allows lawyers to get a good look at the jurors without having to worry about asking sensitive questions or questions which call for merely a "yes" or "no" answer. It might be noted that in British Columbia there is *no* voir dire by anyone, including the court. Attorneys get a voting list with name, address, and occupation; each side gets four peremptory challenges.

Much work needs to be done to draft good voir dire questions which allow some leeway for jury softening, but which also ferret out potential problems or bias in a reasonably

short period of time. The Goodloe monograph includes at page 50 a series of questions for each of twelve jurors, with not one question being repeated. If attorneys do not take the time to master the art of voir dire to maximize the receipt of useful information from the potential juror, we may well find ourselves heading in the direction of the Denver courts. There, voir dire is limited to one-half hour per side to impanel the *entire* jury; the bulk of questions are asked by the court.

Instructions Given Before the Taking of Testimony

Traditionally, jurors are given no instructions on the governing law until the conclusion of the evidence. They are then read multiple instructions and given one or more typed sets (six in Whatcom County) to take with them to the jury room. The result of this procedure? Jurors have listened to the evidence for days or weeks with no real idea of which law applies—which in essence means with no real idea of how to listen to that evidence.

Contrast this anomaly with a case tried to the court. The judge is usually given a trial brief outlining the issues and applicable law. Before evidence begins, the judge has a good idea of the legal context into which the evidence will fall, not to mention his or her own legal training from which to draw. Not so the jury. Why should this be so?

In the involuntary commitment hearing I referred to earlier, the jury had to decide whether the respondent, as a result of a mental disorder, was or was not "gravely disabled" within the law. The instructions were compiled, and after impaneling the jury, I read them the instructions which stated the question to be answered and the legal definitions of the important terms. The jurors later reported that they found this procedure very helpful, since they had had no idea what a mental commitment procedure was or what the standard for commitment should be. In theory, this procedure could be carried out in every case.

Two problems with the procedures are immediately apparent: (1) The jury instructions are not ready at the start of a case, and the attorneys do not have all their instructions in mind until the evidence has shaped up. (2) Giving only those instructions which will help the jury better hear the evidence is often a contention matter.

I require attorneys to submit their basic instructions to me before the case begins. I then query them on their willingness to have the essential instructions read, with a *caveat* to the jury that there may be other, different, and additional instructions given at the conclusion of the evidence, so they should not give undue weight to the preliminary instructions. Rarely have the attorneys objected to this procedure.

It will not always be possible, but if we want juries to deal intelligently with the evidence, we must

provide them with a legal framework in which to assess it intelligently. For example, if the case involved an automobile collision, the law explaining the duties of the drivers could be read to the jury. If the defendant in a criminal case pleaded self-defense, the standard instructions and definitions of key terms should be read before they hear the evidence.

In one case, the amount of damages was the only issue tried to the jury. The jurors of course had been told that liability was admitted. In addition, they were read the instructions on claims, burden of proof, and damages (which lacked the usual elements of future general or special damages since the plaintiff had declared herself recovered). By knowing the elements of damages which they would have to decide, the jurors could eliminate from speculating on those elements which were not in issue.

If lawyers will provide tentative instruction requests no later than the start of the trial, pretrial discussion may produce harmony about instructions which tell the jury the gravamen of the case. After the jury has been sworn and read the preliminary instructions concerning the conduct of the trial and recesses, I say to jurors the following:

> So that you will have a better understanding of how to evaluate the testimony you are going to hear, I am going to read you certain instructions of law which we anticipate will be applicable to this case. Later, when all the testimony has been completed, you will be given a full set of instructions which may well be different or additional to those I read you now, depending on the testimony. You should therefore not put undue weight on these instructions but treat them as a guide to understanding and evaluating the testimony as a preliminary matter.

Jurors in post-trial discussions tell me that they appreciate the pretestimony instructions. These instructions allow jurors to focus their attention, even if they have not had a chance to study the instructions in writing and even if they miss some of the details. These problems, they feel, are taken care of by their close examination of the written instructions during deliberations.

Note Taking

Regardless of the length of the trial, I permit and encourage note taking by the jurors in every trial I conduct. I do this over attorney objection, although attorneys have objected only once or twice. At the conclusion of jury selection, jurors retire to the jury room. There they receive their pads and pencils, materials to which they have access whenever they are in the courtroom. For this idea, I am indebted to

King County Superior Court Judge Robert Winsor. See also Winsor, "Jurors: Some Noteworthy Observations," January 1984 *Bar News*.

Everyone else in the courtroom is taking notes, so why not the jurors? In almost every other jurisdiction in the country it is common. Why not in Washington?

We know that our ability to retain information increases geometrically when more than one sense is involved. Trial lawyers who use demonstrative exhibits recognize this. Jurors repeatedly confirmed to me after cases are over that they tremendously appreciate being able to take notes. Having the opportunity to take notes makes them better listeners—more conscientious and less nervous. It encourages a more systematic review of the testimony during deliberations. Comparing their notes with each other's tends to avoid guess work and foster more complete recollection and confidence.

Lawyers sometimes fear that "better" note takers will take over the jury. Although it is true that some jurors take better notes than others, they assure me that all notes are vigorously scrutinized for accuracy and are often corrected by others who heard something different. Counsel have not found note taking to be distracting. Counsel do not feel that jurors fail to pay attention during the note taking period. I, for one, am convinced that they pay better attention, and that no one is conscious of their taking notes. Even counsel take advantage of note taking by jurors. In closing arguments, lawyers sometimes say, "If you all will review your notes, you will see that we have proved . . ." What prevents note taking from becoming universal in Washington courts is inertia, an unfortunate byproduct of tradition.

Post-verdict Jury Discussion In Chambers

I am indebted to Judge Jerome Lerner of Cook County, Illinois, for this idea. After the verdict has been rendered, I invite all jurors who wish to attend into chambers (with counsel, if they choose) to discuss the case, deal with questions they may have, get their views on how we are doing, and hear complaints. These conferences are always well attended.

The information jurors reveal has been very helpful to me and, I think, to the jurors themselves and counsel. Jurors are never pressed about the deliberations, of course. I ask about note taking, the instructions, whether they have any concerns about how the case went, whether there is anything I or counsel can say to clarify procedure or any mysteries about the case which have perplexed them.

Invariably the discussions are lively and revealing. Especially in high-profile cases, the discussion has proved to be a safe, private way to achieve catharsis and release built-up emotions. At the conclu-

sion of one murder trial, most of the jurors, and even some of the court staff, were very emotional. By the time the session had been concluded, the jurors expressed relief and a readiness to put the matter behind them and go on with their lives. I was struck by an article in the Summer 1985 issue of *Judiciary*, which is published by the Office of the Administrator for the Courts. In it, a juror interviewed in Spokane said:

> Nothing has proved to be as emotionally draining as (my) services as a juror.
>
> I broke into tears at least three times (during deliberations) and I remember once trying to say something and not being able to control my voice enough so that the others could hear me.
>
> All this happened eight months ago.
>
> I have told my best friend that someday I will share some of the experience with her—when the time comes that I can talk about it.
>
> The time hasn't come yet.

The chambers conference goes a long way to helping each juror recognize that he or she is not alone. Getting the feelings out right after the trial avoids their becoming worse as time goes on. It also gives me a chance to stress that the decision is theirs and they need not justify to anyone.

In the sessions, lawyers glean information about how they presented their cases. Otherwise, they would have to ferret out the information by calling jurors individually. For those attorneys brave enough to ask for suggestions on how to improve their presentations, jurors have been quite candid in their responses. Lawyers have been told that their posture and lack of eye contact indicated they had given up on their case; they could not be heard; they were too verbose; they had been doing fine until their client testified, and so forth. Jurors have also said that they resented being talked down to by the lawyers. On the bright side, lawyers have found that jurors by and large are very accepting of different styles in the courtroom; that jurors are quite tolerant of objections in the adversary system; jurors in fact, do read the instructions very carefully and are not as ignorant of the legal language as we tend to think; that jurors do keep track of most of the evidence and get the messages which the lawyers are trying to convey, whether or not the jurors go along with the lawyers' intent.

I have become convinced that jurors can be trusted to disregard matters they are told to disregard, that they do read the instructions, that they carefully explore the evidence piece by piece, that they do understand the burden of proof and the presumption of innocence, and that they appreciate being told as much about the case as it goes along as is consistent with evidentiary restraints. After their conference in chambers, jurors have a greater appreciation of how the system works. They better tolerate the exclusion of evidence and the necessity of settling certain matters outside their presence.

Some of the instructional language, however, needs to be put into lay terms, and I am aware that some judges are now paraphrasing in their charges to the jury some of the more abstruse language and concepts found, for example, in the proximate cause and circumstantial evidence instructions.

Conclusion

The jury process needs continual reexamination. We should not hesitate to overhaul our methodology if to do so makes the jury system better. I am totally convinced of the unique capacity of juries to make good decisions. The more we educate jurors in their roles as they proceed through the trial, the more we insure that their decisions are based on the evidence and the law. We judges and lawyers need to be receptive to, and urge modifications in, the way we do things. Keeping in close touch with juries to get their perspective is one way to become alert to areas which need change.□

Informal Opinion re: Interviews By Prosecuting Attorneys of Represented Defendants Concerning Matters Unrelated To The Representation

An inquiry has been submitted to the Rules of Professional Conduct Committee concerning the ethical propriety of a prosecuting attorney requesting a law enforcement officer to contact and interview a defendant, who is incarcerated pending trial and is represented by counsel, concerning the defendant's knowledge of the criminal activities of third persons. In the situations at issue, the purpose of the interview with the incarcerated defendant is not to obtain information concerning the defendant's criminal activity but to obtain information concerning that defendant's knowledge of the criminal activities of a third person. A frequent situation involves asking the incarcerated defendant whether a cellmate has made admissions concerning the cellmate's involvement in crimes totally separate and independent from the crime the defendant is charged with. In the situation presented, the prosecuting attorney knows the defendant is represented by counsel in connection with the pending case but does not contact counsel to seek permission for the interview prior to the interview occurring.

The inquiring attorney contends that a reasonable defendant would believe that cooperation with the prosecuting attorney or the law enforcement officer in providing information concerning the third person's criminal conduct would benefit the defendant because a defendant would believe that he or she would receive some future leniency or consideration because of cooperation.

RPC 4.2 provides:

> In representing a client, a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

In addition, RPC 8.4(a) provides that it is professional misconduct for a lawyer to violate the Rules of Professional Conduct either personally or "through the acts of another."

The Committee is of the opinion that contacts as described above would not violate the Rules of Professional Conduct unless the conduct of the prosecuting attorney personally, or a law enforcement officer acting at the direction of the prosecuting attorney, was such that the discussions with the prosecuting attorney or those acting on behalf of the prosecuting attorney would affect the defendant's case. If the prosecuting attorney or a law enforcement officer acting on behalf of the prosecuting attorney were to lead a defendant to the belief that future leniency or consideration in connection with the pending case could result, then a violation of RPC 4.2 would occur because the future considerations relate to the pending case which is the "subject of the representation." In such situations, RPC 4.2 requires the consent of the defendant's lawyer before the communication occurs.

Mere questioning concerning an unrelated matter such as a jail crime does not violate RPC 4.2. However, the Committee recognizes that a significant number of defendants in custody might expect that their cooperation might result in leniency in their own case. To avoid uncertainty, the better practice would be for the interviewer expressly to advise the defendant that the discussion with regard to the third person has no relation to the defendant's pending case and that whether the defendant answers or not, and regardless of the answers given, such will not be given any consideration whatsoever in the handling or outcome of his or her case.

The Committee recognizes that law enforcement officers act independently and that the Rules of Professional Conduct apply only to the conduct of lawyers. A prosecuting attorney, however, is responsible for the actions of law enforcement officers acting at the direction or with the permission of the prosecuting attorney. RPC 8.4(a).

Dissenting Opinion

I would make the following changes in the next to last paragraph of the Opinion:

> Mere questioning concerning an unrelated matter ~~such as a jail crime does not violate RPC 4.2~~ *[may or may not give rise to a reasonable belief that the discussion will benefit the defendant's case depending on the circumstances]*. However, the Committee recognizes that a significant number of defendants in custody might expect that the cooperation might result in leniency in their own case. ~~To avoid uncertainty, the better practice would be for the interviewer~~ *[The interviewer should]* expressly advise the defendant that the discussion with regard to the third person has no relation to the defendant's pending case *and that whether the defendant answers or not and regardless of the answers given, such will not be given any consideration whatsoever in the handling or outcome of his or her case.*

The majority acknowledges that a "significant number of defendants in custody might expect that their cooperation might result in

leniency" in their pending case. If that is true, and I agree that it is, a defendant having such expectations needs the assistance of his or her lawyer before and in connection with any such discussions.

I am concerned that the majority opinion may be read by some as making it optional or discretionary for the interviewer to give the cautionary language which the majority identifies as the "better practice." I believe that the prosecuting attorney should have the right to interview regarding unrelated matters but faced with the finding that "a significant number of defendants" may construe the situation as one which potentially impacts their pending case, then, and in those circumstances, I believe that the prosecuting attorney should refrain from the discussion unless it is first made unmistakably clear that whether the defendant participates in the discussion or not, or answers or not, and regardless of the answers given, such will not be given any consideration whatsoever in the handling or outcome of his or her case. That would lay the cards on the table and would tend to correct the misunderstanding which everyone agrees will affect "a significant number of defendants in custody."

Informal Opinions are published pursuant to authorization granted by the Board of Governors but they have not been individually approved by the Board and do not reflect the official position of the Association. An informal Opinion is provided for the education of the Bar and reflects the opinion of the Rules of Professional Conduct Committee.

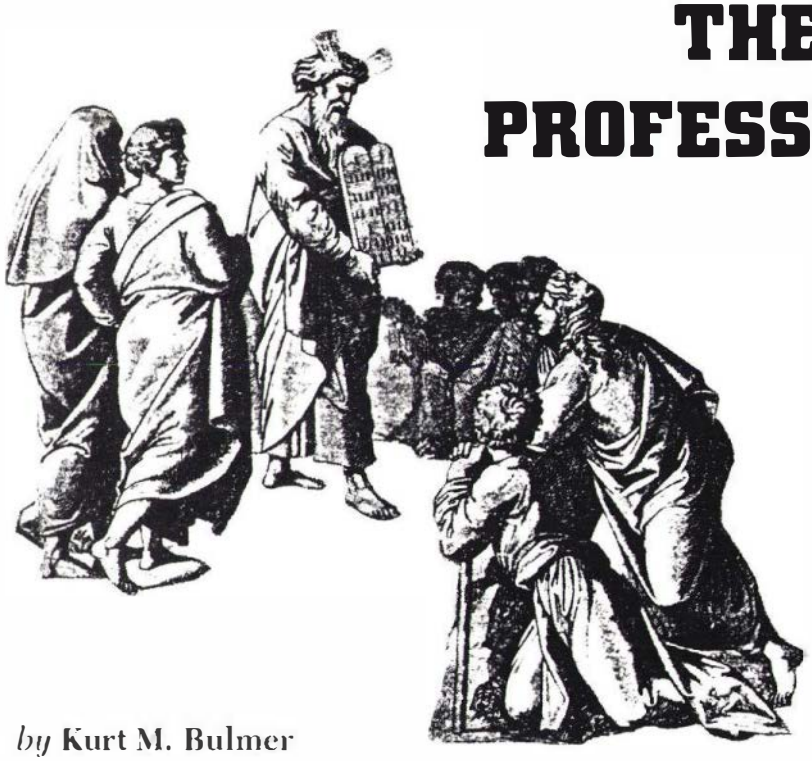
Did You Know...?

Prospective jurors have been subjected to "long and boring homemade" orientation programs, according to a study by Washington's Joint Jury Management Standards Committee. The Committee, together with the Office of the Administrator for the Courts, produced a 20-minute video tape orientation program for the 2,000 persons called to jury duty each year. Narrated by actor Raymond Burr, of "Perry Mason" and "Ironsides" fame, the half-inch VHS format tape is being distributed to all of Washington's 299 trial courts.

A limited number of video tapes will be available for extra-judicial use, for mock trials, public presentations, Law Day events and other law-related education activities. A 16-mm film version is also being planned.

To obtain copies (either on loan or for purchase at reproduction cost), contact Mike Kilborn, Office of the Administrator for the Courts, Temple of Justice, Olympia, WA 98504, or call (206) 753-3365, ext. 253.

THE NEW RULES OF PROFESSIONAL CONDUCT PART III



by **Kurt M. Bulmer**

The first two articles on the new Rules of Professional Conduct (RPC) appeared in the October 1985 *Bar News* and the February 1986 *Bar News*. The RPC can be found in the September 1985 *Bar News*, in most court rule sets and in the *Official Rules of Court—1985-1986*, provided as part of the advance sheet service of the *Washington Reports*.

Rule 3.1—Meritorious Claims and Contentions

Attorneys are prohibited from asserting or defending frivolous matters except for defenders in criminal proceedings. Criminal defense lawyers may require proof of every element of the case, whether frivolous or not.

Rule 3.2—Expediting Litigation

An attorney must make "reasonable efforts" to expedite litigation. This is a "go forth and do good" provision: No standard for measuring "reasonable efforts" is given; efforts need only be those "consistent with the interests of the client."

Rule 3.3—Candor Toward the Tribunal

This rule attempts to define the attorney's role in presenting information to the court. Outright dishonesty is, of course, prohibited. But sometimes silence can be just as misleading as a spoken lie.

Under subsection (a)(1), an attorney appearing before a tribunal cannot make false statements of material facts or law or offer evidence the attorney knows to be false. This is apparently so whether or not the confidences and secrets rule, RPC 1.6, applies.

At odds with many attorneys' concept of their role as advocate is the requirement of controversial subsection (a)(2). This requires an attorney to voluntarily disclose material facts to the tribunal, *even if adverse*, if failure to disclose would assist the client in a criminal or fraudulent act. However, if the material adverse fact falls within the confidences and secrets rule, the attorney cannot disclose it. Subsection (a)(2), of course, the confidences and secrets rule, permits an attorney to disclose information to prevent a crime if he or she chooses to.

Subsection (a)(3) continues a little-known rule contained in the prior rules. Its reenactment engendered considerable controversy. It requires voluntary disclosure to the tribunal of directly adverse legal authority from the controlling jurisdiction when opposing counsel has not disclosed it. The confidences and secrets provision does not apply. Argument that this provision penalizes the better-prepared attorney was not persuasive.

Section (b) continues the duties of Section (a) until the proceedings conclude. "Conclusion" is not defined.

An attorney who offers false evidence and learns of its falsity must immediately disclose this unless disclosure would violate the confidences and secrets rule. If disclosure is restricted by the confidences and secrets rule, the attorney must try to convince the client to disclose voluntarily. Failing that, the attorney can elect to withdraw. Sections (c) and (d).

It does not violate one's duty to one's client if the attorney refuses to offer evidence that he or she reasonably believes to be false. Section (e).

Akin to having to disclose adverse legal authority and material facts to a tribunal is the requirement that in ex parte proceedings the attorney must disclose all relevant facts, whether adverse or not. Section (f). The attorney cannot blindside a judge in an ex parte proceeding by keeping secret facts which would prevent the attorney from getting an order.

Section (g) provides an obvious general exception to the provisions of Rule 3.3. The constitutionally mandated right to assistance of counsel in criminal cases may supersede the obligations of Rule 3.3.

Rule 3.4—Fairness to Opposing Party and Counsel

An attorney is prohibited from: obstructing access to evidence and tampering with evidence, section (a); falsifying evidence or bribing a witness, section (b); disobeying court rules, section (c); making frivolous discovery requests, section (d); "alluding" to irrelevant matters or asserting personal knowledge of facts during trial, section (e); and stating during trial the attorney's

personal opinion on issues such as justness, credibility, culpability and guilt or innocence, section (f).

All these proscriptions existed under the old rules, but the specificity with which they are now detailed will allow their use as offensive and defensive tools during litigation as well as provide clearer standards for disciplinary enforcement.

Rule 3.5—Impartiality and Decorum of the Tribunal

Not surprisingly, an attorney cannot improperly seek to influence (*i.e.*, bribe or extort) a judge or juror, cannot improperly communicate ex parte with a judge or juror, and cannot engage in "conduct intended to disrupt a tribunal."

Rule 3.6—Trial Publicity

This rule attempts to deal with the complicated problem of extrajudicial comment by attorneys. The goal of the rule is to avoid materially prejudicing the adjudicative proceeding. To be a violation, the comments must be made in a setting which would indicate that the comments might be disseminated in the media.

A checklist of some 26 types of statements presumed to have prejudicial effect is given in section (b). These boil down to comments about the guilt and character of parties or witnesses; comments about guilt or confessions in criminal cases; comments about the results of examinations and tests, or the absence of such examinations and tests; and comments about material evidence not admissible at trial. A statement that a defendant has been charged with the crime is required to contain the caveat that the charge is an accusation only and that innocence is to be presumed.

Section (c) contains a checklist of permissible statements. These relate to the general nature of the case, names of various parties, status of an investigation or case, public warnings and information contained in a public record.

The constitutionality of the rule may be open to challenge since it amounts to a permanent "gag order." In controversial and highly

visible cases, the limits of the rule will likely be tested.

An attorney who is not anxious to test the validity of the rule simply should avoid talking publicly about a case. Prosecutors and other government attorneys have a special problem since they have obligations to the public as elected or public officials. For such attorneys, it may not be appropriate to remain silent. If the rule's guidelines are carefully followed, it should be possible to inform the public while avoiding prejudicing an adjudicative proceeding. However, that is a very difficult and narrow line to walk.

Rule 3.7—Lawyer as Witness

An attorney is generally disqualified from acting as an advocate in a matter in which he or she also appears as a witness. The prior code contained such a prohibition, but it was difficult to interpret. The new rule bans advocating a case if the attorney will be a "necessary" witness.

While "necessary" witness is not defined, it probably means that "but for" this witness the case cannot be proved. All attorneys in a firm are disqualified if any one of them is disqualified.

Several exceptions are provided. Where the testimony is uncontested, is a formality, or relates to the nature and value of legal services rendered, the attorney may appear. Sections (a) and (b). If the attorney is called by the opposing side and if a court approves of the continued appearance, an attorney may continue. Section (c). This exception was necessary because of the current litigation tactic of calling opposing counsel as a witness and forcing opposing counsel to withdraw.

In hardship cases the attorney can appear, but the attorney must not have been able to foresee that he or she would be a necessary witness. Section (d). A judge must rule on the two elements of section (d), hardship and foreseeability. This hardship exception would apparently apply only if the need for the attorney to appear as a necessary witness came up unexpectedly during trial.

Rule 3.8—Special Responsibilities of a Prosecutor

Prosecutors in a criminal case are targeted for "special" rules. These rules seem self-evident, but the ABA felt the need to specify them. The rule has been adopted in Washington.

The prosecutor must not charge without probable cause; must see that reasonable efforts are made to preserve the right to counsel; must not seek waiver of important pretrial rights from *pro se* defendants; must disclose relevant evidence to the defendant; and must see that reasonable efforts are made to prevent persons associated with the prosecutor's office from making extrajudicial statements prohibited by Rule 3.6.

Rule 3.9—Advocate in Nonadjudicative Proceedings

Following the lead of ethics opinions but not specifically found in the prior code, this rule requires an attorney to divulge his or her representative status when appearing before a nonadjudicative legislative or administrative tribunal. Candor, fairness and decorum are required.

"Tribunal," a frequently used term in the RPC, is not defined. It appears that if you are testifying or arguing before a legislative committee and someone has retained you to make that appearance, you need to disclose that relationship. Other forums such as zoning boards and city councils would apparently also qualify.

Rule 4.1—Truthfulness in Statements to Others

There is no controversy about section (a) of this rule. It provides that an attorney cannot lie about the facts or the law to a third party.

Many attorneys, however, argue about section (b), which compels the voluntary disclosure of material adverse facts to third parties. This is similar to the disclosures before a tribunal rule, RPC 3.3 (a)(2). Under RPC 4.1 (b), facts must be disclosed to a third party when necessary to avoid a criminal or fraudulent act by the client. This disclosure requirement is subject to the confidences

and secrets rule.

Suppose an attorney knows from reading the newspaper that a flat ban on raising chickens within city limits is about to be adopted. Suppose further that the attorney knows that chicken ranches in the city usually sell for 25¢ a chicken. If a seller hires the attorney to handle the closing of the sale of an in-city chicken ranch at 10¢ a chicken to a buyer known to be illiterate, does the attorney have to inquire whether the buyer is aware of the pending ordinance?

This is not the place to analyze the deeply-rooted differences on the disclosure issue. Suffice it to say that the rule is controversial and requires the attorney to make a judgment call based on issues other than exclusive loyalty to one's client.

Rule 4.2—Communication with Person Represented by Counsel

This rule continues the ban on an attorney having direct contact with a person known to be represented by an attorney.

Rule 4.3—Dealing with Unrepresented Person

If an unrepresented person does not understand that the attorney is serving as an attorney in a matter, the situation must be explained, and the fact that the attorney is not a disinterested person must be made known. This is a new rule, although in the past it has been impliedly required under the not-making-misrepresentations rule. The concept is similar to RPC 3.9 (requiring disclosure of status before nonadjudicative tribunals).

Rule 4.4—Respects for Rights of Third Persons

Absent a substantive reason, an attorney cannot embarrass, delay or burden a third person or use illegal means to gather evidence.

Rule 5.1—Responsibilities of a Partner or Supervisory Lawyer

The provisions of Rules 5.1 through 5.3 are new. They are an outgrowth of demands that attorneys must be held responsible for the actions of other attorneys and nonattorney personnel associated with their law firms.

Reasonable efforts must be made to assure that all attorneys in a law firm and all directly subordinate attorneys conform to the requirements of the RPC. Sections (a) and (b).

An attorney who orders or knowingly ratifies violations of the RPC, by that act, also violates the RPCs. Section (c)(1). More dramatic and significant is subsection (2), which makes it a violation to knowingly permit a partner or subordinate attorney to engage in conduct which violates the RPC. An attorney who knows about a potential violation must take "reasonable remedial action."

While certainly an admirable goal, this provision contains many possible traps for an attorney subjected to review in a post-violation

environment. It may be hard to demonstrate what was "known" and what constituted "reasonable remedial action." If you are the attorney who "knew" (and who took the action), you may find it very difficult to show that a violation of this intervention rule did not take place, if the other attorney, in fact, proceeded to engage in the prohibited conduct.

Rule 5.2—Responsibilities of a Subordinate Lawyer

Section (a) makes an attorney responsible for violations of the RPC, even if the violation occurred at the direction of another person, presumably a client or a supervisory attorney. If a supervisory attorney directs the action and it is reasonably arguable that it is not a violation, the subordinate attorney who follows the direction is safe. Section (b).

Rule 5.3—Responsibilities Regarding Nonlawyer Assistants

Nonattorney employees of an attorney are the attorney's responsibility. If nonattorney personnel violate the rules and the lawyer ordered it or knew about it, the lawyer is responsible.

Rules 5.1, 5.2 and 5.3 make attorneys responsible for their partners, associates and nonattorney employees. The rules require the attorney to take action to prevent violations of the RPC. It is no defense that a client or supervisory attorney directed the attorney to engage in the violation.

Rule 5.4—Professional Independence of a Lawyer

Although it is a violation to share legal fees with a nonattorney, sharing fees with an attorney's estate and with nonattorney employees as part of a profit-sharing plan is permissible. Section (a).

An attorney cannot form a partnership with a nonattorney if the partnership will practice law in any way. Section (b).

Following the lead of conflict rule RPC 1.8 (f) an attorney cannot permit interference with his or her professional judgment by someone who is paying the attorney to give legal advice to a third party. Section (c).

Practicing in a professional corporation is permissible if attorneys are the only ones who own shares; if, other than the corporate secretary or corporate treasurer, attorneys are the only directors and officers, and if the attorney's independent judgment is maintained. Section (d).

The concepts of Rule 5.4 are not new.

Rule 5.5—Unauthorized Practice of Law

Exactly restating previous rules, an attorney cannot practice in a jurisdiction in which he or she has not been admitted. Attorneys are also prohibited from assisting someone in the unauthorized practice of law.

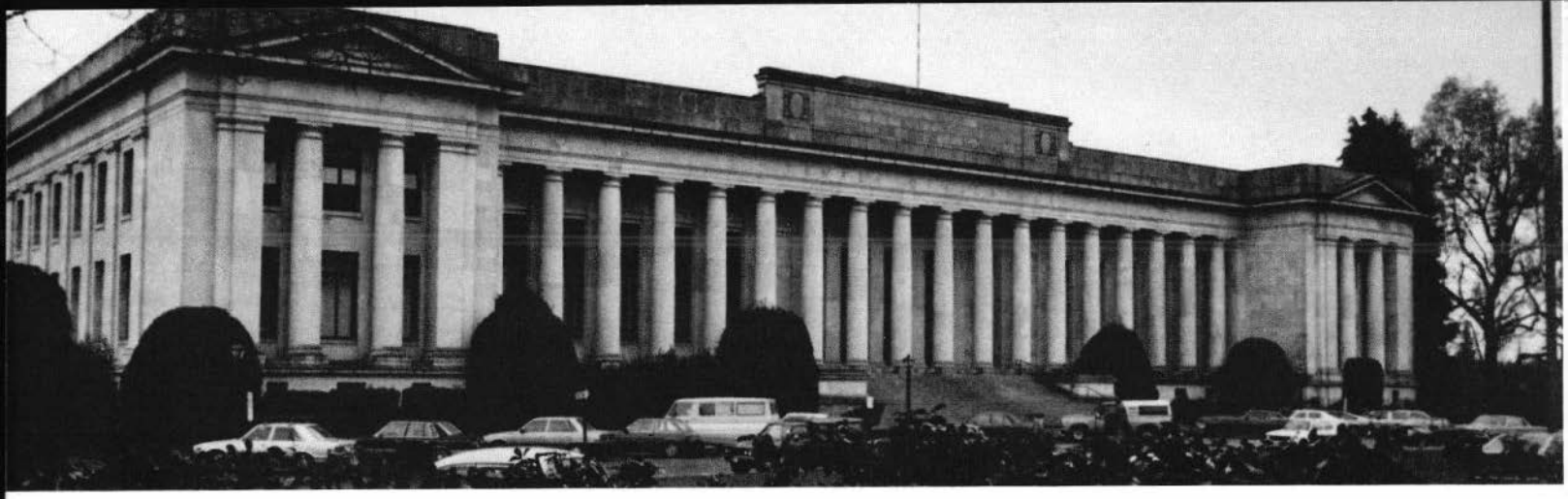
Rule 5.6—Restrictions on Right to Practice

It is improper to offer or enter into an employment agreement which would restrict the attorney's practice after the employment is terminated. An agreement saying "I will hire you, but if you leave my firm, you must promise not to practice in this county" would be improper. Section (a).

Let's say the opposing side says, "Don't take any more cases against us, and we'll settle this case." This violates the RPC by the attorney making the offer. It will also be a violation if the offer is accepted. It is specifically deemed improper to offer or accept an agreement which restricts an attorney's practice when that agreement is part of a settlement in a controversy between private parties. Section (b).

The next, and last, article will cover public service, advertising and reporting professional misconduct.□

***Kurt M. Bulmer**, former General Counsel of the WSBA, was a member of the Task Force on the Rules of Professional Conduct. He represents respondents in disciplinary matters and lectures frequently on professional responsibility.*



What's Up at the Judicial Qualifications Commission

by Esther Garner

If citizens ratify it, a legislatively-proposed constitutional amendment could change the name and membership structure of the Judicial Qualifications Commission, make its deliberations more public and require the suspension of a judge it has recommended for removal.

As specified by the resolution, the group's seven members would be increased by two. Both would be citizen members, bringing lay membership to an almost-majority. Under its new name—"Commission on Judicial Conduct"—all hearings would be public after initial investigation and deliberation. Any judge it recommended for removal from office would be required to step down, with pay, pending final determination by the Supreme Court.

The Judicial Qualifications Commission has seven members:

Judges: Ray E. Munson, Div. III, Court of Appeals, Spokane
Frank D. Howard, King County Superior Court, Seattle
Thomas E. Kelly, Everett District Court

Lawyers: William W. Baker, Everett (Chair)
Thomas D. Loftus, Seattle

Non-lawyer/
Citizens: Ann Sandstrom, Seattle
Brenda Teals, Moses Lake

RCW 2.64.030 provides for selection of alternate members. The alternates are Herbert A. Swanson, Div. I, Court of Appeals, Seattle; Robert E. Graham, Chelan County District Court; Robert J. Doran, Thurston County Superior Court, Olympia; attorneys Elizabeth J. Bracelin, Seattle and Wesley A. Nuxall, Colfax; and citizens Sheila Vortman, Seattle and Michael J. Jackson, Renton.

Activities

There were 102 complaints to the Commission in 1985 and 89 in 1984. Litigants dissatisfied with a judge's ruling continue to submit the largest percent of the allegations; these have been designated by the Commission as "erroneous judgment." The next most frequent allegation relates to a judge's demeanor in court, which has been characterized as "injudicious temperament." Not infrequently with the allegation of erroneous judgment is included bias or prejudice.

The Commission reviews all allegations. In courts of limited jurisdiction, the Commission has found it helpful to review taped proceedings. These often clarify the perceptions or misperceptions of complaints. Court personnel at all levels continue to provide courteous assistance to the Commission in confidential inquiry or at further investigative stages, though loyalty to a judge may place them in a difficult position. Attorneys may also be contacted in confidential inquiry. They have been most helpful and often compliment the Commission in being thorough. Some complaints have been initiated by lawyers, judges and court personnel. Judges have also consistently been courteous and cooperative with the Commission.

The Commission's overall goal is to maintain confidence and integrity in the judicial system. Thus, it believes any information it can share in an educational sense without breaching confidentiality will assist judges in avoiding misconduct. Each year the Commission participates in the Judicial Orientation program conducted by the Office of the State Court Administrator. In years past, the Commission has also been invited to participate at judges' conferences. The Commission uses these opportunities to try to increase awareness of possible unintentional or technical violation of the Code of Judicial Conduct.

Canon 7 applies to all lawyer candidates for judicial office, pursuant to DR 8-103. As a result of Attorney General Letter 1982 No. 27, the Commission assumes jurisdiction and pursues any misconduct which occurs in the election process if the lawyer is elected. The Public Disclosure Commission provides the Judicial Qualifications Commission with a list of candidates and a letter is sent to lawyer candidates informing them of Commission jurisdiction.

Since 1981, the Commission has concluded 21 matters with informal disposition of admonishment. This disposition requires the agreement

of the judge. These matters have included the following conduct:

—delay in entering a final decision (the most frequent cause)
—contact between a judge and attorney or party involved in litigation without both sides present
—improper campaign promises and misleading campaign practices
—improperly questioning and commenting to a defendant in court
—improper use of the judicial position, giving an appearance of impropriety
—serving as arbitrator
—engaging in business and financial activities creating a conflict of interest
—failure to comply with the public disclosure law in an election campaign

A recommendation for admonishment was filed with the Supreme Court wherein the Commission found improper political activity. While the Commission felt the judge was well intentioned in his conduct on behalf of his community, judges are prohibited from political activity unless the activity is specifically for improvement of the law, the legal system or the administration of justice. This was a close question; case law is lacking. This is most appropriately before the Supreme Court for a decision.

The Commission held its first public hearing in December 1985. The media guidelines set forth in Canon 3 of the Code of Judicial Conduct were followed during the proceedings. That hearing resulted in the Commission's first recommendation to the Supreme Court for removal of a judge. One other matter has been decided by the Supreme Court. *In re Buchanan*, 100 Wn.2d 396, 669 P.2d 1248 (1983).

Inquiries on how the Commission functions are welcome. To obtain our annual report, write to the Judicial Qualifications Commission, 12th and Jefferson Building, Suite 9, Olympia, WA 98504-7710, or telephone (206) 753-4585.□

An Unappealing Situation

I was recently the subject of a bitterly contested legal malpractice action and lost. It was an experience I hope never to repeat. But why I write is not so dramatic as the pathos of a malpractice case. It has to do with what we all think of as the "consent to settlement" clauses of our respective professional negligence policies.

I had always assumed, something no lawyer should ever do, that the "consent to settlement" provisions of the policy carried right on through the entire litigation process. According to my carrier (INA), however, the "consent to settlement" provisions of the policy did not apply to an affirmative appeal. If I wanted to appeal, which I desperately did and do, it was going to be on my nickel. Given a $4,000 to $5,000 record on appeal, it was prohibitive in the extreme.

How many of you out there understand that? No matter how substantial your appeal issues, the carrier (at least mine) is of the view that the wishes of the insured have nothing to do with that decision. Indeed, I am informed that some carriers have initiated appeals over the objection of their insureds.

The policy provided that the carrier will pay all sums "which the Insured shall become *legally obligated* to pay as damages . . . [defined as: "judgments and settlements"]." It then goes on to spell out the duty to defend, to investigate and negotiate as "it deems expedient," but

> "[t]he Company shall not make any *settlement* or *compromise* any *claim without the written consent of the Insured*."

The position of the carrier is and was that:

> "*[s]ettlement* or *compromise* requires the written consent of the Insured, however, in this case there is a *judgment* against you. Under your policy, the Company is obligated to pay the judgment on your behalf."

To this I countered that the obligation to pay which adheres to a "judgment" only attaches when the judgment becomes "final," meaning all appellate avenues have been exhausted or waived. Clearly, I argued, if there remain lawful avenues which can alter or avoid the "obligation to pay," there is no "obligation to pay" within the meaning of the policy; certainly that evades the consent provisions of the policy to any "settlement" or "compromise." I've "settled" too many cases after "judgment" and while on appeal to believe those words don't carry their same meaning post-trial court judgment unless clearly stated by the definitional or explicit terms of the policy.

The company then turned to an at-best ambiguous section of the policy which addressed appeals. It stated that the company is obligated to "pay all premiums on appeal bonds *required* in any such *defended* suit," which says to me that as bonds are required only of judgment debtors who affirmatively appeal, appellate remedies are amongst the duties of defense of the carrier. But the carrier preferred to emphasize what then followed, ". . . but *without any obligation* to apply for or furnish such bonds . . ." Now, what does that mean? First of all, it's clear that we're talking about bonds, not appeals. As an insurance carrier, it does not have a duty to provide the bond, an insurance instrument, in its own name. The company apparently maintains it goes further than that and that it does not have a duty to advance the appeal at its risk with or without the consent of the insured, a conclusion which simply does not follow to my way of thinking.

Which returns me now to the cost problem and financial exposure, had I elected to appeal over the objection of the carrier. It did agree to tender payment of the judgment into the registry of the Court and allow me—as it, of course, had to—appeal on my own. The carrier proposed to authorize the notice of appeal, preparation of a Civil Appeal Statement and other incidental costs, though obviously not a bond premium since it had tendered the judgment into the registry, for a period of 30 days while the carrier and I arbitrated the policy construction dispute. If their interpretation was sustained, I was on my own. If mine was sustained, they'd of course fund the whole appeal, plus the costs of trial on remand, if that's the way it played out. I said no. I said that for me to authorize an appeal, there had to be unequivocal acceptance of defense within the policy limits, barring both an arbitration or a declaratory judgment action on coverage. Why?

Any lawyer who is also not a fool knows fundamentally that his own judgment is at best an educated guess. The clearest of cases have been lost. And I have had my share. While I then believed and still believe that there is no good-faith-justification for the carrier's position, I could be wrong. And if I am wrong, where will I be 30 days from now? As appellant, I will have to pay for that $4,000-plus record. I don't have it. Independent counsel would cost me some multiple of that amount. I don't have that either. Granted, I could handle the appeal myself, but in the idiom of the old axiom, I don't have a fool for a client, at least yet.

It gets worse. As appellant, since I

can't pay for the record, I can imagine a motion for terms by respondent to include dismissal of the appeal for want of prosecution. Meanwhile, the assured cross appeal—plaintiff didn't like the judgment much more than I did—could be advancing and given an inadequate defense; his chance of prevailing is that much the better. Accordingly, I would be looking not only at having to fund the appeal if I directed filing of the Notice, but also at terms and a substantial increased verdict if it were remanded. It was a risk I was unable to accept.

This is a very substantial difference in exposure from a coverage question at the front end. Typically, if there is debate on coverage upon original tender of defense, the exposure of the insured is not increased by concurrently litigating both the underlying action and coverage, for coverage debate does not extend or expand the exposure to the claimant. Indeed, it may allow a very real benefit of a defense to the underlying case where none could be had while the coverage issue is being debated. As defendant, the insured has absolutely no affirmative elections to make. Not so here.

Conclusion

Just so everyone out there understands the scope of this problem, consider this. Defense counsel believed that there were meritorious appeal points that could result in a remand but that on remand we would not likely do better and could do worse. I strenuously disagreed, but will accept, for these purposes, that being a fair statement of the probabilities on appeal. However, the carrier's position was, and I quote:

> "[Counsel's] opinion, however, does not bear upon our policy decision regarding an appeal in this matter. Were his opinion totally opposite, our decision, based upon the policy, would still be the same."

Think about it!

Anonymous

L.E.A.R.N. + I.O.L.T.A. = Spokane Success

by **Jo Rosner,**
Attorney/Educator

Spokane's Bloomsday marathon was fierce competition, but law-related education still made a good run: With the help of a grant from IOLTA, Spokane area teachers were given a two-day workshop on May 2 and 3 to help them infuse law in their curricula.

The pilot program, designed as a prototype of future workshops throughout the state, was conducted by two L.E.A.R.N. (Law-related Education and Resource Network) board members: Dr. **Peter J. Hovenier,** director of the Washington Center for Law-related Education and chairman of Social Studies at Western Washington University, and **Jo Rosner,** attorney/educator and administrator of WSBA's MENTOR project.

For the twenty-three teachers who contributed their Bloomsday Saturday to the workshop, both Friday's and Saturday's programs offered outstanding presentations by Spokane judges, attorneys, law-enforcement officers and legislators.

After a keynote address from **Larry Strickland,** Social Studies Coordinator for the Office of the Superintendent of Public Instruction, the Friday morning program gave the teachers an overview of some of the sources of law—the Constitution, legislation and the courts. An afternoon panel, moderated by Spokane Superior Court Judge **George Shields,** utilized the expertise of a Spokane prosecutor, a public defender and two attorneys to explain how the court systems function.

The recently revised curriculum/resource book, *You and the Law,* helped emphasize practical application of LRE for the classroom. Prepared for secondary schools, the publication is a collaborate effort of the Office of the Superintendent of Public Instruction, the Washington Council on Crime and Delinquency, and the Washington State Bar Association. Friday's workshop showed the teachers how to use the book handouts, activities and teacher information on state civil and criminal law.

WSBA's president, **Patrick Comfort,** welcomed the teachers back to the workshop on Saturday morning. A full day of activities included a civil law presentation by Spokane attorney **Stephen Phillabaum** and one on criminal law by **Stephen Matthews;** an introduction to the State Bar's pamphlet program, which helps lay people understand various aspects of civil law; a law-enforcement viewpoint by Spokane's police chief, **Robert Panther;** and a mock trial based on the Seattle-King County Bar's criminal law materials for teachers.

A new 20-minute video tape featuring **Perry Mason** (a.k.a. Raymond Burr) helped instruct the mock-trial jurors. The tape was produced by the Office of Administrator for the Courts in Olympia and is supplied free to the state courts. It is an outstanding effort of that office and teaches students and adults about jury duty and court procedure.

Ron Miller, Social Studies Coordinator for Spokane School District #81 and **Elaine Porter,** Director of Staff Development for E.S.D. (Educational Service District) 101 were instrumental in making the workshop a success. But most important of all was the Legal Foundation of Washington, which saw value in such a workshop and made it possible with an IOLTA grant.□

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

Advance Notice of the Thirty-First Annual Estate Planning Seminar and Comprehensive Tort Reform Act Seminar

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

The Thirty-First Annual Estate Planning Seminar will be presented in Seattle on Thursday and Friday, October 23 and 24, 1986. This two-day event will be held at the Westin Hotel.

The Annual Estate Planning Seminar is jointly sponsored by the Estate Planning Council of Seattle and the Washington State Bar Association; it is one of the leading seminars of its type, with a nationally recognized reputation for excellence.

Bruce P. Flynn (Karr, Tuttle, Koch, Campbell, Mawer, Morrow & Sax, Seattle) is Chairperson for the 1986 program, assisted by Co-chairperson **Frederick G. Fogg** (Peoples Bank, Senior Trust Officer, Seattle). The distinguished faculty this year will include, among others, **Carlyn S. McCaffrey** (Weil, Gotshal & Manges, New York); **Malcolm A. Moore** (Davis Wright & Jones, Seattle); **James K. Treadwell** (Lasher & Johnson, Seattle); **Robert S. Mucklestone** (Perkins Coie, Seattle); **Jonathan G. Blattmachr** (Milbank, Tweed, Hadley & McCloy, New York); **Dan Hastings** (Carter, Ledyard & Milburn, New York); **Gerald A. Rein** (Lukins & Annis, P.S., Spokane); **Devitt D. Barnett** (Karr, Tuttle, Koch, Campbell, Mawer, Morrow & Sax, Seattle); **Shirley D. Peterson** (Steptoe & Johnson, Washington, D.C.); **Kenneth L. Schubert, Jr.** (Garvey, Schubert, Adams & Barer, Seattle); and **Eugene P. Daly, Jr.** (Gray, Plant, Mooty, Mooty & Bennett).

This program has been approved for 15.00 CLE credits by the Washington State Board of Continuing Legal Education. A seminar brochure containing further details about registration for the seminar will be mailed to members of the Bar Association this summer.

For further information about this program, you may contact Debbie Kirchhauser at the Washington State Bar Association, 505 Madison Street, Seattle, WA 98104 or telephone (206) 622-6021.

New Tort Reform Act

The Washington State Bar Association's Young Lawyers Section and Continuing Legal Education Committee are presenting a comprehensive seminar on the 1986 Tort Reform Act at four sites during August. The program will be presented in Tacoma on August 1, in Bellingham on August 8, in Spokane on August 15, and in Seattle on

August 22.

This informative half-day program will provide you with an overview of the act and its history, discuss the new limitations on actions and the new limit on non-economic damages, explain the accelerated physician-patient privilege, changes to joint and several liability, and duly note other significant sections of the Act.

Program Co-chairpersons for the program are **Keith S. Hopper** (Counsel, Washington Bankers Association, Seattle) and **Nancy L. Dykes** (Esposito, Brown, Tombari & George, Spokane). Faculty members (and the cities they will appear in) include: The Honorable **Gary F. Locke** (member of the Washington State House of Representatives and Attorney at Law, Seattle) at all four sites; **Elaine Houghton** (Anderson, Holman & Houghton, Tacoma) at the Seattle and Bellingham sites; **Jean M. Johnson** (Reed, McClure, Moceri, Thonn & Moriarty, P.S., Seattle) at the Tacoma and Spokane sites; **Daniel E. McKelvey, Jr.** (Paine, Hamblen, Coffin & Brooke, Spokane) at the Tacoma and Spokane sites; **Richard B. Kilpatrick** (Attorney at Law, Bellevue) at the Seattle and Bellingham sites; **Terence R. Whitten** (Lukins & Annis, Spokane) at the Tacoma and Spokane sites; **William F. "Frem" Nielsen** (Paine, Hamblen, Coffin & Brooke, Spokane) at the Seattle and Bellingham sites; **Hugh R. McGough** (Unigard Insurance Company, Seattle) at the Tacoma and Bellingham sites; and **Joel D. Cunningham** (Williams, Lanza, Kastner & Gibbs, Seattle) at the Seattle and Spokane sites.

The program is approved for 4.00 CLE credits by the Washington State Board of Continuing Legal Education. For further information about this seminar, please contact Colette Cao at the Washington State Bar Association or telephone (206) 622-6021.

Approved CLE Courses
WASHINGTON STATE BAR ASSOCIATION

Creditor-Debtor Section
Mid-Year Meeting and Seminars
12.00 credits **$165**

JUL 12, 13 & 14	Port Ludlow (The Resort At Port Ludlow)

Introduction to Business Insurance Law
7.00 credits **$95**

JUL 17	Spokane (Sheraton Hotel)
JUL 18	Seattle (Westin Hotel)

New Tort Reform Act
4.00 credits **$75**

AUG 1	Tacoma (Executive Inn)
AUG 8	Bellingham (Holiday Inn)
AUG 15	Spokane (Inn at the Park)
AUG 22	Seattle (Sheraton)

CLARK COUNTY REPORT

by **JOHN F. NICHOLS**

Due to the extensive remodeling of the Clark County Courthouse, relocation of people and places is rabid. One of the new features added to the courthouse is the now legendary "Clark County Ramp." The monolith, billed as the "gateway to the legal system," ushers citizens through the main entrance of the courthouse into the heart of Clark County jurisprudence, *i.e.* the snack bar. Users of "the ramp" must negotiate hairpin turns, jumps and straight-aways before leaping a chasm to Franklin Street. All thrill-seekers are required to sign releases and are warned not to drink rainwater before trying this stunt.

Those tourists trying to find the Assessor's Office and/or Treasurer's Office should look for double-wide modulars (mobile homes) in the parking lot north of the courthouse. Soon to be appearing in various parking lots are the Auditor's Office, Clerk's Office, and homeless attorneys. The latter are the result of the annual lawyer migration which rivals that of the Caribou and Arctic Tern in their relentless pursuit of summer forage and breeding grounds. Among these nomadic attorneys are: **Craig Schauermann, Mike Foister** and **Dayann Liebman,** all leaving **Darrell Lee**'s office for parts unknown. Moving into said void will be **Robert Mitchelson,** late of Poyfair and English. Joining an illustrious firm is **Dennis Lane**, late of Seattle, as a partner (Jr.); said firm's new name is "Nichols, Lane & Marshall." **Ken Hoffman** is now of counsel at Gallup, Duggan, Tubbs & Heurlin. **Gerry Miller** meanwhile picked up a couple of rookies in the form of **Edwin Storz** and **Dave Graef**. Yes, they are licensed in Oregon, in Washington and perform spinal adjustments.

With the opening of Expo '86 in Vancouver, many judicial dignitaries have passed through Clark County. The WSBA president, **Pat Comfort,** and Bar Governors sojourned to our Vancouver on May 12, 1986 for a gala luncheon complete with weiner-wraps, shepherd's pie and hoagies supplied by the school district. The Supreme Court followed on May 21, 1986, and toured the sights, and then heard legal arguments at Clark College. The "Supremes" were given "E" tickets which included entrance to the south main arches, elevator ride to the top, two rides on "the Ramp" and 1/64th interest in **Doug Whitlock**'s latest project, whatever it may be. While the court appeared a little disappointed with some of the local pavilions, the availability of motels and office space was a pleasant surprise.

GOVERNMENTAL LAWYERS ASSOCIATION OF WASHINGTON STATE

by **FRANK K. EDMONDSON**

What is the Governmental Lawyers Association? Membership in "Gov Law," as it is more commonly known, is open to attorneys employed by federal, state or local governmental units in Washington. Its purposes include providing a forum for sharing information, fostering improvement in governmental representation, and promoting a better public understanding of the role of governmental lawyers. Gov Law holds monthly luncheon and program meetings and sponsors CLE programs of particular interest to government lawyers. Past activities include candidate forums, programs on dealing with the media, reports from Governor's Office staff, and legislative updates.

New Officers: Governmental Lawyers recently elected new officers for the 1986-1987 term. **Mary Prevost** was elected President; **Frank Edmondson,** 1st Vice-President; **Aaron Owada,** 2nd Vice-President; **Robert Fallis,** Secretary; and **Mary Barrett,** Treasurer.

In addition, **Allen Miller** was elected to act as liaison with the Washington State Bar Association, and **Helen Hannigan** to chair the membership committee. **Shawn Newman** and **Marla Prudek** will develop the CLE programs and **Joel Green** and **Laura Eckert** will coordinate programs and social functions for the organization.

Activities: Governmental Lawyers offered four CLE programs in Olympia during the past year. All were well attended and contributed to the significant increase in membership last year. Both the program committee and the CLE committee are now developing a number of activities for the coming months. We are looking forward to a busy and interesting year.

LEWIS COUNTY

1986 officers of the Lewis County Bar Association are: President, **Steve Buzzard** of Centralia, Vice President, **Larry Fagerness** of Centralia.

Jerry Adair joined the prosecutor's office in the spring. Adair, besides being a lawyer, worked three years as a psychologist in Saskatchewan.

SEATTLE-KING REPORT

by **JAMES L. VARNELL**

Office Moves. **Bennet A. McConaughy, Hugh D. Spitzer** and **Thomas M. Walsh** have become partners of Roberts & Shefelman, and **Deborah S. Winter** and **Lizbeth A. Englund** have associated with the firm. **J. James Gallagher, Stephen M. Klein, Douglas A. Schafer, James L. Magee** and **Michael E. Kipling**

have joined Graham & Dunn as members of the firm. **John L. Bley, Mark C. Lewington, Londi K. Lindell, Noreen M. Nearn, Larry J. Smith** and **Wendy D. Welkom** are new associates. Stafford, Frey & Mertel has relocated its office to Watermark Tower. **Gordon R. Tobin** has opened his office in Bellevue. **P. Warren Marquardson, Marianne Schwartz O'Bara, Robert M. Kane, Jr.** and **Judd R. Marten** have become partners of, and **Pitman B. Potter** is an associate with, LeSourd & Patten. **Rex M. Walker** is now of counsel to Barokas & Martin. **Stanbery Foster, Jr.** is now of counsel to Tousley, Brain, Reinhardsen & Block, which has opened an office in Olympia. **John G. Bauer** and **Robert F. Baker** have become partners of Cable, Barrett, Langenbach & McInerney, and **Eric E. Johnson** and **Peter S. Holmes** are new associates. **Steve W. Berman** is the resident attorney in the Seattle office of Bernstein, Litowitz, Berger & Grossman.

Jay P. Derr and **Amy L. Kosterlitz** are now partners of Buck & Gordon. **James F. Biagi, Jr.** is an associate with Kargianis & Austin. **Margery Hite** and **Michael McGrorey** have joined Hight & Green as associates. Franco, Asia, Bensussen & Coe announces the following additions: **David L. Friend** and **Michael Jay Brown** as partners; **Bruce P. Kriegman** as an associate; and **William Y. Mimbu** as of counsel. **Fred M. Zeder** has joined the newly-named firm of Peterson, Bracelin, Young, Putra, Fletcher & Zeder. Former U of W Dean **Richard Roddis** has been elected president of Unigard Security Insurance Company and will remain chairman of the board and chief executive officer. **Peter T. Jenkins** has relocated his office to the Fourth and Blanchard Building. Halverson and Strong announces that **John W. Kydd** is now a partner.

CLE: Statutory Interpretation. RCW 26.18.030(2) specifically states that it applies to any dependent child "whether born before or after" June 7, 1984. Does it also apply to children born on that date?

Honors. **Llew Pritchard** has been elected to the ABA Board of Governors. **Jon Schorr** was named Boss of the Year by the Greater Seattle Secretaries Association. (Obviously, the voters were unaware of **Robert Pirtle**'s candidacy for that honor.) **Jean Crown** was named Secretary of

the Year.

Reader's Digest. Our panel of literary critics has determined that certain excerpts from the following cases deserve recognition for comic relief in the otherwise sometimes dull subject of federal court removal-remand:

1. Judge Roney's opening paragraph in *Jerguson v. Blue Dot, Inc.*, 659 F.2d 31, at 32 (5th Cir. 1981), which is replete with golfing metaphors; and

2. The opening paragraph of *Lewis v. Time, Inc.*, 83 F.R.D. 455, at 457 (E.D.Cal. 1979), in which Judge Karlton quotes Carl Sandburg's infamous comment about dead lawyers.

The worst attempt at humor goes to Judge Goldberg for his concluding paragraph in *B, Inc. v. Miller Brewing Co.*, 663 F.2d 545, at 555 (5th Cir. 1981), which states in part:

While we express no opinion as to the merits of their trouble brewing in Dallas, we find that this case of Miller's must come to a head in the state courts.

SKAGIT COUNTY REPORT

by **WM. H. NIELSEN**

The Skagit County Law Day ceremony was a smashing success under the able chairmanship of **Pat Hayden**. Supreme Court Justice **Keith Callow** was gracious enough to agree to be the main speaker for the event. Superior Court Judge **Harry A. Follman** served as the master of ceremonies. A large contingent of lawyers, legal secretaries and members of the public attended the luncheon. A nice job was done by all in charge, including President **Pat McMullen**, who faded into the background.

Congratulations are also in order for **Brock Stiles**, a recent graduate of Willamette, for being sworn in as a member of the Bar. He was introduced to the court by his father, **Wm. A. Stiles, Jr.**, and will join the firm of Stiles and Stiles (and Stiles?). Bill, the elder, is talking about imminent retirement.

Welcome back to **Joi Sayler**, who spent a few months in the abyss of the Seattle Public Defender's Office. Joi's new duties as assistant cities attorney and special deputy prosecutor deal mainly with DWI prosecution.

Congratulations are clearly in order for **Warren Gilbert** of Gilbert and Meyer for his recent appointment as secretary of the association. Warren has displayed an extra-special ability to put on periodic get-togethers and write the infrequent news to the membership letter. He is being actively recruited by guess who to write this column in the coming year.

WALLA WALLA COUNTY

Gary Ponti of Walla Walla has been elected president of the Washington Association of Child Abuse Councils. The association comprises county and tribal councils throughout the state.

DISCIPLINE

Disbarred

Yakima attorney **Daniel A. Masters** (admitted in 1980) has been ordered disbarred by the Supreme Court effective April 25, 1986 based upon a hearing officer's findings that Masters failed to account for funds received by him on behalf of minor children and failed to deliver those funds to their guardian when requested; failed to proceed promptly to file a bankruptcy as requested by a client; failed to proceed in a timely fashion with another bankruptcy proceeding; approved a decree of dissolution of marriage without his client's knowledge or consent, and failed to advise his client of the entry of the decree; commingled earned fees with client funds in his trust account; failed to cooperate with the investigation of disciplinary complaints; twice failed to appear for depositions for which he had been properly subpoenaed; failed to file answers to the Formal Complaint, Amendment to Formal Complaint, and Amended Formal Complaint; and demonstrated that he was unfit to practice law.

Bellingham attorney **John D. Pappas** (admitted in 1974) was ordered disbarred by the Supreme Court on April 25, 1986, based upon a hearing officer's findings that Pappas's conduct in knowingly causing a house to burn and then applying for and receiving $43,000.00 in insurance proceeds involved moral turpitude, dishonesty, and corruption, and adversely reflected upon his fitness to practice law. In addition, the hearing officer found that Pappas had failed to maintain complete records of client trust accounts; that Pappas had failed to file a trust account declaration as required by RLD 13.3; and that this record, together with his previous Censure, demonstrated that Pappas was unfit to practice.

Suspended

Vancouver attorney **Irving L. Dane** (admitted in 1976) has been ordered suspended for 30 days by the Supreme Court effective April 25, 1986, based upon a hearing officer's findings that in representing a client in a criminal traffic proceeding, Dane failed to appear at the time of arraignment or make other arrangements on behalf of the client, and failed to act to have the bail forfeiture set aside and have a trial date set despite instructions from his client to do so; and that Dane failed to prosecute a personal injury claim on behalf of a client in a timely fashion. In addition, Dane was ordered by the Disciplinary Board to receive a Reprimand for his failure to respond promptly to the investigation of a disciplinary complaint and for failure to appear for a deposition for which he had been subpoenaed. The Board also ordered that Dane receive a Censure for failure to file an answer to the Amended Formal Complaint or the Amendment to Formal Complaint until the date of the hearing into those complaints.

Seattle attorney **Richard L. Hildebrand** (admitted in 1979) has been suspended from the practice of law for six months, pursuant to a stipulation for discipline, by order of the Supreme Court entered April 10, 1986. The disciplinary Suspension is to commence only upon termination of Hildebrand's prior CLE suspension. The discipline was based on Hildebrand's conduct with respect to several clients. On behalf of two clients he filed employment discrimination cases, both of which were ultimately dismissed by the Superior Court for want of prosecution. On behalf of one client he commenced a dissolution case which he never completed. During pendency of their cases, Hildebrand did not notify the clients of his whereabouts or the status of their cases. Prior to reinstatement Hildebrand must meet a number of conditions, including restitution of fees in the amount of $995.00 to the clients. He will additionally be on probation for one year after reinstatement.

IN MEMORIAM

Maurice Kadish died in Seattle May 12, 1986 at the age of 75. As a child, the Glasgow, Scotland native moved from Calgary, Alberta to Seattle, where his parents ran the first cigar store at Yesler and First Avenues. Graduated from the University of Washington with an A.B. in 1931 and a LL.B. in 1932, Kadish was admitted to the Washington Bar in 1933. A prominent criminal trial attorney, he went on to handle corporate and international probate matters involving Washington decedents who had left money to beneficiaries behind the Iron Curtain. Kadish was a King County Superior Court judge pro tem for many years. Associates of his Smith Tower office had included **Anthony Wartnik** and **John Darrah** (now King County Superior Court judges) and **Stephen Schaefer** (now Seattle Municipal Court judge). In June 1984, Kadish received an honorary Doctor of Civil Law degree from City University, which he had helped to establish and where he had taught paralegals. City University is establishing a scholarship in his name. Kadish was a relative of **Solie Ringold**, chief presiding judge of the Court of Appeals.

"Courageous Advocacy" Award Nominees Sought

The American College of Trial Lawyers is soliciting nominations for its 1986 Courageous Advocacy Awards, which recognize lawyers for "outstanding efforts on behalf of a controversial cause or client where the representation occurs in face of actual or possible disfavor or public unpopularity or adverse treatment by the media of the lawyer, client or cause."

Nominees need not be members of the college. Nominations may be submitted to Dewitt Williams, 1400 Washington Bldg., Seattle, WA 98111-0040.

Robert C. Mussehl Appointed to ABA Chair of Ad Hoc Committee on Assembly

Robert C. Mussehl, Seattle attorney, has been appointed by **J. Michael McWilliams**, Chairman-Elect of the House of Delegates of the American Bar Association, to chair the Ad Hoc Committee on the Assembly for 1986-1987. Mussehl has been a member of the Standing Committee on Assembly Resolutions for six years and a member of the ABA House of Delegates since 1979.

Group And Prepaid Legal Services

Are you familiar with prepaid legal services plans and how they operate? On September 18, attorneys and interested parties around the state will have the chance to learn more about prepaid legal services—a service that was estimated to cover over eight million people as of early 1985.

The two proffered events focus on prepaid legal services. The first is designed primarily for attorneys: the Washington State Bar Association's CLE Committee and Group and Prepaid Legal Services Committee will co-sponsor a half-day morning CLE seminar, "An Introduction to Group and Prepaid Legal Services Plans and How They Could Expand Your Client Base." In the afternoon, the Group and Prepaid Legal Services Committee will sponsor a symposium designed to appeal primarily to representatives of credit unions, major employers, banks, and labor unions. Both events will be presented in downtown Seattle at the Westin Hotel, and registration for each program will be on a first-come, first-served limited enrollment basis.

The CLE seminar, offered from 8:30 a.m. to 12:30 p.m., features a faculty that includes **Alec M. Schwartz**, Executive Director of the American Prepaid Legal Services Institute (an affiliate of the American Bar Association). This program has been approved for 4.0 CLE credits by the Washington State Board of Continuing Legal Education. Tuition for the seminar is $65.

The CLE program will focus on matters of concern to attorneys such as "What Are Prepaid Group Legal Services Plans and How Do They Work?" "Access Plans vs. Comprehensive Plans," "How Participation in a Prepaid Legal Services Plan Could Expand Your Client Base," and the "Marketing of Group and

RESOLUTIONS to be Considered at the 1986 Annual Business Meeting of the Washington State Bar Association

According to the by-laws of the Washington State Bar Association, resolutions and reports received by the Resolutions Committee at least 60 days prior to the Annual Business Meeting are to be published in the *Washington State Bar News* prior to such Annual Business Meeting.

The Resolutions Committee earnestly solicits written responses and comments from members of the Association regarding proposed resolutions and requests that any such responses and comments be submitted to the Resolutions Committee, c/o the Washington State Bar Association, 505 Madison, Seattle, Washington 98104. The function and purpose of the Resolutions Committee is to report to the membership of the Association upon each resolution, giving its recommendation, proposed amendments thereto, or comments thereon.

As announced in the last *Washington State Bar News*, the Resolutions Committee will hold a public hearing prior to the Annual Business Meeting. The hearing is scheduled for 10 A.M. on September 10 at the offices of the Bar Association, at the above address. Upon completion of business that day, or at the Chairperson's discretion, the hearing will be adjourned to reconvene on September 18 at 3 P.M. at the Westin Hotel. The advance public hearing session on September 10 has been scheduled in an effort to allow more time to those presenting views and in an effort to give the members of the Committee more time to consider the resolutions and to request any additional information which might be helpful to the Committee in making its recommendations on the resolutions to the membership. Proponents and opponents of resolutions are urged to attend the September 10 hearing if at all possible, and, if not, to present their views prior to that time in concise written form for consideration by the Committee at that hearing. Presence at or absence from the September 10 hearing will not affect any right under the by-laws to present views when the public hearing reconvenes on September 18. At the reconvened hearing, preference in presenting views will be given to those with viewpoints which were not expressed at the September 10 hearing. Proponents and opponents will be given a reasonable opportunity to be heard at the advance session and at the reconvened hearing.

At the conclusion of discussion of each resolution at the reconvened hearing, the Resolutions Committee will recommend approval or rejection of any such resolutions, with amendments if deemed appropriate.

A copy of the by-laws regarding time deadlines and other information about submitted resolutions may be obtained from the Washington State Bar Association Office.

Members of the Resolutions Committee are John Aaby, William L. Dowell, Kenneth ● Eikenberry, Gary D. Gayton, Jack A. Hawkins, Lembhard Howell, John F. Kruger, Jonathan C. K. Lee, Frederick L. Noland, Gregory H. Pratt, Scott L. Simpson, Phillip L. Thom, Richard L. Wiehl and Thomas D. Loftus, Chairperson.

NOTICES

NOTICES ADVERTISING

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

Classified: Members—$25 for 25 words, each add'l 25¢. Non-members—$35 for 25 words, each add'l 75¢. Box number service—$6. *Advance payment required.*

Deadline 25th of each month for second issue following. No cancellations after deadline.

Submit double-spaced typed copy (no phone orders) to Cherlyn Davis, *Bar News*, 505 Madison Street, Seattle, WA 98104.

Prepaid Legal Services Plans."

The second event is sponsored by the Group and Prepaid Legal Services Committee. It is an afternoon *symposium* targeted at representatives from banks, credit unions, labor unions, and major employers who are interested in learning more about prepaid legal services and how they might be of interest to their customers or employees. The symposium is designed to familiarize attendees with such issues as understanding the concept of prepaid legal services plans, considerations for the small-, medium- and large-sized employer, how prepaid plans can benefit subscribers, and concepts to keep in mind when selecting or developing a plan.

PROFESSIONAL

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

Antonio Salazar
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Seattle, WA 98104
Telephone (206) 624-6414

Schwabe, Williamson, Wyatt, Moore & Roberts
and
Lenihan, McAteer, Hanken & Borgersen
merged their practices on July 1, 1986.

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