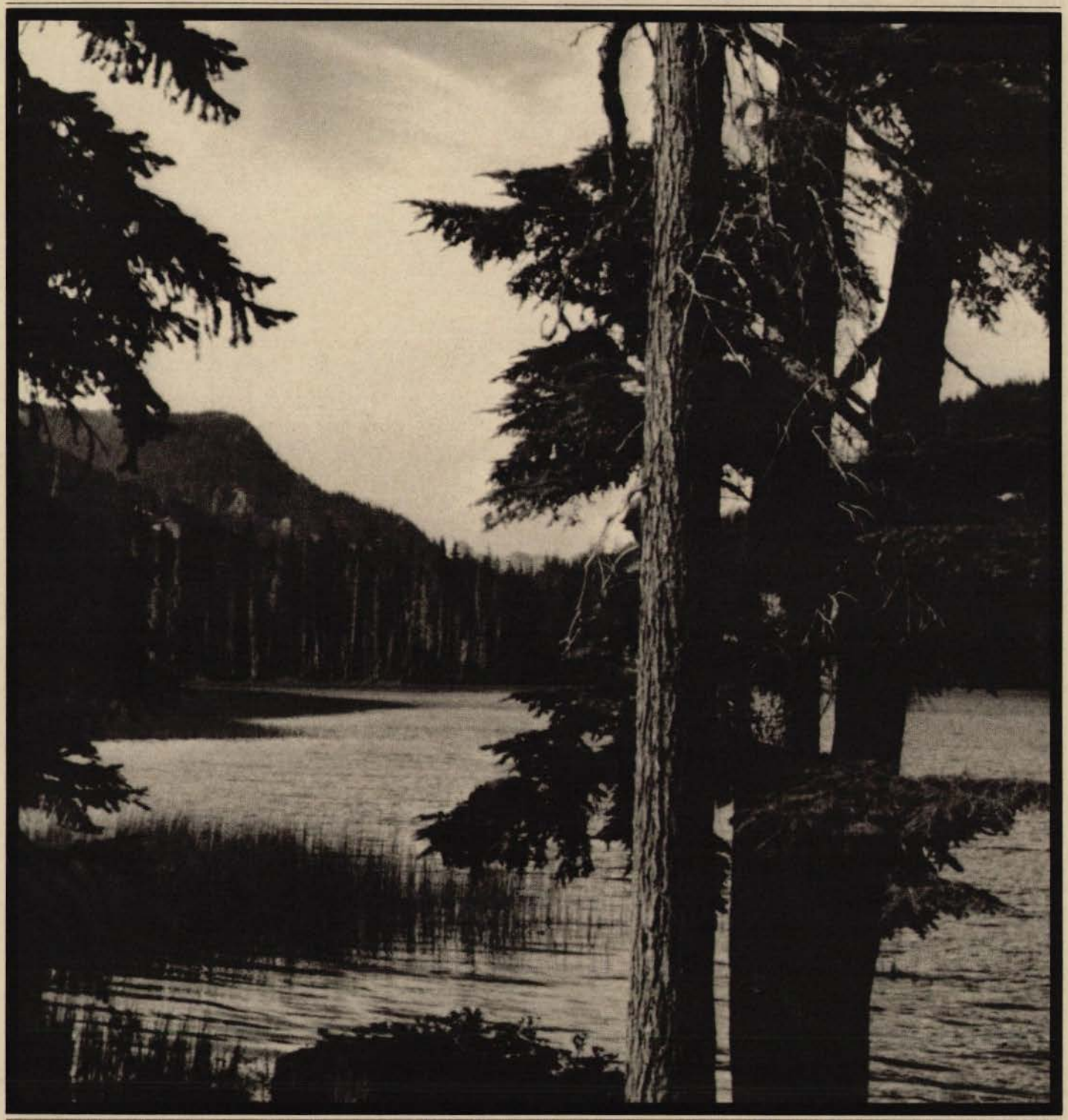
Washington State Bar News
Vol. 40, No. 8, August 1986



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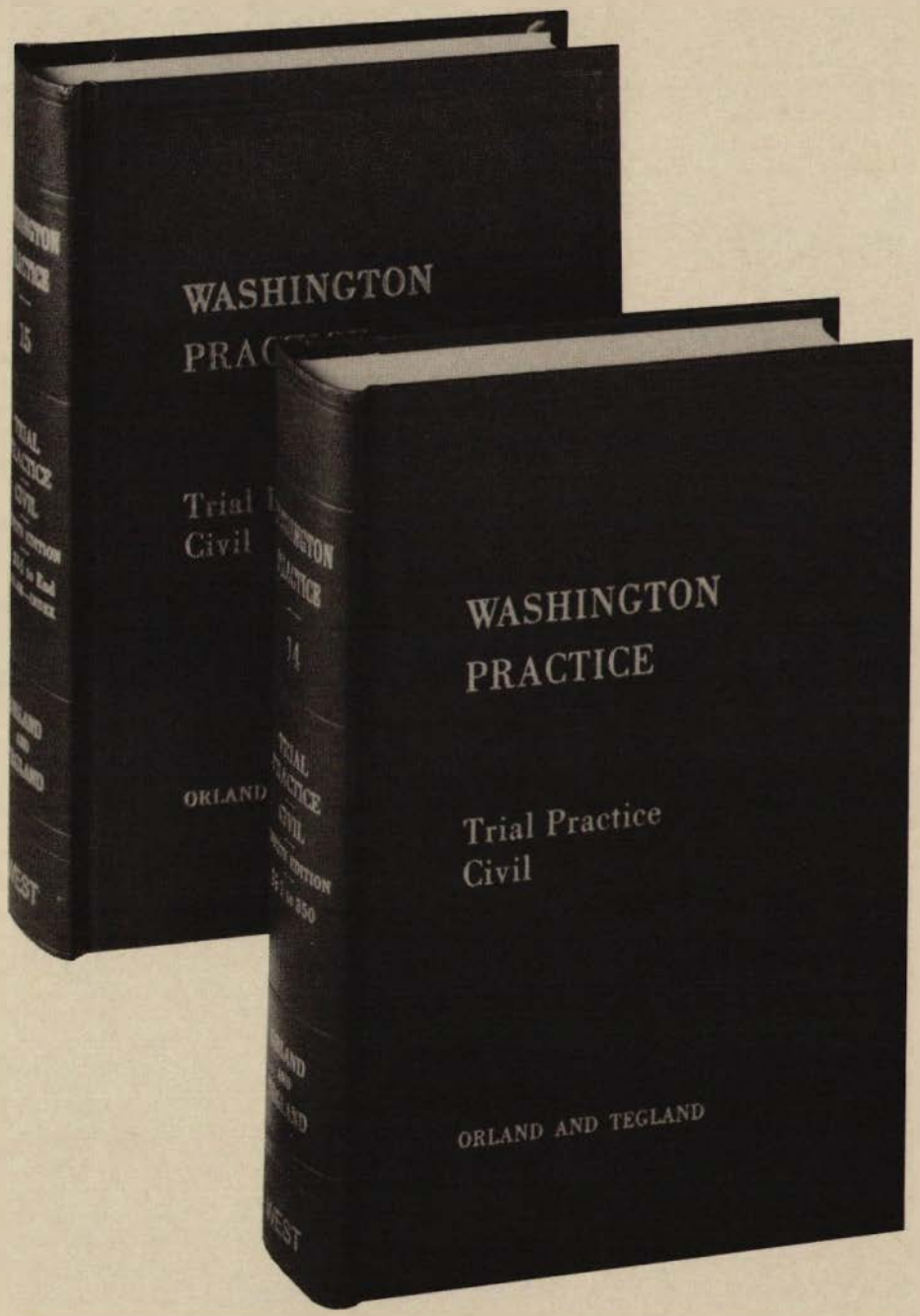

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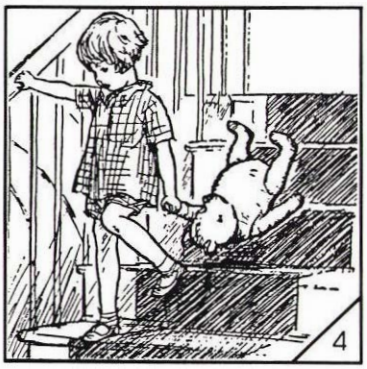
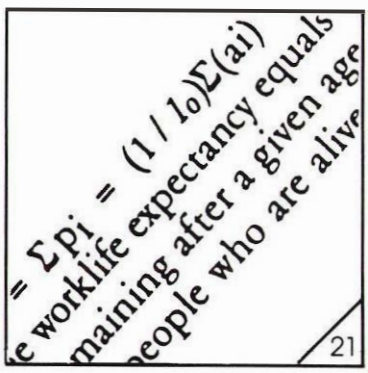
Vol. 40, No. 8, August 1986

FEATURES





Hearings on Professional Liability Insurance:
See page 11.

ART CREDITS

Cover: Leech Lake at White Pass. Photo by John Redenbaugh, Seattle attorney.

IN THE NEWS

DEPARTMENTS

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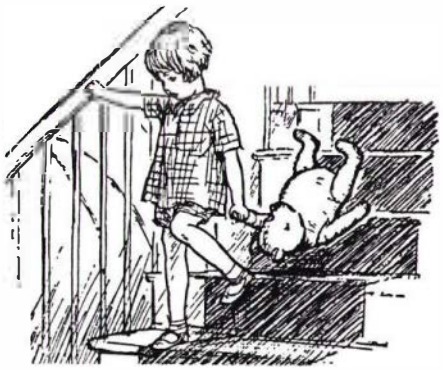
INTO THE BOG



In Which We are introduced to the BOG and Some Groupies and the Stories Begin

by **Jay V. White**

Here is the BOG, coming downstairs now, bump, bump, bump, on the back of its head, behind Christopher Robin. This is, as far as it knows, the only way of coming downstairs, but sometimes it feels that there really is another way, if only it could stop bumping for a moment and think of it. And then it feels that perhaps there isn't. Anyhow, here it is at the bottom, and ready to be introduced to you. The Board of Governors.

This is a pilot column. I do not expect to be its only author, nor do I expect this to be its only appearance—though, but for the grace of Grayson, it may be. It is an invitation to past, present and future members of the Board of Governors, and perhaps occasional Groupies, to step from the shadows of The Board's Work and The President's Corner to share a snapshot or two from their experience, silly or serious.

A snapshot rarely can do more than suggest a moment. *But there is only this moment.* At the instant you take the picture, you think you have the perfect picture. But then you develop it and show it to some reluctant observer, only to find yourself offering the thousand words you are certain it is worth. Finally, you exclaim, "You had to be there!"

But still you snap more pictures and try to get someone's attention long enough to show them. And so it is with this column. In the immortal words of Joan Rivers, can we talk? Bump, bump, bump.

BOG. What an unhappy acronym. In my dictionary, I found a definition of "bog" as "wet, spongy ground, with soil composed of decayed vegetable matter." Might be a reference to a Bogbrain, I mused, reading further, assuming it could get no worse, but it did: "Bog" is British slang meaning "privy" or "outhouse." Being a lawyer, I disregarded "outhouse" as clearly inapposite. But "privy" rang a bell. Now there was something that sounded legal! I remembered reading in law school about people in privies, usually with one another.

Sure enough. I turned from Webster to Black, where "privy" is defined as a "person who is in privity with another. One who is a partaker or has any part or interest in any action, matter, or thing." And the very next definition is "privy council," meaning the "principal council of the sovereign." This is more like it, I thought. No more decayed vegetable matter. Goodbye outhouse! This BOG was an apt acronym after all.

But then my eyes caught another definition of "privy" offered by Black (*Et tu Blacky?*) complete with Kentucky citation: "Also, a water-closet. *Louisville & N.R. Co. v. Commonwealth,* 175 Ky. 282, 194 S.W. 313, 314." Had I come full circle? Could decayed vegetable matter be far behind? I ended my research abruptly, comforted only by the conclusion that Kentucky is a long way from England if you don't push British slang too far. Thus, we are introduced to the BOG. Bump, bump, bump.

Now I recall I promised to introduce Some Groupies. Another snapshot. Anyone who regularly encounters the BOG is saddled by this irreverent term. Can we talk? I am a former Groupie, for the editor of the *Bar News* is one. Others include ("but are not limited to") representatives from the judiciary, Washington Women Lawyers, Governmental Lawyers, Prosecuting Attorneys, Public Defenders, the Seattle-King County Bar Association and, on occasion, other county bar associations. Each month they forsake their otherwise exemplary lives to travel the wet, spongy ground. They offer valuable guideposts along the way and they are part of the stories to be told.

There are many more BOG snapshots, and as the BOG awaits three newly-elected privies—Mike Carlson of Everett, Ed Shea of Pasco and Julie Weston of King County—I can offer a preview of what awaits them.

As they go deeper into the BOG, they will find a world marked by shades of gray where the spongy ground can prove to be quicksand. We are just beginning the stories here, but they may encounter the taxing turf of lawyer admissions, discipline, disbarment and reinstatement; the looming landscape of a professional liability fund, whether it should be mandatory or even be; public interest project funding; committee appointments; proposed legislation and court rules; ethics, skills training, and competency; institutional advertising; judicial appointments; Continuing Legal Education; the Client Security Fund; IOLTA; the resolutions and referendum process; assistance to impaired lawyers; law-related education; *amicus curiae* briefs; and where do all the Bar dues go. Bump, bump, bump.

Throughout their journey into the BOG, its happily temporary privies must represent those who put them there, but remember that those who cannot decide, represent no one; that those who cannot learn from their mistakes, hear no one; that those who cannot follow, lead no one; and that those who find another way, do so only if they stop bumping long enough and think of it, even though they feel that perhaps there isn't.

Seattle attorney **Jay V. White** *is a sole practitioner in Ballard; a former Editor of the* Bar News *(1976-80); and a member of the Board of Governors, representing the lawyers of the First Congressional District.*

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

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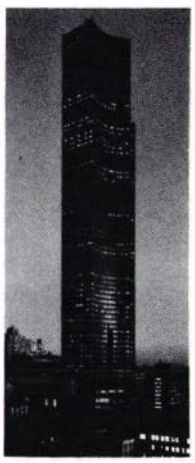

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September CLE

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

During September, the Washington State Bar Association is presenting four CLE seminars for your educational benefit.

One of these, Creditor-Debtor Practice Skills Training, a revised and updated intensive skills training course, will be presented on September 12 and 13 at the Battelle Institute (Seattle Campus). This popular course, limited to 110 registrants on a first-come, first-served basis, features six outstanding faculty members. **Dillon E. Jackson** (Hatch & Leslie, Seattle), Course Chairman, has assembled a faculty that includes **Sheena R. Aebig** (Shulkin, Hutton & Bucknell, P.S., Seattle), **Charles R. Ekberg** (Lane Powell Moss & Miller, Seattle), **Jack J. Cullen** (Hatch & Leslie), **Martin E. Snodgrass** (Jacobson & Snodgrass, Bellevue), and **Charles E. Watts** (Van Valin & Watts, P.S., Bellevue). The program will focus on various aspects of bankruptcy law and will utilize lectures, demonstrations, small group discussions and problem-solving sessions as part of the educational process.

Also on the September agenda is a program entitled "Where Will Your Future Clients Come From? An Introduction to Prepaid and Group Legal Services Plans and How They Could Expand Your Client Base." It will be presented on September 18 at the Westin Hotel in Seattle from 8:30 am. to 12:45 p.m. The program is designed to familiarize you with the concept of prepaid and group legal services. Speakers will explain what prepaid legal services plans are and how they work and how participation in a prepaid legal services plan could expand your client base. A videotape dealing with legal advertising, produced by the American Bar Association's Commission on Advertising, and that features **Howard Cosell** as narrator, will also be shown as part of the program. The seminar features, among others, two nationally recognized leaders in the field of prepaid legal services: **Alec M. Schwartz,** Executive Director of the American Prepaid Legal Services Institute, and **Stuart J. Baron,** President of the Board of Directors for the American Prepaid Legal Services Institute. Other faculty members include: **Scott J. Horenstein,** Program Chairperson (Horenstein & Horenstein, P.S., Vancouver); **F.G. Enslow** (Griffin & Enslow, P.S., Tacoma); **Robert D. Welden** (WSBA Staff Attorney, Seattle); **C. Mark** Casey (Crumb & Casey, P.S., Spokane); and **Don E. Roberts** (Senior Associate, C.W.R., Inc., Seattle).

"New Developments and Strategies for Child Abuse Cases: Criminal and Family Law Perspectives" will be presented on September 12 at the Westin Hotel. The seminar addresses legal and tactical problems which arise in the context of an accusation of child abuse. A special emphasis will be placed on the interrelationship between family and criminal law concerns in such cases. In addition to general background topics, the seminar includes presentations dealing with special problems which arise in child abuse cases including cross-examination techniques for young children, the Child Sexual Abuse Hearsay statute, exploring possible interview bias, and the use of anatomically "correct" dolls. The outstanding faculty includes: **Michael A. Frost** (Program Co-Chairperson); Professor **John A. Strait; Mary H. Wechsler; John R. Muenster; Lee Ann Miller; Rebecca J. Roe; Marsha T. Macy; Richard A. Hansen; Steven J. Fields; John G. Burchard, Jr.; Kathleen Garvin; Murray B. Guterson; John Henry Browne; T.F. Naumann,** Ph.D.; and **J. Adam Moore.**

"More Effective Family Law Practice: Adoption in Washington—Tax Pitfalls in Family Law Practice—Ex Parte Practice—Modern Practice and Practical Forms—View From the Bench" will be presented in three cities. The first presentation will be on September 12 in Spokane at the Ramada Inn; the second presentation will be on September 18 at the Executive Inn in Tacoma; the final presentation will be on September 26 at the Greenwood Inn in Bellevue. The program, as denoted by the title, will focus on several vital areas of family law practice that need to be addressed from time to time. The faculty members (and the sites at which each will appear) are: Hon. **Stephen M. Gaddis** (at Bellevue); **Martin L. Salina** (at Spokane); **James G. Leach** (at Spokane, Tacoma and Bellevue); **Robert B. Taub** (at Tacoma); **Marywave Van Deren** (at Tacoma); **Stephanie M. Searing** (at Bellevue); Hon. **Rosanne Buckner** (at Tacoma); Hon. **Joseph F. Valente** (at Spokane).

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SEP 18 Seattle (Westin)

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4.00 credits **$65**
SEP 12 Spokane (Ramada Inn)
SEP 18 Tacoma (Executive Inn)
SEP 26 Bellevue (Greenwood Inn)

In Favor of Bar Association Malpractice Insurance

Editor:

I appreciated William Gates' article, "Lawyers' Malpractice Insurance: What Shall We Do?" *(Bar News,* May 1986), which updated us on the WSBA Malpractice Insurance Task Force.

I, for one, favor the Bar Association taking the malpractice insurance business away from the insurance companies.

Mr. Gates in his article stated . . . "the carriers continue to assert that they are losing money." According to *The Nation* (May 17, 1986), "the General Accounting Office says the liability insurance industry made $75 billion profit in the past decade and paid no income tax. And (their) stock values went up 50% (in 1985). And net worth of liability companies jumped about $7 billion."

My opinion is the insurance companies obfuscate and conceal the true facts on the industry's earnings, and daycare centers, doctors, lawyers, cities and all of us pay the price.

CYNTHIA B. WHITAKER
Seattle

Frustration Update

Editor:

Thank you for the thought provoking column, "Age Discrimination is Alive and Well in the Legal Profession" by an unnamed "frustrated middle-aged lawyer," in your June 1986 issue.

Just in case there are any frustrated *"old-aged"* lawyers who felt *truly* frustrated upon reading in the column that Washington Age Discrimination Law only protected persons between the ages 40-65 and federal law only those between ages 40-70, a correction is in order. Since October 1983, both the applicable Washington and federal statutes have been amended to protect persons between the ages of 40-70 and 40-75 years, respectively.

I hope this letter doesn't add to the middle-aged author's frustration.

RICHARD J. WOTIPKA
Seattle

Fundamentally Unfair

Editor:

The Washington State Administrative Law Judges Association opposes any requirement that attorneys who are full-time employees of federal, state and local governments help fund a malpractice insurance program for the private practitioner. The government lawyer is not faced with the risk and exposure that confront the private practitioner and would not benefit from a malpractice insurance program. It is fundamentally unfair to require all attorneys to pay for such a program. In addition, the private practitioner whose risks are greatest may also receive compensation commensurate with those risks.

RUPERTA ALEXIS-CALDWELL,
President,
Washington State Administrative
Law Judges Association

Gov Law Speaks Out

Editor:

The Governmental Lawyers Association Executive Board, on behalf of its 180 members, wishes to express concern regarding the mandatory malpractice insurance program proposed by the Bar Task Force. The program will be finalized in late August for a Board of Governors vote in mid-September 1986.

Details of this far-reaching program, which affects the entire Bar membership, are now being hastily determined in order for the current Board of Governors to vote on the program before new Board members are seated. In May 1986, a divided Board approved establishment of a new Task Force to finalize program plans for the September vote.

The proposed program is being finalized without adequate information. The program contains provisions contrary to recommendations of the consultants hired by the Bar Association to study the malpractice insurance issue. In addition, the Board and the Task Force have failed to clearly articulate the purpose or to demonstrate the need for such a program. The proposed program provides limited coverage for private sector attorneys at a high cost to attorneys in both the private and public sectors.

We urge all Washington State Bar Association members to carefully review this proposed program from which an estimated 60% of you will seek exemption, yet still be required to subsidize the insurance program for the 40% who do participate. Contact your representative on the Board of Governors now before the final vote in September.

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Reducing Transactional Costs

Editor:

I have noted with interest that over the past several months there have been several letters to the Editor concerning the strengthening of CR 68 (offer of judgment). In general, advocates of a rule change propose that either a plaintiff or defendant may make an offer of judgment and if the offer is not accepted and the offeree does not at trial improve its position from the offer made, then the offeror is to receive reasonable costs and attorneys' fees incurred after making the offer.

I fully agree that steps must be taken to reduce the transactional costs that now unnecessarily burden civil litigants. For this reason, during the 1986 legislative session I proposed in the Tort Reform Act (SB 4630) that the "offer of settle-

ment statute," RCW 4.84.250.300, be expanded to cover all cases, regardless of the amount of damages, and to allow the prevailing party to recover costs and attorneys' fees plus interest.

Proponents of the Tort Reform Act chose to ignore this proposal, along with the other proposals aimed at reducing transactional costs in the civil justice system. It is my firm belief that civil justice reform cannot be accomplished by ignoring these critical issues.

During this legislative interim, the Senate Judiciary Committee will continue its inquiry into the issue of expanding the offer of settlement statute. Additionally, the Committee will be studying: mandatory discovery conferences (statutorily expanding the concept expressed in CR 26(f)), exorbitant witness fees, prejudgment interest, federal voir dire, and small claims court jurisdiction.

The Committee wholeheartedly solicits the input of members of the Washington State Bar Association on these issues and welcomes any proposals you may have to reduce other transactional costs in our court system.

PHIL TALMADGE, Chair,
Senate Judiciary Committee

Precipitous Decision

Editor:

Although no report has been given to members in the *Bar News*, the Board of Governors has voted to refuse consideration, for an indefinite period, of any resolutions submitted by the World Peace Through Law Section. This action of the Board frustrates the WPTL Section's primary means of fulfilling its purpose—to advance the rule of law throughout the world.

In developing its resolutions on important international law matters, the WPTL Section does not presume to speak on behalf of the WSBA membership as a whole. Even so, the Section has been required in the past to submit its resolutions to the Board of Governors for review. The Board's recent action now forecloses the only tool available to the WPTL Section for publishing the results of its deliberations.

It is proper for concerned members of our Association to assume leadership positions in promoting accords aimed at reducing world tensions. The American Bar Association and most state bar associations have established counterparts to our Washington World Peace Through Law Section. The Board of Governors' precipitous decision forecloses, at least temporarily, this invaluable contribution to society. The matter has been referred for study to a task force on Bar Association Resolutions and Referendums. Let us hope that the study is completed expeditiously and that the work of the World Peace Through Law Section is permitted to continue without unwarranted interference.

STEVEN F. BRAULT
Seattle

I Know You're Not "Dear Abby," But . . .

Editor:

My husband is a deputy prosecutor. Recently he stayed home from work for two days while he was in the middle of a trial.

On the first day, when I came home from my job and found him home, I was surprised (I usually get home about 3 o'clock in the afternoon) and I asked him if he was sick. He laughed and said that he wasn't but that he had called in sick to stall his trial. A witness he needed was on vacation and he didn't want to close his case until he could put the witness on the stand.

We had quite an argument. He's always complaining about people who lie in court and I said that he was doing the same thing. He said that he wasn't because he wouldn't actually lie in court. I said that it was even worse because he is a lawyer.

I read your magazine every month. I know you aren't "Dear Abby" but I don't know who else to ask because I am afraid of getting my husband in trouble if I am right.

I've never seen anything like this in your "Discipline" column, but I think my husband could and should get in trouble with the Bar for something like this and, if I am right, I don't want him doing it again. I don't want to see his name in that column.

Who is right?

A Black Hat?

Editor:

Our office has had its first go around with the new real estate forfeiture law. I think it will be our last. I can't believe the damage that it has done to sellers under the old real estate contract. If anyone has designed a technique to remove real estate contracts as useful vehicles, that did it. The chance for client anger is absolute, and it really shafts Grandpa, who sold the family place on an "A 1964" contract before the law was contemplated. It certainly puts a black hat on any seller who uses a real estate contract. We should have left well enough alone.

I would entertain working with any group that could be formed to challenge the law in any legitimate way.

J.R. SHERRARD
Bainbridge Island

The 50-year Perspective

Editor:

I enjoyed very much the editor's page in the March *Bar News*. The insights shared by attorneys who had practiced for 50 years help to place in perspective all current problems involving accounts receivable, marketing, billing practices, calendars, partners, secretaries, etc. I found some of the observations quite amusing, while others were inspiring.

CHARLES K. WIGGINS
Seattle

With a Tip of the Hat

by **Jo Rosner**
Attorney/Educator

There are times when someone else's work is so 'on point' that you want to pass it along. With a tip of the hat to the American Bar Association's Special Committee on Youth Education for Citizenship, here are some excerpts from one of their Bar/School Partnership pamphlets, "Lawyers in the Classroom":*

Most lawyers have never been teachers. When asked to share their experiences with kids, they may say they haven't the slightest idea how to talk to a class of students. They may even be intimidated by the idea. On the other hand, lawyers deal with the community, probably consider themselves effective communicators, and have an excellent command of their subject matter. Most of them will probably be far better teachers than they at first imagined.

Since lawyers are not accustomed to speaking with students, they may need examples of how to present material so that youngsters will not be turned off by legalese. And they need ways of keeping the children interested and getting them to ask questions, suggested answers to often-asked difficult questions, and a strong idea of the total program so they'll see their presentation as part of a course and a structured series of topics, not as a talk standing in isolation.

Teachers often ask lawyers to come into the classroom to play a specific role—judge in a mock trial, resource on career day, etc. This should give lawyers a welcome structure and should make the entire experience more lively for everyone concerned. In addition, teachers can suggest such methods as debates, mock trials, simulations, and role-plays, which will help lawyers see that their contribution can be much more than standing up before a group and giving a formal speech—a technique of limited value and a prospect that may be intimidating even to a trial lawyer. While there certainly is value in listening to attorneys talk about their work, students can often learn more if they are actively involved in learning strategies.

Whether an audience consists of elementary students, teenagers, or adults, a lawyer should be aware that people are invariably most interested in events and issues that touch their lives personally. One way to make a theoretical concept more engaging is to present it in the context of a controversial local issue or a situation relevant to the world of the school or classroom.

The first five minutes of the presentation may very well make or break it. The first information must be presented in a dynamic and interesting manner. This does not mean that presenters have to oversimplify; they just have to speak in terms a layperson can understand.

Here are some tips for presenters.

- Be relaxed and friendly so that you can gain the students' interest and get a positive reaction quickly.
- Encourage student participation. Avoid lecturing. Structure your presentation so that you involve students right away. You may want to begin by asking them what they already know about you and your organization.
- Be yourself! Try to incorporate personal reflections. Some examples of questions you might want to answer include the following: Why did you become a lawyer? How has the job affected your life? Your family? What has been your most frightening experience on the job? Your happiest?

Finally, the lawyer should remember that no one has all the answers. If a question is asked that is not a part of his/her expertise, then he or she should not hesitate to admit a lack of knowledge—and a willingness to look it up.

Other booklets in this bar/school partnership series, particularly the one entitled "Sure-Fire Presentations," are worth a look. *Update on Law-Related Education* is a magazine containing useful background articles and ideas for classroom activities. (Both are available from the American Bar Association, Special Committee on Youth Education for Citizenship, 750 N. Lake Shore Drive, Chicago, IL 60611.)

* *Reprinted with permission of Charles White, Editor, ABA/S.C.Y.E.C.*

ABLE Alive and Well in Division One

by **Jack P. Scholfield**
Chief Judge

The Court of Appeals Backlog Elimination Project (ABLE) is underway in Division One. The Legislature has authorized sufficient funds to implement the program. Three law clerks have been hired, and two of them are at work preparing prehearing memos for use by the pro tem judges. The three clerks are **Helen Swinehart, Craig Campbell** and **Mark Swanson.** All three have previously clerked with the Court of Appeals.

A calendar has been prepared for each Monday commencing July 14 and running through to mid-December, with interruption only for the fall judicial conference and annual bar convention.

The three-judge panels will normally consist of a Supreme Court justice and two retired or active superior court judges.

Hearings are presently scheduled to be held in the courtroom of Division One, One Union Square, commencing at 9 a.m. The ABLE panels will hear six civil cases per day. Enough active or retired superior court judges have volunteered so that it will not be necessary to use attorney pro tems this year. CAR 26, recently adopted by the Supreme Court, allows attorney pro tems to be used only by stipulation of the parties. CAR 26 also requires that we not use attorneys so long as we have enough active and retired judges to keep the program on schedule.

Our present civil case backlog is approximately 250 cases. The ABLE program is planned for one year, and it is anticipated that it will substantially eliminate the backlog within that time.

Opinions of the ABLE panels will be published only upon the unanimous recommendations of the ABLE panel and approval of the Chief Judge of the division. Since most of the pro tem judges on these panels will be sitting only once or twice, a great deal of administrative detail is involved in scheduling and setting up calendars. Counsel are encouraged not to seek continuances unless it is absolutely necessary.

The Court of Appeals appreciates the cooperation and assistance provided by Supreme Court justices, active and retired judges, and members of the Bar needed to get this program in place.

Professional Liability Fund Task Force Sets Meeting/Hearing Schedule

As announced in the June 24, 1986 Membership Letter from State Bar President Patrick Comfort, the Board of Governors has created a Professional Liability Fund Task Force to develop the format for a potential professional liability fund insurance plan similar to that which has been operating in Oregon for almost 10 years. The Board of Governors has been studying the malpractice insurance problem in Washington for over a year and one of the prime purposes of the Task Force is to provide a working format for a professional liability fund plan in order that the Board may better, from a working proposal, assess the feasibility and advisability of such a program for Washington lawyers. In response to the President's letter, many Bar members have already sent their written comments to the Task Force. As was also indicated in that President's Letter, the Task Force will be holding Hearings across the State to receive Member comments and input directly. Those Hearings have now been set on the following schedule:

Tuesday, September 2, 1986—Spokane - Cavanaugh's Inn at the Park - 4:00 p.m.
Wednesday, September 3, 1986—Pasco - Red Lion Motor Inn—9:00 a.m.
Wednesday, September 3, 1986—Yakima - Convention Center—4:00 p.m.
Thursday, September 4, 1986—Mount Vernon-Skagit County Courthouse—4:00 p.m.
Friday, September 5, 1986—Seattle - Madison Hotel—9:00 a.m.
Friday, September 5, 1986—Olympia - Westwater Inn—4:00 p.m.

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Communicating with the Communicators

The law-related education programs sponsored by and affiliated with the Washington State Bar Association have been favorite topics of mine as I have addressed lawyers and other groups throughout this State.

Recently, the American Bar Association selected Washington as one of seven states to participate in the Bar-School partnership program sponsored by the ABA under grants from the United States Department of Education. When we received news of the selection, we were very proud. We have attempted to call attention to this honor and to the most noteworthy program, which will provide a very valuable adjunct to our flourishing MENTOR program.

Shortly after the announcement of the grant, the *Seattle Times* ran an excellent feature story on the program. The story was written by Julie Emery, a *Times* staff reporter, and was printed in the May 9, 1986 edition of the *Times*. It was well written, accurate, complete and treated very fairly a newsworthy subject.

The following day, we were shocked to read an editorial in the *Times*, however, which appeared to be critical of the project. The editorial is reprinted, word for word, within the box in this article. A careful re-reading of the editorial seemed to indicate that the author was attempting to point out that "nightmarish possibilities" might arise out of making the study of law and legal concepts part of the curriculum of our schools. The editorial further seemed to assume that an abundance of lawyers in society predisposes citizens to litigate. My initial reaction was that the first concept was philosophically unsound (even, God forbid, undemocratic) and that the second concept was a cheap shot.

Armed with the editorial, your Executive Director, John J.

EDITORIALS

The Seattle Times
AN INDEPENDENT NEWSPAPER
Founded August 10, 1896

LAW IN THE SCHOOLS

A little learning could be expensive

WASHINGTON is one of seven states chosen by the American Bar Association to participate in a new Bar-School Partnership Program. Participation is supposed to be an honor, but there are some implications for nightmarish possibilities.

The program's object is to make the study of law and legal concepts a permanent part of the curriculum at elementary and secondary schools.

The U.S. Department of Education is funding the pilot programs; the state bar and Office of Public Instruction will administer models in the Highline, Spokane and Yakima School Districts.

Jo Rosner, a teacher and lawyer, is state coordinator of the project. She believes law courses can help children learn about authority, responsibility and justice. But what other things might follow if kids learn a more about lawyering and the law?

Will a lawsuit-happy society already overburdened with litigation find that a little learning can be expensive? Will parental malpractice suits increase? Will a little pushing on the playground lead to assault complaints?

And will — heaven forbid — more youngsters be encouraged to join the profession, adding to the nation's glut of lawyers?

Michalik, our Director of Public Affairs, R. Wayne Wilson, and I visited the Editorial Room of the *Seattle Times* Tuesday, June 10, 1986. The purpose of our visit was not to "take on" the *Seattle Times*. I learned many years ago not to argue with the person holding the microphone. We did intend, however, to attempt to find out if the editorial was evidence of some type of predisposition on the part of the editorial staff of the *Times* or the author and, frankly, how to better communication channels between the media and the State Bar in the future, irrespective of the present problem.

We were met cordially by representatives of the editorial staff. We were assured that the editorial was written in jest and was not to be interpreted as a philosophical bent nor to be taken seriously.

We suggested to the editors that in forthcoming editorials, when the staff does not wish the editorial to be taken seriously, that it might consider making such fact a little more evident.

Be that as it may, we further acknowledged that we are very sensitive to any apparent attack on law-related education programs and the concept that society is well-served by the teaching of legal principles to lay persons and in our schools. We further acknowledged that because of the intensity of our feelings on this subject, perhaps our sense of humor was a bit thin and easily pierced.

Acknowledging our vulnerability as such, we left the office of the *Seattle Times* with the feeling that our visit had been productive and that the editors to whom we had talked were as supportive of law-related education programs as we.

It is important to maintain open-door communications between the Association and the media. Occasionally, when we wish to "blow our horn" about a project of which we are particularly proud, we will need the assistance of the communication media to inform the general public of the worth of our program. If the media are predisposed against lawyers, the Bar Association or major Bar projects, it will be difficult to receive fair treatment when publication is required. We believe that fair treatment has generally been accorded the Washington State Bar Association by the newspapers of this state and will continue to be in the future, particularly in the case of the *Seattle Times*.

Bob Comfort

WASHINGTON STATE BAR **NEWSLINE**

The Board's Work

by **Carole Grayson**

Vancouver, B.C., June 27-28, 1986

Present: President Comfort and all Governors except Roy Moceri and Harold Vhugen (both from Seattle).

Also present: Patricia Schlosser (Wa. Women Lawyers), Dan Phillips (Dist. and Muni. Ct. Judges Assn.), Phil Faris (Superior Ct. Judges Assn.), Geoff Revelle (SKCBA Bd. of Trustees), Pat Sutherland (Wa. Assn. of Prosecuting Attys.), Mary Drobka (SKCBA Young Lawyers), Chuck Snyder WSBA Young Lawyers), Robert Farrell (WSBA Counsel). Solie Ringold (Ct. of Appeals Judges Assn.), John Michalik (WSBA Exec. Dir.).

MORE MALPRACTICE MOOLAH The Governors unanimously granted the Malpractice Task Force's request for up to $12,000 for further actuarial work and meetings. WSBA Executive Director John Michalik will obtain a breakdown of the proposed expenses.

"DECREASE ESTRANGEMENT, INCREASE ASSIMILATION" Governor Elizabeth Bracelin of Seattle, chair of WSBA's Task Force on Young Lawyers, and Task Force member Thomas Fitzpatrick of Seattle proposed that a Young Lawyers Division, to include all WSBA young lawyers, be created.

The Governors voted 6-2 to create the WSBA's first division. Governors Ed Lane of Tacoma and Jay White of Seattle dissented. The division's proposed $85,000 budget includes, inter alia, $22,000 for a newsletter, $13,000 for CLEs, and $15,000 for a "Washington Network" to integrate rural young lawyers.

Currently, 1300 of 8400 lawyers meeting the criteria of young lawyer belong to the section.

The proposal is "not a question of duplication but of enhancement," said Bracelin, and "an excellent feeder system." Governor Steve Reisler of Seattle, who is a young lawyer, wondered if the division would wind up being "another stratum of chairs."

"Is the goal of the division to decrease estrangement from the Bar and increase assimilation into it?" asked Bond. "That's the bottom line," agreed Fitzpatrick, who added, "There would be no need for the division if the Bar did a good job of utilizing young lawyers," e.g., in committee appointments.

IS THERE LIFE AFTER DISBARMENT? Among other things, RLD 9.1(a) requires disbarred lawyers to wait three years before filing a petition for reinstatement.

The governors voted 8-0 to recommend to the Supreme Court that the rule be amended to extend the period to five years.

STATE WIDE TEL-LAW Tacoma attorney Terry Lumsden presented a propsal for a state wide Tel-Law program to run in conjunction with the existing Tacoma-Pierce County Bar Association Tel-Law program. After a motion to defer the matter to assess similar programs in King and Spokane Counties was defeated, the Governors adopted the proposal 7-1, subject to final oversight by the WSBA Budget Committee.

First year budget is $36,000, with $6,532 (tape library, rent, equipment and move, repairs and maintenance, supervision and miscellaneous expenses) provided by the Tacoma-Pierce Bar and $23,800 by the WSBA. Advertising is expected to cost $12,200.

Governor Frank Hayes Johnson of Spokane opposed the motion.

HORS D'OEUVRES The Governors 8-0 approved a request from the Office of the Administrator for the Courts for $1,500 to co-sponsor a reception for U.S. Supreme Court Justice William Brennan during the Washington Judicial Conference in Spokane on August 24.

SKILLS TRAINING: THE ART OF THE POSSIBLE The director of the Professional Legal Training Course of the B.C. CLE Society, David Cruickshank, outlined possible skills training mechanisms.

"The art of the possible in Washington," he said, might approximate Ontario's program. Ontario admits 1000 new lawyers yearly in a province of 8 million. Its program, offered in three cities, is taught mostly by 80 volunteers who work over 1/2 a day during the two-week program. Student tuition is $1,000, with the rest of the cost, $1,300, covered by IOLTA and the government.

In B.C., annual fees to practice law include $510 bar dues, $295 for a fund to cover defalcations from trust funds, and $1,700 for compulsory malpractice insurance. $75 of the bar dues covers tuition for the skills training course.

After a motion to table skills training failed 3-5 (Zylstra, Petruss, Johnson voting to table), the Governors voted 5-3 to present a pilot skills training program in late 1987; if it is successful, the Bar will implement and determine how to finance a future mandatory program on a wider scale.

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Orcas Island, July 18-19, 1986

Present: President Comfort and all Governors except Harold Vhugen (Seattle) and Ed Lane (Tacoma).

Also present: John Michalik (WSBA Exec. Dir.), Don Davidson, Tom Zilly (SKCBA Pres.), Joe Wesley (Dist. and Muni. Ct. Judges Assn.), Chuck Snyder (WSBA YLS), Lloyd Bever (Superior Ct. Judges Assn.), Karl Tegland, Bill Gates (WSBA Pres.-Designate), and Allen Miller (Gov. Lawyers).

MORE MALPRACTICE MOVES — After hearing an update from Seattle lawyer William H. Gates, who chairs the Bar's Professional Liability Fund Task Force (and is WSBA president-designate), the Governors voted to require and conduct a poll of all WSBA members on the issue of the adoption of a professional liability fund plan if and when one has been finalized by the Task Force, reported to the Governors, and received the Governors' recommendation. The action specifically reverses their May 1986 decision that final action on the subject be scheduled no later than the September 1986 meeting. Bracelin abstained.

NEW KID ON THE BLOCK — After hearing a report from Seattle attorney Donald Davidson, the Governors approved 8-0 the creation of the Section of Public Procurement and Private Construction Law.

Interested lawyers are invited to send in their $15 section dues and attend the section's first meeting, which will be held during the WSBA Annual Meeting at the Westin on Friday afternoon, September 19, 1986. The purposes of the meeting are:

1. To ratify the officers and council members announced or vote them out of office.
2. To organize the section and discuss its future.
3. To plan for the section's meeting to be held during the WSBA convention in Honolulu this November.
4. To take up such other business as may come up before the meeting.

Prospective members may indicate their interest in the section's five standing committees: Legislation; Model Procurement Code; Public Bidding Law; Bond, Liens and Security Devices; and Uniform Contracting Rules, Regulations and Procedures.

NOT ONE PENNY FOR ART — With the help of President Pat Comfort of Fircrest, the four non-Seattle Governors (Zylstra, Johnson, Bond, and Petruss) defeated by a 5-4 vote a request for $1,500 from Washington Volunteer Lawyers for the Arts to fund partially a new part-time program coordinator position.

Bond, whose motion to deny the funds prevailed, said that the integrated bar "should not volunteer money for special interest groups." It was agreed that within the past year, the Governors had granted $1,000 to the Northwest Women's Law Center to fund partially a new position there.

* * * * * * * * * * *

BUDDING WRITERS: Plans are afoot for future Bar News issues on the following themes: agricultural law, protecting the rights of the non-English speaking and the hearing impaired, construction law, family law, and the courtroom of the future.

"Where's the Judicial Chamberpot?"

A privilege. A singular way to improve one's skills as a trial lawyer. An opportunity, no matter how infinitesimal in the overall scheme of things, to make a different kind of imprint on our society and courts. Such is being a judge pro tem. There are hundreds of pro tems throughout the state; without us the system would already have caved in on itself.

My observations as a Seattle Municipal Court judge pro tem?

• The pro tem handbook discusses the finer points of courtroom procedures and permissible sentences. It does not, alas, enlighten the tyro pro tem as to certain equally important tricks of the trade such as the location of the judicial chamberpot.

• The first time I rule on an objection, my heart pounds all the way into my arm sockets. But I do it; the parties obey without fuss, and the floor beneath the bench doesn't open and swallow me.

• Later the same day, sensing another objection brewing, I look around the courtroom and think, "Where's the judge who's gonna resolve this?" Then I realize, "Oh, I am the judge."

• I have overruled myself.

• During voir dire, a defense attorney asks a prospective juror if she'll follow the law as given to her by the judge—and they both look in my direction. Me??? I don't remember being present at the signing of the Magna Carta.

• Both trials (as of early June) have had female defendants. They sat listlessly, avoiding eye contact with judge, jury, and universe. The impact was clear: Even before the verdicts were in, they were defeated. Something else was missing: Contact between attorney and client—either a simple touch on the shoulder or whispered conferences. When I'm in trial, I chat with my clients and solicit their feedback; we take turns pouring each other water. If I don't feel a sense of camaraderie with my clients, why should the jury?

• The problem with a purely technical defense (as in one of the DWIs) is that the person charged with the crime gets forgotten—especially if she exercises her constitutional right to silence. (She was convicted in 30 minutes.)

• As a lawyer, I always look jurors right in the eye and emote as much as appropriate. (But see "Stressed Out", December 1985 *Bar News*, p. 11.) Exactly the opposite is required of me as judge. So, even though the jurors make humorous observations during voir dire, and even though they look to me for guidance throughout the trial, I intentionally do not respond. This being stoic is a major challenge, however, since my lawyerly trademarks include freestyle frowning and Olympic eye rolling.

• Misdemeanor juries seem more voluble and open during voir dire than felony juries. Why?

1) The graver the charge, the graver the jurors.

2) The larger the panel, the more likely its members are to feel that everything worthwhile has already been said by the time they are questioned. Their silence may be saying, "Let's get on with the trial already!"

3) Judge Pro Tem Grayson perceives the process differently from Trial Lawyer Grayson.

• Can I have presided over Seattle's first DWI trial in which the BAC Verifier was used? Breathalyzer and BAC Verifiers make me think of Rube Goldberg contraptions. A better mousetrap comes along weekly.

• The Power of the Throne: I sit behind black marble with serpentine striae. Lawyers, court personnel and public rise as I enter. I rest my posterior on the high-backed chair, cushion, and four-inch-thick looseleaf. The well-worn chair (leather? vinyl?) may or may not impart to me a judicial bearing. It does, however, give me a judicial pain in the lower back.

• The hardest part of being a judge is sitting still. Lawyers, at least, get to raise themselves on two legs and stride about the courtroom with the singlemindedness of a wounded dinosaur.

• From my father I inherited the attention span of an eighth grader. Without an influx of oxygenated blood cells, my brain shuts off. Yawns and heavy eyelids follow. Why should we expect jurors and court personnel to respond differently? Homo sapiens did not evolve to be sedentary.

• Amazing world we live in: I gleefully fear carnival rides, but I never think twice about an elevator. I sit in a courtroom with a overhead grid suspended ⅓ of the way down from the ceiling, yet I don't worry about it defying Newton's law of gravity.

• Lawyers' phrases to be wary of:
  • One last question . . .
  • Now, to move things along . . .
  • Let me just clarify this . . .

• Last summer, then WSBA president Lee Campbell declaimed on a tradition whose time, he said, had come: robes for lawyers. After being cloaked for several days, I have a humble modification: Yes, robes for the bench and bar, but please, please! let the robes be of silk or linen or cotton. Robes of acetate, polyester and plastics are like rubber suits in a steam bath.

• What equation shows the time by which the actual recess exceeds the one declared? Once I informed a jury that court would be in recess for five minutes. Thirty-five minutes later, we resumed. Time flies when you're having fun.

Effective Bar Promotion

Kudos to the Governors of our Washington State Bar Association for adopting in May a public relations policy in the best interests of the lawyers and citizens of the state. Now let's hope that they spend our dues for such activities, rather than allocating big

bucks—such as they did last year—for institutional advertising, which, we all know, is a big hole into which one pours money.

In 1985, the Governors authorized $29,000 to partially underwrite the "MacNeil/Lehrer" and "Frontline" news programs. This maiden institutional advertising endeavor was intended to increase the Bar's visibility. Though the intent was laudable, of what value was it to Washington lawyers or citizens if the credits to the two in-depth news shows indicated the Bar to be an underwriter?

Was the $29,000 expenditure the highest and best uses of our dues which we give to the folks at 505 Madison, a payment of $160 a head, which none of us, it scarcely needs to be restated, makes voluntarily?

No way.

One also wonders at an apparent double standard in the Governors' underwriting two programs which editorialize on national and international issues while in March 1986 establishing a task force to look at, *inter alia*, the Bar's World Peace Through Law Section. Some Governors find the section's resolutions condemning apartheid, aid to contras, and U.S. withdrawal from the World Court to be political questions not appropriate for a state bar. Some Governors think that the Bar as a whole would be better off without the section. Isn't there a double standard here—what's okay for Bar institutional advertising ain't okay for the World Peace Through Law Section?

(To be fair, when the Governors authorized the $29,000 last year, at least one Governor—Hal Vhugen of Seattle—noted the two programs took positions on national and editorial issues.)

But if the words of the Bar's Public Affairs director mean what they appear to, the Bar may have recognized that institutional advertising a la "MacNeil/Lehrer" and "Frontline" is not effective to spread the good services and resources of the Bar. "The best advertising we can do," R. Wayne Wilson told the Governors in April 1986, "is to publicize the benefits of our programs and activities rather than to merely tell people what we are." Wilson was highlighting Bar public relations activities and discussing the interest of the Bar committees on publication relations, prepaid legal services, legal services, and law-related education in public service advertising.

He was right. Let's stick to programs which do benefit us as lawyers and as citizens of Washington. The Citizen Rights Pamphlets are a good example. Let's not be afraid to get creative—*e.g.* public forums on TV or radio or to live audiences to educate the public on when it should consult a lawyer, etc.

And let's not forget the PR policy the Governors adopted for the Bar in May 1986. (See May 1986 *Bar News*, "The Board's Work", p. 10.) Its goals are straightforward: to increase public understanding of the role that lawyers, acting through our legal system, have in our society; the concept of lawyer professionalism; our judicial system; and individual rights and responsibilities within our legal system.

The Bar is a resource. It provides a service to the public. Let's not succumb to the 80s' temptation to go Madison Avenue (and "Masterpiece Theatre") and underwrite slick shows which have nothing to do with Washington. Let's educate the public about who we are and what we do . . . each of us.

No more money into the endless black hole of institutional advertising. Public service advertising—yes, that's a higher and better use of Bar dues.

As more than one wag has noted, the folks who watch "Frontline" and "MacNeil/Lehrer" don't need lawyers; if the Bar wanted to reach the folks who need—but don't have—lawyers, why not sponsor the "Dukes of Hazzard"?

Carole Grayson

$$E(n) = E(\Sigma w_i) = \Sigma E(w_i) = \Sigma p_i = (1/l_0)\,\Sigma(ai)^*$$

Structured Settlements: Panacea or Malpractice Trap?

by **Bernard W. McNallen**

Structured settlements are being touted by various life insurance carriers and annuity brokerage firms as *the* revolutionary way to settle large personal injury suits.

Is this assertion fact or fiction?

The answer to this question is not easy. For many uninitiated plaintiff attorneys, the lure of the structured settlement overreaches their good judgment. The thought of resolving a complex medical malpractice, products liability, wrongful death, quadraplegic, or other catastrophic injury case short of trial at very high dollar levels is difficult to ignore. Consequently, more and more structured settlements are being implemented. Unfortunately, legal malpractice suits arising from ineffective and risky structured settlements will dampen the synergistic effect of settling the case and gaining widespread recognition within the legal community for obtaining a multi-million-dollar settlement.

The truth is that there are more and more poorly conceived and implemented structured settlements occurring. Some realities about structured settlements follow:

1. Structured settlements normally create a subtle but real conflict of interest between the client and counsel.

Unless properly negotiated, the plaintiff's attorney will strain the fiduciary relationship with the client and violate numerous ethical considerations at the very least. This conflict can arise in a number of ways. A common (but certainly not the only) example is: An annuity broker contacts the plaintiff attorney and indicates that if a structured settlement is acceptable to this attorney, there will be a lump sum provided at settlement for $150,000. The annuity broker advises the attorney that $100,000 of the funds are intended to be payment of the attorney's fee portion of the case while the remaining $50,000 can be used to offset the medical liens or other subrogated interests, with a remainder to the client.

If the plaintiff attorney accepts this offer, even tacitly, he is now in a position of competing with his client in the sense that he has "negotiated" his fee in derogation of his client's interest. Moreover, he has allowed the client's adversary to "dictate" the application of the funds being offered at the time of settlement. The relationship between the attorney and the seriously injured client is clearly defined in each and every state. Simply stated, the attorney's fiduciary duty consists of the utmost good faith and finest loyalty. The client's interests cannot be compromised—even tacitly!

2. The structured settlement is "negotiated" with the active involvement of the plaintiff's adversary (defense counsel) and its structured settlement surrogate (the annuity broker).

It is a normal practice in the structured settlement field for either or both of these persons to set the "criteria" for the structured settlement. Part of this effort involves "convincing" the plaintiff's attorney that a structured settlement is *the* best solution in this particular instance. To set the stage for further dialogue and "get the client into the right frame of mind," the annuity broker introduces the idea that the funding vehicles to be used in the structured settlement are "safe," "secure," "backed by a state fund which *guarantees* the payout," and other *unreliable* and (for the overriding majority of the time) *untrue* representations. The "competent" practitioner normally does absolutely no independent verification of these representations. (If adequate research were done, it would be rapidly discovered that the realities are diametrically different from the representations.) Instead, the plaintiff's attorney usually concerns himself with the many other aspects of "settling the case." For example, if the injured client is a minor or otherwise incompetent, the reasonableness hearing and the report of the guardian ad litem must be attended to now. Or, in the case of a profoundly injured client, prospective rehabilitative and vocational necessities must be defined, verified and implemented. The "mechan-

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**The worklife expectancy equals the sum of the person-years remaining after a given age divided by the initial cohort of people who are alive at that initial age. (From "Calculating Changes In Life and Worklife Expectancy" by Eugene Silberberg in* Trial News, *September 1985, p. 17.)*

ics" of the structured settlement become somewhat of a perfunctory item (other than the attorney's fee issue) until these other items are addressed and resolved. The casualty company (or its annuity broker) has assured the plaintiff's counsel of its willingness to buy the annuity. It is now "timely" for the attorney to contact his client and "let him know the good news" about the prospect of an imminent settlement without the necessity of a trial at a "very satisfactory level of compensation."

3. The Contingent Fee Agreement.

Where the idea of a structured settlement is briefly set forth in the fee agreement, the client, in reality, *now* becomes acquainted with its significance. He quickly learns that a series of periodic payments rather than a lump sum settlement is being considered. The client, in many instances, gazes sheepishly at his "advocate and advisor" while the "facts about structured settlements" are heaped upon him. If the client is somewhat slow at grasping this new suggestion or poses questions concerning elements of the concept that show his lack of full understanding, he is usually presented with a litany of clichés such as: "It's just like a lifetime pension," or "It's guaranteed," or "It's completely safe," or "The lottery winners get their million dollars this way," and so forth. In fact, the attorney is now SELLING ANNUITIES!!!

Moreover, the attorney is now acting as a conduit or agent for the insurance carrier and the annuity broker. He is extolling the virtues and benefits of a financial product (the annuity) and a structured settlement as a panacea for the client without doing the necessary research to confirm the validity of *his* statements to the client. As a result, the client loses the value of receiving *objective* advice from his fiduciary, suffers a diminution in his ability to make an *informed* decision about whether to accept or reject a structured settlement; and the attorney has lost his detachment and is emotionally involved. The insurance carrier and annuity broker have won an important point by *default!*

Additionally, a structured settlement or "annuity" clause in the fee agreement that provides full payment of the attorney's fee portion at the time of settlement may place the law firm in a *windfall* position in relation to the injured client. These clauses result in immediate payment of all attorney's fees to the firm while the client waits to achieve financial parity. For those lawyers who believe that the impact of this clause is being overstated, I submit that consideration be given to the "bargained-for-exchanged" component of a fee agreement. Does a client actually "negotiate" the terms of the fee agreement? Or is it customary for the fee agreement to be presented to the client for signature without discussion? To those lawyers who feel that this clause is a "bargained-for" provision, the issue becomes very difficult to defend if at some future point the client (reacting to a default) retains new legal counsel to "review" the file. Whether the original attorney prevails on this issue does not reduce the anxiety of having the otherwise "closed" file subjected to the scrutiny based on "20-20" hindsight. The situation becomes a great deal more critical if the plaintiff has inadvertently altered any of the incidents of the settlement, thereby triggering constructive receipt and the resulting tax liability. The situation becomes aggravated if the life carrier falls prey to the same realities that devastated Baldwin-United and rendered some of the nation's largest annuity brokerage firms liable to annuitants for poor investment recommendations. It can be quite a learning experience to see exactly how some courts interpret the equal-bargaining/arms-length relationship between a seriously injured person and his attorney if a dispute arises after settlement. If the client alleges that the fee agreement was executed at a time when he was suffering the effects of a debilitating injury and was being treated, in part, with pain medication, etc., the court may feel quite empathetic toward the client. Moreover, the advent of word processing machines and computers has reduced the fee agreement to a standardized and possibly "adhesive" document that the client executed on a "take-it-or-leave-it" basis (in many instances). Practically speaking, most seriously injured clients retain the attorney based upon a

recommendation or the attorney's reputation, *not* as a result of in-depth analysis of the local legal community. So, if the client wants to retain that attorney to represent him, he takes the fee agreement offered to him without question or comment.

4. The Attorney-Client Relationship (vis-à-vis a structured settlement).

In the personal injury area, most injured clients have virtually no experience with the legal procedures utilized to compensate them for their injuries. The legal steps or mechanisms used to obtain redress from the tortfeasor are foreign to the plaintiff. Moreover, the vernacular used by personal injury attorneys is normally outside the range of the plaintiff's vocabulary. For example, the terms "underinsured," "uninsured," "multiple tortfeasors," "joint and several liability," "indemnification," and "subrogation" are meaningless to the plaintiff. Therefore, he is relying totally on his attorney's expertise in representing his (the client's) interests. Likewise, in the context of a structured settlement, the terms "annuity," "present value," "guarantee provisions," "constructive receipt," "revenue ruling," etc., fall within the same category as the former verbiage. The distinction between these two examples is that with the structured settlement language, the client encounters these terms, is asked to contemplate this settlement alternative, discuss it with his family, and make a very important (perhaps a lifetime in duration) decision all within a very short time frame. It is absolutely *ludicrous* to contend that this plaintiff is capable of making an informed decision without the aid of a truly objective structured settlement advisor. *Objectivity* in this context is defined as structured settlement expertise provided by a professional person who is NOT selling the annuity that will be purchased to fund the plaintiff's settlement. Otherwise, the client relies justifiably on his attorney's recommendations regarding the structured settlement. As set forth above, if the attorney is no longer detached—the client has a problem. If the structured settlement suffers a default at a future point in time, the attorney has an even bigger problem! Obviously, if a default occurs, the client will seek redress from his former "advocate and advisor."

5. Default: *stare decisis*.

In 1983, Baldwin-United, which was a highly-rated annuity company, involuntarily filed for "rehabilitation" (which is the insurance industry's parlance for bankruptcy) due to massive default on *at least* $500 million of annuity contracts. The impact of Baldwin-United's default has reverberated through a number of states and has resulted in many annuitants losing their entire investment. In fact, many annuitants have received *zero* return on their investment since the date of default (September 1983). To date, there has been no settlement although the state of Minnesota has recently announced that its resident-annuitants "may" begin receiving a 7.5% rate of return "during 1987" contingent upon the approval of the bankruptcy court. Other states have not accomplished even this much!

The Baldwin-United fiasco has resulted in 18 annuity brokerage firms being sued by disgruntled annuitants. The common denominator in almost all of this litigation involves "misrepresentations" relative to "safety" features of these annuities made by annuity brokers. There were apparently "many" statements made by annuity salespersons suggesting the "guaranteed back-up provisions provided by state-sponsored associations" would preclude or obviate any interruption in payments if a default occurred or, in the alternative, some annuity brokers advised the prospective annuitants that a default "cannot occur." Obviously, many of these "representations" were not true. Consequently, the income stream provided by the annuities dried up immediately and is still dried up. There have been a number of lawsuits filed by various states, including NewYork (which is seeking $140 million), Georgia (which is seeking rescission of approximately $50 million and return of $2.5 million in brokerage commissions), Minnesota, Indiana and Arkansas, to name a few.

The lawsuits brought by these and other states demonstrate emphatically that annuities are not fail-safe! Moreover, there are really no post-

settlement protections available to seriously injured plaintiffs who suffer a default. The consequences of an unforeseen default as regards a seriously injured person and his family are devastating. These persons are totally dependent upon the income stream of the structured settlement. Without the annuity payments, they are reduced immediately (and perhaps irrevocably) to indigency. Therefore, an unbridled use of the terms "safe," "secure," and "guaranteed" in the context of a structured settlement is foolhardy, unethical and perhaps unlawful!

Many very highly-rated life insurance companies (that sell annuities used to fund structured settlements) reinvest the premium dollars in very risky investments. For instance, one life insurance company (which will remain anonymous) actually invests a portion of the annuity premiums in "junk bonds!" For those of this readership who are not aware of the significance of this statement, let me assure you that a B-rated bond is *damned* risky! The life insurance company receives a high rate of return from such bonds and can, and often does, offer annuity products to annuity brokers at very attractive prices. In effect, this ostensibly provides extra benefits to the seriously injured person because he receives "more bang for his structured settlement buck!" Moreover, since the rating services normally wait for a default to trigger a downward rating of the life insurance company, the situation is critical. In these cases, the plaintiff attorney *thinks* the life insurance company is financially beyond reproach and passes that feeling on to his client. In reality, most prudent plaintiff attorneys would rarely (if ever) recommend placing the annuity with a company practicing this type of reinvestment program. Unfortunately, knowledge of this problem arises *after* a default occurs. In actuality, most plaintiff attorneys are not cognizant of this or other structured settlement pitfalls, in part because they fail to perceive the fact that they are "risk-takers." When a poorly-rated corporation (*i.e.*, B-bond rating) fails to meet its debt service (cannot pay the accrued interest on its bonds), an upstream series of problems arise. The life insurance company is, to one degree or another, dependent upon these payments which, in turn, are used to meet its debt service, *i.e.*, the annuity contract commitments. Depending upon the size of the portfolio invested in these "junk bonds," the degree of shortfall can be substantial. If this "upstream" default causes a significant cash-flow problem, the life insurance entity will either have to "absorb" the interrupted income stream or, in more serious instances, reorganize or "rehabilitate" itself in order to plug the hole caused by the interrupted income stream.

In the Baldwin-United debacle,

the annuitants were advised by many of the annuity brokers that the "unusually" high rate of return being offered (in excess of 11.5%) did not indicate a higher-than-normal risk factor. Instead, the prospective annuitants were told that the high interest rate level was Baldwin's way of gaining increased annuity market share. This assurance and the prospect of receiving such a high rate of return coupled with the "quality rating" of Baldwin-United was just too good for many investors to pass up. All was well until Baldwin-United, either intentionally or unintentionally, misstated the value of its assets in notices to the insurance commissioner that it intended to acquire through a leveraged buyout another financial entity. The impact of this "error" was realized when Baldwin-United annuitants began complaining to various state insurance commissioners that there was a problem in the timeliness of their payments from Baldwin. The assistant insurance commissioner of Indiana reviewed the financial details of Baldwin-United and quickly ordered the seizure of Baldwin-United subsidiaries in Indiana.

It is important to remember that an insurance company's ability to pay its policyholders depends upon the "performance" of its investment portfolio. Insurance regulators "try" to review these portfolios every three years. In many instances, the time it takes to have the results of the "review" published obviates the value of the effort. Consequently, there is little, if any, effective regulatory scheme in place today. Therefore, the seriously injured client and his attorney *must* take adequate precautions and demand adequate protections before executing a structured settlement agreement.

Summary

Structured settlements *are* very beneficial to the seriously injured client and his family. If properly formulated, the client will receive an on-going, long-term, tax-free income stream in a management-free way. In addition, the risk of dissipating the settlement is diminished in that the client is less likely to fall victim to unscrupulous investment advisors or well-intentioned relatives and other "risk factors."

This article is not intended to be an exhaustive overview of this subject. Rather, it is intended to illustrate, in a cursory fashion, some of the pitfalls that exist in structuring a personal injury settlement. There is a real malpractice exposure unless a clear understanding of the concept is present. Structured settlements are not a panacea in all personal injury cases. In many instances, the structured settlement may be a malpractice trap or a "ticking time bomb" to the plaintiff's attorney. Be careful! □

Bernard W. McNallen is a partner in the Spokane firm of Zajonc, Jolicoeur & McNallen and president of Structured Settlement Consultants, Ltd. of Spokane and Tacoma in Washington and Santa Ana in California.

THE WSBA TRAVEL PROGRAM

Available to all members of the Washington State Bar Association, their employees, and their families.

PUERTO VALLARTA—Nov. 26-Dec. 2 at $410, Dec. 26-Jan. 2 at $626. Includes airfare, hotel, transfers, tax.

MAZATLAN—Nov. 26-Dec. 3 at $425, Dec. 25-Jan. 1 at $510. Includes airfare, hotel, transfers, tax.

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NAME _____ ADDRESS _____

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WASHINGTON STATE BAR ASSOCIATION
505 MADISON ST.,SEATTLE,WASHINGTON 98104
(206) 622-6054

JOHN J. MICHALIK
EXECUTIVE DIRECTOR

August 1, 1986

Dear Colleague:

In the past, the WSBA Travel Committee has organized one or two group tours a year to selected destinations, and offered these tours exclusively to members of the WSBA. The tours have been successful, and the interest for "more" has been great.

I am pleased to announce that our Board of Governors recently met and unanimously agreed to endorse the formation of a "discount" vacation program to benefit all members of the WSBA, their families, invited guests, and employees of your respective law firms.

The WSBA TRAVEL PROGRAM will be monitored by the WSBA Travel Committee. Travel Bug, Inc. (TBI) was exclusively selected to implement this program. Located in Seattle, TBI has successfully handled a similar vacation program for the Boeing Company employees and retirees for the last 11 years and has developed an excellent reputation in the market place among its customers and suppliers.

The WSBA TRAVEL PROGRAM was designed solely to provide you with the best vacation travel offerings at substantially reduced prices unavailable to the general public. The tours have been scrutinized by TBI for quality and dependability, and lower rates have been attained for you without sacrificing the quality of accommodations or the service of operations.

Destinations offered at savings will include Mexico, the Caribbean, the South Pacific, Hawaii, Europe, South America, the Orient, Russia and other selected destinations.

I am pleased that the WSBA can offer this new and exciting benefit to you. On behalf of the WSBA and our Travel Committee, I personally encourage each of you to read the WASHINGTON STATE BAR NEWS each month and circulate the information concerning the WSBA TRAVEL PROGRAM among your associates and employees. Happy Traveling!

Very truly yours,

John J. Michalik

RESOLUTIONS

. . .To Be Considered at the 1986 Annual Business Meeting of the Washington State Bar Association

RESOLUTION FOR REFERENDUM ON MANDATORY MALPRACTICE INSURANCE PROGRAM

Submitted by: Howard K. Todd *and* Timothy H. Esser

Be it resolved:

The Board of Governors of the Washington State Bar Association shall not recommend that the Washington State Supreme Court implement a program of mandatory professional malpractice insurance before the program has been submitted to the members of the bar association for their approval by referendum as provided in the WSBA By-Laws.

REPORT EXPLAINING RESOLUTION CALLING FOR REFERENDUM ON MANDATORY MALPRACTICE INSURANCE

The Board of Governors has undertaken to draft a court rule which would require state lawyers to participate in a professional liability fund administered by the Washington State Bar Association. In his letter to the membership dated June 24, 1986, the WSBA President promised that the Board would publish and mail a draft of the proposed rule and coverage plan to members of the Bar. He did not promise that the membership would have an opportunity to vote on the proposal. This resolution is to secure that valuable right.

If adopted, the mandatory malpractice insurance program would be expensive, would require the establishment of a large bureaucracy, and would have a disparate impact on differently situated lawyers. The need for any such program is subject to dispute. If the membership's right to vote is not to be respected in regard to his sort of undertaking, one wonders whether state lawyers might ever expect to exercise that right.

Arguments have been raised in the past that referenda are impractical and costly. Whatever merit such arguments might have in the abstract, they are inapplicable to a specific proposal that would impose a substantial financial obligation upon every lawyer in the state. The mandatory malpractice insurance program deserves to be decided on its merits, by the lawyers who would be subject to its requirements.

RESOLUTION FOR REFERENDUM ON MANDATORY SKILLS-TRAINING PROGRAM

Submitted by: Howard K. Todd

Be it resolved:

The Board of Governors of the Washington State Bar Association shall not recommend that the Washington State Supreme Court implement a mandatory "skills training program" before the program has been submitted to the members of the bar association for their approval by referendum as provided in the WSBA By-Laws.

REPORT EXPLAINING RESOLUTION CALLING FOR REFERENDUM ON MANDATORY SKILLS-TRAINING

Mandatory skills training describes a program which would require lawyers newly admitted to the bar to submit to WSBA sponsored classes before they could practice law. The program would enlarge the WSBA budget by more than a quarter million dollars a year. The need to initiate a mandatory skills training program is subject to dispute, not only because no other state bar association has adopted such a program, and the content of the program remains vague and ill-defined, but because the experience with mandatory CLE provides no definitive evidence that mandatory CLE enhances professional competence. See *Final Report and Recommendations of the ABA Task Force on Professional Competence.* (1983), pp. 8-9.

Like the mandatory malpractice insurance program, a mandatory skills-training program would be expensive, would require the establishment of a large bureaucracy, and would have a disparate impact upon differently situated lawyers. It would have to be supported either at substantial personal cost to each newly admitted lawyer, or by a significant increase in bar dues. Before the Washington State Bar Association undertakes to establish the WSBA College of Postgraduate Legal Studies, it is appropriate that the membership be fully informed and given the opportunity to vote on the proposal.

RESOLUTION TO AMEND QUORUM REQUIREMENT FOR REFERENDA

Submitted by: Howard K. Todd *and* Douglas Shaw Palmer

Be it resolved:

The WSBA By-Laws, Article VII, Section 8, shall be amended by striking all of the present Section 8 and substituting a new Section 8 as follows:

Section 8: REFERENDA TO THE ASSOCIATION. Referenda may be enacted to amend Association By-Laws, to modify or reverse a decision of the Board of Governors, or to adopt resolutions on any subjects on which resolutions are permitted at the annual meeting. The Board of Governors may refer any such proposals to a vote of the entire active membership of the Association upon its own authority. Whenever there shall have been filed with the Association a petition containing the text of a resolution proposed for a referendum, and signed by 250 of the Association's active members, the Board of Governors shall submit the resolution to the membership of the Association for a vote by mail in accordance with Article VII, Section 9. The resolution shall be enacted if it shall be approved by a majority of the votes cast in the referendum.

REPORT EXPLAINING RESOLUTION AMENDING ARTICLE VII, SECTION 8 OF THE WSBA BY-LAWS

Last winter, a resolution was submitted to the membership of the Washington State Bar Association which called for a vote of the membership before the Board of Governors recommended changes in the rules which regulate the profession. Notwithstanding that the proposal was approved by a majority of the lawyers who voted on the measure, their votes were deemed ineffective because less than 50% of the active membership of the Association participated in the referendum. This resolution would strike that requirement of the By-Laws which invalidates the will of the majority.

The resolution does not present a new idea. It derives from a proposed amendment to the By-Laws which was advanced by Seattle/King County Young Lawyers in 1977. In the report which was submitted in support of the 1977 resolution, supporters Anderson, Bradbury, Carroll, Fisher, Goldmark, and Longfelder urged that a majority vote carry a referendum, that the "unreasonably burdensome" quorum requirement be eliminated, and that petitions for referenda be allowed at any time, not only within 60 days of a decision which the membership seeks to review. The 1986 resolution would be to the same effect.

The 1986 resolution does not enlarge the scope of questions subject to the referendum authority, although it expressly recognizes the authority of the Board of Governors to refer questions to a vote of the membership upon its own motion, an authority which the By-Laws have not heretofore provided. The rights of the members to compel a referendum by petition is preserved.

The State Bar Act directs that active members of the Washington State Bar Association be able to exercise a meaningful right to vote. RCW 2.48.050(7). Yet the members do not enjoy a meaningful right to vote as long as the Board can disregard the will of the majority as expressed in a mail ballot. Since 1977, well-respected members of the profession have recognized that Article VII, Section 8 of the WSBA By-Laws inhibits the members of the Bar from exercising their referendum powers. In the face of the Board's continuing endeavors to impose new and substantial burdens on the right to practice law, it is both timely and necessary that the By-Laws be changed to assure that the Board honors the results of Bar referenda.

TO: **WASHINGTON STATE BAR ASSOCIATION RESOLUTIONS COMMITTEE**

FROM: Robert C. Mussehl, Evelyn McChesney, Michael D. Mallory, Steven Hake, David M. Shelton, Melton Boyd, Edward E. Henry, Lady Willie Forbus, Stephen K. Strong, Barbara E. Reinsma, Brad Doyle, Christina Ager, John D. Schumacher, Julie Wade, Allen T. Miller, Jr., John Midgley, Bruce G. Lamb, Thomas C. Evans, Richard R. Wilson, Claire Thomas, T. Ryan Durkan, Christine Mrak, Ernest J. Ishem, Jr., Gary J. Thogersen, Ellen A. Miyasato, Shelly R. Brown, P.K. Abraham, Kathryn A. Warma, Ricardo Cruz, Kern Cleven, Denise Dee Knapp, Geoffrey Crooks, Linda S. Hume, Robert W. McKisson, Lisa E. Schuchman, Tarl R. Oliason, Dean R. Sargent, Kathleen Weber, Eric T. Nordlof, Jane MacLean, Bruce D. MacLean, Donald D. Fleming, Ruth B. Schweinfurth, Leslie A. Grove, James S. McLean, Larry Anderson, David H. Armstrong, Gary L. Hemingway, Larry J. Smith, James L. Sheehan, Richard C. Fasy, Edith M. Rice, Einetta Weathersby, Douglas A. Boe, Nicholas Wagner, Carol L. Hepburn, Lewis M. Wilson, James R. Hardman, Alexandra Cock, Robert H. Biggs, John R. Muenster, Jeff Spence, Kim D. Koenig, Raven Lidman, Dianna Timm Adams, Bruce D. Corker, Mary Alice Theiler, Richard Travis Rasmussen, Michael E. deGrasse, Iver C. Macdougall, Terrence V. Sawyer, Laura C. Inveen, Mary Gleysteen, Stephen A. Bernheim, Allan B. Ament, R. Corbin Houchins, Kyron J. Huigens, Charles A. Baechler, Dennis Cronin, Bertha R.S. Houser, Steve Ann Chambers-Castanes, Pamela G. Bradburn, Herbert M. Hamblen, Leonard W. Schroeter, Kenneth A. MacDonald, Bruce H. Erickson, Kenneth Isserlis, James A. Douglas, Dudley Panchot, Susan Samuelson, Fernando E. Perez Peña, Charles A. Barone, Ralph D. Pittle, William A. Garling, Jr., Rufus E. McKee, Douglas Jewett, Floyd Fulle

TITLE: RESOLUTION FOR NEGOTIATIONS OF A TREATY TO PROHIBIT FIRST USE

RESOLUTION: BE IT RESOLVED that the Washington State Bar Association recommends that the United States Government immediately pursue negotiations with the Union of Soviet Socialist Republics to conclude a treaty relative to a mutual, verifiable agreement by the contracting parties not to initiate use of conventional force against each other; not to initiate use of nuclear force against each other; and not to initiate nuclear response to conventional assault. The resolution contemplates negotiations toward an executable, verifiable treaty establishing parity of conventional forces in Europe at substantially reduced levels and toward removal of battlefield nuclear weapons on both sides of the East-West border in Central Europe.

REPORT

1. THE FIRST USE OPTION

This resolution addresses the risk of World War III in Central Europe where 2,000,000 troops armed with conventional and nuclear weapons are concentrated. The United States has pledged to defend Western Europe with United States nuclear weapons, including U.S. based intercontinental nuclear missiles, if necessary to stem Soviet non-nuclear assault.

This policy is called the nuclear option, the first use policy, or simply deterrence. The price of nuclear deterrence of conventional war is very high. Such war could occur by intentional escalation; by preemptive strike in absence of conventional war; by accident, mistake or terrorist seizure.

2. THE RULE OF LAW

United States policy of first use of nuclear weapons is illegal under existing international, municipal and constitutional law.

The United Nations Charter prohibits threat of force. Self defense under Article 51 of the United Nations Charter is limited to proportionate response. This per se excludes the nuclear option since disproportionate nuclear destruction is claimed to deter conventional war.

Collective human experience that violence is best contained when escalation of violence is prohibited is codified in municipal law. National states must obey this principle if the world is to survive in the nuclear age.

War powers under the United States Constitution are not unlimited. The constitutional requirement of congruence between ends and means prohibits the United States to begin a nuclear war that would destroy the United States. Claim that nuclear escalation can be controlled is not realistic.

3. AN IRRATIONAL POLICY

Deterrence assumes Soviet decision makers are rational and United States decision makers are irrational. Soviets will not begin a conventional war because to do so could initiate nuclear annihilation of the Soviet Union. United States leaders will begin a nuclear war even though to do so would initiate nuclear annihilation of the United States.

So long as the United States deploys nuclear weapons to escalate conventional to nuclear war, it is highly likely that conventional war will escalate to nuclear war. This is what deterrence is all about.

But it is not true that this strategy is the wisest way to deter either conventional or nuclear war. Continued reliance on nuclear escalation forecloses serious consideration of alternative means to deter conventional war. Risk of conventional war can and must be reduced through some means other than deliberate creation of a high risk of nuclear war. It is not true that the more likely conventional hostilities in Europe are to escalate to intercontinental nuclear war, the safer is the world.[1]

Deterrence policy does not become rational upon suggestion that deterrence is just a bluff.[2] Even if true, intent of present and future decision makers is not controllable. Reason and restraint are largely inoperative in crisis. If conventional war erupts, nuclear war fighting strategies are likely to override previously undisclosed intent not to escalate.

The efficacy of deterrence to preserve conventional peace has been disproved by conventional war in theaters where the nuclear option is in place and by military preparations to implement the nuclear option if deterrence fails.[3]

4. PROSPECTS FOR NEGOTIATIONS

The Soviet Union has proposed negotiations of no first use of any force, conventional or nuclear. Western delegates have dismissed the proposal on the ground that the West has not agreed to the concept of no first use of nuclear weapons.[4] This response assumes negotiations relative to no first use of conventional and nuclear forces, under which the United States can insist upon implementation, could not serve the interests of the West. It is unrealistic for the West to link conventional and nuclear forces for war fighting purposes and to refuse to link them in negotiations to reduce the risk of nuclear war.

This resolution anticipates negotiations toward mutual and significant reduction in conventional forces and removal of battlefield nuclear weapons in Central Europe. Implementation would markedly reduce the risk of intentional and accidental nuclear war. Such negotiations would serve the legal requirement of rationality of means to end under the rule of law and thus is an appropriate action for the Washington State Bar Association.

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[1] The United States is deploying Pershing II missiles in Europe *because* they make "escalation of any nuclear war in Europe to involve an intercontinental exchange more likely, not less . . . . This is why the deployment strengthens deterrence." Richard Burt, "NATO and Nuclear Deterrence," NUCLEAR WEAPONS IN EUROPE Arms Control Assn. 109, 111 (Heath: 1983).

[2] "Deterrence is not, and cannot he, bluff. In order for deterrence to be effective we must not merely have the weapons, we must be perceived to be able, and prepared, if necessary, to use them effectively against the key elements of Soviet power." Brent Scowcroft, "President's Commission on Strategic Forces," 2-3 (April 1983).

[3] See military strategies outlined by Caspar Weinberger "should deterrence fail" DOD Annual Report to Congress 1985 p 28. Weinberger elsewhere expresses his "profound belief that, if we have the capability to present the Soviet leadership with unacceptable consequences at any level of aggression of which they are capable, then that aggression will not occur in the first place." Id. at 47. Vice Adm. John Marshall Lee, USN (ret.) does not share this "profound belief." "[R]eliance on nuclear defense and nuclear deterrence of conventional operations will result, sooner or later, in the unimaginable catastrophe of general nuclear war . . . . [A] policy of No First Use of Nuclear Weapons, together with the measures that would make No First Use effective, is our best hope for survival." "No First Use," *The Churchman* (Sept. 1985).

[4] UPI/AP Joint Dispatch, *Seattle Times*, Jan. 29, 1985, A2. Similar offers were made the prior year. See *New York Times*, Jan. 25, 1984, A7.

THE NEW RULES OF PROFESSIONAL CONDUCT PART IV

by **Kurt M. Bulmer**

This is the fourth and final article in a series of articles on the new Rules of Professional Conduct (RPC). The first three articles appear in the October 1985, February 1986 and July 1986 *Bar News*. Copies of 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*.

The prior articles covered some background material and discussed Rules 1.1 through 5.6. This article will cover Rules 6.1 through 8.5.

Rule 6.1—Pro Bono Publico Service

Rule 6.2—Accepting Appointments

Rule 6.3—Membership in Legal Services Organization

Rule 6.4—Law Reform Activities Affecting Client Interests

All four of these rules encourage participation by attorneys in pro bono and public service work. None is mandatory, but the last two do provide some conflict protection if the attorney does do public interest legal service.

Rule 6.1 is a general proposition that an attorney should do pro bono work.

Rule 6.2 deals with the conditions under which an attorney might seek to avoid appointment as counsel. The primary test which permits avoiding such appointment is "good cause," such as potential violation of the RPC, unreasonable financial burden and the repugnancy of a potential client or cause of action.

Assuming a legal services organization is not an attorney's law firm, he or she can participate as a director, officer or member, even if the organization provides legal services to clients who are adverse to the attorney's own clients. As long as the attorney doesn't participate in decisions in direct conflict, it is permissible to participate in the organization. For example, an attorney could sit on the board of a legal services organization providing free bankruptcy services, even if some of the attorney's clients are sometimes creditors in bankruptcy proceedings. If the attorney avoided direct conflicts in his or her votes, participation on the board would be permissible. Rule 6.3.

Rule 6.4 provides similar protection for participation in organizations seeking to reform the law. An attorney can participate in such organizations even if such reforms might affect a client of the attorney adversely or beneficially. If a client might be benefited, the attorney need not name the client to the organization but must disclose to the organization that a client of the attorney would be helped by the reforms.

Rule 7.1—Communications Concerning a Lawyer's Services

The advertising rules found in 7.1 through 7.5 were worded differently in the prior code, but the general spirit of the rules is the same. The fundamental philosophy of the rules is found in RPC 7.1, which prohibits false or misleading advertising. The long "laundry list" of what can be included in an advertisement has been eliminated. However, if an advertisement makes misrepresentations by either commission or omission, if an advertisement contains a statement creating unjustified expectations, or if an advertisement makes unsubstantiated comparisons with other attorneys' services, then that advertisement is conclusively deemed to be misleading or a misrepresentation.

Rule 7.2—Advertising

Truthful advertisements can be made in any public medium such as television, newspapers and phone directories. It is also possible to advertise through nonpublic media by means of written communications. This is subject to the restriction on direct contact found in Rule 7.3. RPC 7.3 is discussed below, but fundamentally an attorney could use pamphlets and brochures, broad-based bulk mailings and other types of written communications in addition to public media such as radio, billboards and the like. Section (a).

Two technical requirements are that a copy of the advertisement or written communication must be kept for two years, Section (b), and the name of at least one attorney responsible for the ad must be on any communication, Section (d).

Except for advertising costs and lawyer referral service fees, an attorney is still prohibited from paying someone to recommend the attorney. Section (c). Runners, agents and other persons paid to send clients represent too high a risk of overreaching and are banned.

Rule 7.3—Direct Contact with Prospective Clients

Direct contact is permitted with family members or former clients. It is prohibited as to all other prospective clients if the attorney is instigating the direct contact in order to make money. Direct contact occurs when the attorney knows a specific person needs legal services and the attorney makes contact in person, by mail or otherwise with the potential client. An attorney can't stop at the scene of an accident and offer his or her services to a victim.

Mailings to groups generally known to need the type of legal services the attorney wishes to offer are permissible, but a person known to specifically need those services cannot be contacted. For example, if an attorney mails a letter to all real estate agents in an area and offers closing services, that would be okay. But the same letter sent to an agent because the attorney knew the agent had just made a sale would be improper.

A number of people have called into question the constitutionality of this rule. It appears there may be other ways to prevent overreaching without resorting to the broad ban on direct contact adopted by Rule 7.3. Eventually, the rule will be challenged, and we will have an answer on its constitutionality. In the meantime, it appears the rule may have viability in disciplinary or consumer protection actions. Unless you are prepared to mount the necessary constitutional challenge, I recommend staying away from direct contact with prospective clients.

Rule 7.4—Communication of Fields of Practice

Except for a patent attorney, an attorney cannot state or imply that he or she is a specialist. However, the attorney can state that he or she practices in specific fields of law. Some fine lines will need to be drawn here since the statement "practicing in real estate law" is apparently permissible, yet the statement "practice limited to real estate law" may not be permitted as it may imply specialty. Under the old rule the "practice limited" expression was proper—it is now questionable.

Rule 7.5—Firm Names and Designations

Just as under the old rules, what name a law firm can use continues to be regulated. Trade names are prohibited, but "legal clinic" is permissible when used alone, or with a geographical designation, or with the name of one of the attorneys. Section (a). Accordingly "Best Way Law Offices," a trade name, and "Real Estate Legal Clinic," an unauthorized legal clinic name, are both improper. "Seattle Legal Clinic" and "Legal Clinic of Kurt M. Bulmer" are both permissible. Any type of legal clinic name is made specifically subject to the misrepresentation provisions of RPC 7.1.

A firm name may contain the names of deceased or retired members of the firm. Section (a). The same name can be used in different jurisdictions even though everyone named is not admitted in all jurisdictions. It must be noted who can practice where on identifications of the firm—*i.e.*, letterheads and in ads. Section (b). The name of an attorney who goes into public office and who does not actively practice with the firm cannot be used in connection with the firm. Section (c). Finally, attorneys cannot state or imply they are a partnership if in fact they are not a partnership. Section (d).

Rule 8.1—Bar Admission Matters

False statements and misleading statements on bar applications by applicants or attorneys are prohibited.

Rule 8.2—Judicial and Legal Officials

Attorneys can't make false or reckless statements about a judge or judicial candidate. Section (a). The provisions of this rule tend to come about when an attorney has lost an emotional case and in a flippant or angry remark implies the judge lacked integrity. The rule doesn't say a judge can't be criticized by an attorney, but such criticism cannot be false or made with a reckless disregard for the truth.

Attorney judicial candidates have to follow the requirements of the Code of Judicial Conduct. Section (b). The rules encourage attorneys to provide support to judges and courts unjustly criticized. Section (c).

Rule 8.3—Reporting Professional Misconduct

Unlike many other jurisdictions, Washington does not require attorneys to report other attorneys' questionable conduct. Attorneys are encouraged to make a report if there is a substantial question about another attorney's conduct, but it is not mandatory. Section (a). Washington has found that a voluntary rule combined with the immunity and confidentiality provisions of the Rules for Lawyer Discipline are as effective, if not more so, as the mandatory rule in other jurisdictions.

Section (b) contains a similar voluntary rule as to reporting fitness questions about judges.

Even though the rule encourages reporting, no report should be

made if it would violate the confidences and secrets provisions of RPC 1.6. Section (c).

Rule 8.4—Misconduct

This rule is fundamentally a continuation of the equivalent rule in the prior code. It is a list of specific types of actions that will be considered professional misconduct.

An attorney cannot violate the RPCs or assist someone in doing so, Section (a); an attorney cannot commit a crime that reflects on his or her honesty, trustworthiness or fitness, Section (b); an attorney cannot engage in conduct involving dishonesty, fraud, deceit or misrepresentation, Section (c); an attorney cannot engage in conduct that is prejudicial to the administration of justice, Section (d); an attorney cannot state or imply an ability to influence improperly a government agency or official, Section (e); and an attorney cannot knowingly assist a judge in a violation of judicial conduct rules or other law, Section (f).

Rule 8.5—Jurisdiction

The final provision of the RPC provides jurisdiction over all attorneys who practice law in Washington. Jurisdiction covers both those licensed in Washington and those temporarily admitted for some special purpose.

* * * * *

This concludes the series of articles on the no longer "new" RPC. The articles have not attempted to cover any issue in detail. For a specific problem, the applicable rules must be consulted. It would also be worth the time to sit down and read the rules. My set of rules is 949 lines long, shorter than Act III of *Hamlet*! Surely, you can find the time to at least glance through them. □

***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.*

Notes From the Academy

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

Creditor-Debtor Law. *Case 1.* Educational loan was dischargeable in full under 11 U.S.C. § 523(a)(8), because first installment became due more than five years before date of filing. Court rejected minority view that only installments that became due more than five years before date of filing were dischargeable. ***In re Nunn***, 788 F.2d 617 (9th Cir. 1986).

Case 2. Debtor-employee's ERISA-qualified savings plan and portion of stock ownership plan became property of bankruptcy estate. Federal restrictions on transfer did not make them excludable from estate under 11 U.S.C. § 541(c)(2), because under ***In re Daniel***, 771 F.2d 1352 (9th Cir. 1985), that section excludes only property subject to restrictions on transfer under state spendthrift trust law. Savings plan was not spendthrift trust under state law because funded primarily by debtor, and debtor could withdraw funds without substantial penalty. Stock ownership plan funded entirely by employer was spendthrift trust, but portions of accumulated funds that debtor could withdraw without substantial penalty were not excludable. Funds included in bankruptcy estate were not exemptible under 11 U.S.C. § 522(10)(E), because, given debtor's power to withdraw, they were more akin to savings than to future earnings required by that exemption. ***In re Petit***, No. 85-01698 (J. Volinn, Bankr. W. D. Wash. 1986).

Case 3. Where settlor of debtor's profit sharing plan was corporation-owned and totally controlled by debtor and debtor as trustee exercised unfettered control over funds in plan, trust was self-settled and therefore not a state spendthrift trust excludable from debtor's bankruptcy estate under 11 U.S.C. § 541(c)(2); funds were not exemptible for same reason stated in ***In re Petit***, supra. ***Nelson v. White (In re White)***, No. 82-02144 (J. Volinn, Bankr. W. D. Wash. 1986).

—*M. D. Rombauer*

Real Property. *Case 1.* Title insurance company has no obligation to vendor, who ordered title insurance for purchaser, to provide accurate preliminary commitment report. Court places decision on ground of lack of duty to vendor and declines to decide whether title companies have "abstracter's" duty to disclose title defects in preliminary reports. ***Klickman v. Title Guaranty Co.***, 105 Wn.2d 526, 716 P.2d 840 (3/27/86).

Case 2. (a) Deed that "conveys and warrants unto Bellingham and Northern Railway Company . . . for all railroad and other right of way purposes, certain tracts and parcels of land" conveyed only easement, not an estate. (b) Deed that conveys "any and all other real property" grantor owns or may acquire in a vicinity contains an adequate description, in spite of Washington's rule that deed must contain full legal description of a specific parcel of land. Court says description of "any and all" property is adequate because description(s) of grantor's land may be determined by examining local public records. ***Roeder Co. v. Burlington Northern Co.***, 105 Wn.2d 567, 716 P.2d 855 (3/27/86).

Case 3. Earnest money agreement that described land as "approximately" that shown on attached sketch was not adequate description when attached sketch did not show meridian, township, range, or section. To comply with statute of frauds, description must either be complete, without recourse to oral testimony, or must refer to another document that does contain complete description. ***Ecolite Mfg. Co. v. R. A. Hanson Co.***, 43 Wn. App. 267, 716 P.2d 937 (3/27/86).

—*W. B. Stoebuck*

EAST KING COUNTY REPORT

by DOUGLAS W. HARRIS

Well, another summer is here, which means it's time for the annual EKCBA Golf Tournament. This year there has been a change in venue to Carnation Golf Course. Like last year there will be a barbecue after the tournament at which the major prizes will be awarded. We've had a good response from several hotels and restaurants and, as was seen last year, you don't have to be Jack Nicklaus to win something.

The evening at Longacres was a huge success. Some of us even won some money. Everybody had his own system for picking losing horses, but nobody seemed to go away disappointed.

The firm of Jacobson & Snodgrass has moved to new headquarters in Bellevue at 3015 112th Avenue N.E., Suite 203, (206) 822-5580. **Jeffrey Schreiber** has joined the firm as an associate. We're all looking forward to an open house sometime this summer.

Lynn C. Pollock announced the opening of her law office at Honeywell Center, Suite 1046, 600 108th Avenue N.E., Bellevue.

There isn't much to report from the June Board of Trustees meeting as the absentees greatly exceeded the attendees. Our honorable treasurer was fishing in Alaska, but did take time to prepare the monthly Treasurer's Report. The report showed an all time high membership of 325. There was also a report of the ongoing effort to include representatives from the local bar associations on the Judicial Selection Committee of the Seattle-King County Bar Association. Discussions are underway with Judge **Robert Winsor** to that effect.

Finally, the EKCBA Membership Drive should be in full swing by now. At $15 per year, how can you lose? With the vastly increasing number of Eastside attorneys, it is hoped that this year's membership will increase dramatically. Watch for membership information in the mail. There has been some discussion of a telethon this year, but we all hope that it won't be necessary.

Please give me a call with anything you may want announced in this column at (206) 822-5580 or drop me a letter. No postage due, please.

GOVERNMENTAL LAWYERS REPORT

by FRANK K. EDMONDSON

Awards—The Governmental Lawyers Association, the Puget Sound Legal Assistance Foundation and The Thurston-Mason Bar Association were the recipients of "1986 Safeplace Community Awards" for outstanding service to the community. The three organizations jointly sponsored "The Attorney Referral Project of Thurston and Mason Counties," which has provided many hours of pro bono services to victims of domestic and sexual vio-

lence. Congratulations and well done to the many participants who have contributed to the success of this program.

Programs—Gov Law is off to a fast start with interesting luncheon programs and CLEs. At the May luncheon, **Angelo Petruss,** 3rd District Governor, discussed the current status of the proposed mandatory malpractice insurance program. Dr. **Sherwin Colter** spoke on "Stress Management and Burn Out" at the June luncheon. Senator **Phil Talmadge** and Representative **Seth Armstrong** presented a "Legislative Update" CLE in July.

People—**Ed Mackie,** Chief Deputy Attorney General, is serving as the Governmental Lawyers observer on the new Bar Task Force on mandatory malpractice insurance.

In addition to her other Gov Law activities, President **Mary Prevost** attended the Local Bar Presidents meeting in May and reported to the Washington Women Lawyers on the Bar's proposed malpractice insurance program.

GRAYS HARBOR COUNTY REPORT

The Grays Harbor Bar Association is happy to note that we have two new superior court judges: **David Foscue** took over pursuant to an interim appointment by Governor Booth Gardner when **John W. Schumacher** retired January 1, 1986. Department One is under the decisive guidance of **Robert L. Charette,** who ran for election when **John H. Kirkwood** decided not to seek reelection.

This is quite a change for members of the bar, as Judge Schumacher, the junior judge, had been on the bench for over fifteen years. You know you are getting older when such changes take place and you have difficulty adapting to them. It seems like only yesterday that this column was continually asking if anyone had seen Robert Charette while the legislature was in session. Now, without any problem at all, we can find the Honorable Judge presiding over Department One of the Grays Harbor County Superior Court with great graciousness.

A short update in regard to the attorneys in Montesano: **John Lindel** practices by himself. **Eric Nelson** has joined his father, **Greg Nelson.** We also have **James Stewart** and **Bill Stewart** (another father-son combo), **Joan Curry,** and **Ralph Thomas. Dan Tighe** is practicing solo. Another firm has exploded with **Stephen Olson, Jeff Raines** and **Teresa Ahern.** Next time we will update the prosecutor's staff under **Michael Spencer.**

The Grays Harbor County Bar Association's 28th Annual Bar Derby was held at Westport July 15, 1986. This annual event has been somewhat curtailed by recent problems in the fishing industry. Details on winners will follow as soon as we separate fiction from nonfiction.

ISLAND COUNTY REPORT

by **CHRIS L. CUSTER**

Christian Skinner, after two years of stellar leadership, relinquished the Island County Bar Association Presidency to **David P. Walker,** of Walker and Comeau. Skinner, when last seen, was racing away without a seatbelt in his new car trying to figure out how he was going to make auto, house and boat payments if he takes a vacation. Walker, who was in Pennsylvania on active Navy duty for two weeks during the nomination and election, returned much too late for anyone to pay attention to his Sherman speech.

The author, on his honeymoon when appointed to the nominating committee, figured those who miss meetings do so at their own risk. Dave will have very able assistance during his term from **Joan McPherson** of Coupeville, who was elected Secretary-Treasurer in spite of her desperate attempts to re-open nominations.

Ken Pickard of Coupeville recently returned with a nice sunburn from a windsurfing trip on the Columbia River. **Mark Thune,** of Cohen, Manni and Thune, who last year was bamboozled into climbing Mt. Rainier with **William J. Daniel,** has sworn off any future daredevil summer trips. This year, Daniel has talked him into rafting the Deschutes River in eastern Oregon—where drownings average only eight a year.

In the interests of self-aggrandizement, it should be noted parenthetically that **Chris L. Custer**, of Johnston & Custer, managed to return from his bachelor party in time for his wedding on May 31 at the Oak Harbor Yacht Club. He is now back to work and happily married after surviving his honeymoon—barely—rafting the Methow River.

PIERCE COUNTY REPORT

by **ROBERT W. MARSDEN**

Bertil Johnson has been named to a new study committee to review Washington's tort system and make recommendations designed to ease insurance problems for state residents. The 10-member committee includes six attorneys, two lay persons, a law school professor and the State Insurance Commissioner. The findings of the committee are expected to be presented to the 1987 session of the State Legislature.

John Messina, Patrick Duffy, Dick Gustafson and **Dave Bufalini,** formerly with the firm of Manza, Moceri, Gustafson and Messina, have formed a new law firm in Tacoma: Messina, Duffy. The firm commenced operation on May 19 near the Tacoma Mall. **Steve Bulzomi** has been hired by Messina, Duffy as an associate.

Dave Stillman, formerly an associate with McCormick, Hoffman, Rees and Faubion, has opened his own practice in Spanaway.

SEATTLE-KING REPORT

by **JAMES L. VARNELL**

Office Moves. Hillis, Cairncross, Clark & Martin announces that **James J. Ragen** and **Michael F. Schumacher** have become principals in the firm, which has relocated its offices to the Galland Building. **David E. Leshner** and **Susan J. Shulenberger** have become associates of Cable, Barrett, Langenbach & McInerney. **R. Broh Landsman, Danferd W. Henke** and **Karen J. Vanderlaan** have become partners in Helsell, Fetterman, Martin, Todd & Hokanson. **Stephen A. Sewell** has joined the Port of Seattle as general counsel. **Carrie L. Schnelker** has been promoted to assistant general counsel for the Port. Bassett & Morrison announces that **Daniel F. Mullin, William M. Clumpner, Jr.** and **Marlin L. Vortman** have become principals, and **Dawn Tae Thorsness** has become an associate.

Lenihan, McAteer, Hanken & Borgersen has merged with Schwabe, Williamson, Wyatt, Moore & Roberts. **William Lenihan, James McAteer, James Hanken** and **Sigurd Borgersen** are partners in the firm. **Ann Forest Burns** is of counsel in the Seattle office. **David L. Garrison** and **Rex B. Stratton** have formed a professional corporation with offices in the Westin Building, **Ford E. Smith** of counsel. **Constance L. Proctor** has become a partner of Alston, Courtnage MacAulay & Proctor. **James M. Rupp,** son of one of the most complimentary readers of this column, is counsel to John Fluke Manufacturing Co., Inc.

Honors. At the annual meeting of the Seattle-King County Bar Association, the following were recognized for their extraordinary achievements: **Lowell Halverson** for exemplary and distinguished service to SKCBA; **Gregory Dallaire** for his efforts in addressing the legal needs of the poor; **Gerald Day** for consistent and diligent representation of *pro bono* clients; **Rodney J. Vessels** for outstanding contributions to the Young Lawyers Section; **Frank D. Howard** as Outstanding Judge; the late **Charles Goldmark** for distinguished and meritorious service to the legal profession and public. The firm of Levinson, Friedman, Vhugen, Duggan, Bland & Horowitz was recognized for its dedicated commitment to the provision of legal services to the poor. After the awards dinner, members of the Bar were entertained by a spoof of a personal-injury trial entitled "Twelve." This play was written by **Jim Rogers** with musical direction by **Keith** (Mr. Tar Heel) **McClelland.**

Timothy J. Blake recently received a grant from the American Association of Law Libraries. **Robert Graham,** retired senior partner of Bogle & Gates, was named Seattle's First Citizen of 1986 by the Seattle-King County Board of Realtors.

Tee Time. **Dave Koopmans** has returned to the lawyers' golf tour and will make his first appearance in years at the Phil Biege Open at Enumclaw. **Tom McElmeel** will attempt to recapture the trophy he won when his foursome included this correspondent, Judge **Jim Dore**, and Carole Coe-Hauskins. Other perennial favorites include **Bob** "The Silver Fox" **Kuvara, Paul** "How's Your Game? **Houser, Bill** "Air Mail" **Levinson, Judith Eiler, Leslie Wagner** and **Jane Rhodes.**

SOUTH KING COUNTY REPORT

by **LESLIE A. WAGNER**

New Officers. Recently elected officers and trustees of the South King County Bar Association are President: **Judith R. Eiler;** Vice-President: **A. Robert E. Thomson;** Secretary: **Leslie A. Wagner;** Treasurer: **Ernest Vogel;** and Trustees: **Duncan Bonjorni, Steve DiJulio** (who also holds a seat on the Seattle-King County Bar Association Board of Trustees), **Gary Faull,** and **E.T. "Woody" Leverette. Paula Pridgeon, Mark Eide, Jim Curran** and **Laird Pisto** return for the second year of their two-year terms as Trustees. **Carlos M. Sosa III** is Immediate Past President.

The installation of the officers and trustees was held at a banquet at Longacres on May 28, 1986, with King County Superior Court Judge **David C. Hunter** performing the honors. A good time was had by all, though by most accounts, not much money was won. The highlight of the evening for Judy Eiler and Carlos Sosa was having their picture taken with "Earley Drummer," the winner of the "South King County Bar Association Purse."

New Legal Clinic. The Young Lawyers Section of the Seattle-King County Bar Association has established another free legal clinic in South King County. Currently the Clinic is held on two Wednesday evenings per month at the Kent Senior Center. **Steve DiJulio** was instrumental in generating interest within the South King County Bar; many of our Bar members have volunteered their time and talents to staffing the Clinic.

New Blood. **Terri Roberts,** former law clerk to the Honorable **Walter E. Webster Jr.,** of Division I of the Washington State Court of Appeals, is now practicing and sharing office space with **Bob Kuvara,** in Kent.

Larry Schreiter has joined Curran, Kleweno & Johnson, P.S., as an associate. Larry worked for the State Attorney General and in his own practice in Olympia before joining the Curran firm.

Welcome Terri and Larry!

SPOKANE COUNTY REPORT

by **JUDY J. FOSTER**

Newly elected officers and trustees were voted in at the meeting of the membership of the Spokane County Bar Association in June. New officers are **Thomas D. Cochran,** President; **Joseph P. Gagliardi,** Vice-President; **Richard J. Schroeder,** Secretary; **Michael J. Pontarolo,** Treasurer. Trustees are **Gary J. Gainer, Henry E. Stiles II, Paul J. Wasson, Seaton Daly Jr., Richard W. Kuhling** and **Richard White.**

J.R. Fallquist, the clerk for the Eastern District of Washington Federal Court, retired on August 1 after 30 years of service. At a luncheon honoring Fallquist, 150 attorneys, judges and friends wished him farewell and a memorable tribute was given by retired Supreme Court Justice **William Williams.**

Professor **James Vaché** has been named the new Dean of Gonzaga Law School. He will take over his duties upon the retirement of **Theodore Clements.** Vaché has for many years taught constitutional, administrative and contract law as well as other law school courses. The membership of the Spokane Bar Association as well as the community wish to thank Dean Clements for his years of service to the law school and Spokane.

Michael J. Custer has been elected president of the Young Lawyers Section of the Spokane Bar Association. New trustees are **Conni Stamper, Donald Verfurth, Steve Kozer** and **Bruce Hanify.**

On the Move! **Thomas Kelleher, Kevin O'Shaughnessy, Scott Brown** and **Keith Newell** have opened new offices: Kelleher, O'Shaughnessy, Brown and Newell is located at 103 W. Indiana, Spokane, 99205. (509) 326-5445. Evans, Craven & Lackie, P.S., moved to N. 1206 Lincoln, Spokane, 99201. (509) 328-1110.

Ronald Morrison has recently opened his own office located at W. 815 - 7th Avenue, Spokane, 99204. (509) 455-3647. **Dudley Forster** is now practicing at N. 2610 Pines Road, Spokane, 99206. (509) 924-9930.

Spokane Bar Association Golf Tournament. On the hottest afternoon of the year, 149 attorneys and judges withstood the hot sun to play in the annual SBA Golf Tournament. Thanks go out to Family Law Court Commissioner **David Thorn** for the many, many hours of work he put in to sponsor this event. Nearly $400 was raised for the Spokane Food Bank and although no one won it, a new car was offered for a "hole in one" shot. (Sorry, **Jim Workland!!**)

DISCIPLINE

Censured

Shelton attorney **Robert C. Brungardt** (admitted May 1978) has been ordered censured pursuant to a stipulation for discipline. The stipulation was based on Brungardt's conduct in requesting that the Department of Social and Health Services defer collection activities against his client, as a support order was about to be entered in the dissolution and a payment plan undertaken. When it became apparent to Brungardt that no support order would be entered, he failed to correct his prior communication to the department, which had delayed garnishment activities based on Brungardt's representations.

IN MEMORIAM

Alexander L. Cain, who practiced law in Seattle for more than 50 years, died May 18, 1986 at the age of 77. The Seattle native attended Seattle Prep, Gonzaga University, and the University of Washington School of Law.

Trial Practice Guide

The *Guide to Trial Practice in King County*, 2nd edition, contains practice tips and biographical information on judges. To purchase it, send $34.37 (includes $2.37 tax) to Seattle-King County Bar Association, 320 Central Bldg., Seattle, WA 98104.

Process Servers Association Annual Meeting

The Washington State Process Servers Association is having its second annual state conference at Campbell's Lodge in Chelan September 12-13. For further information, contact Robert J. Hoyden at (206) 771-8834, or write WSPSA, P.O. Box 933, Lynnwood, WA 98046.

Fall Meeting Planned by Judicial Recommendation Committee

The WSBA Judicial Recommen-

dation Committee is scheduling their last meeting of 1986 this Fall in order to review applications of those persons interested in being placed on the approved list of candidates for Washington State Supreme Court or Court of Appeals vacancies. Applications are available by contacting the Bar office at 505 Madison Street, Seattle, WA 98104, (206) 622-6054. All completed applications must be received by the Bar office **no later than September 5, 1986** in order to be considered at the upcoming meeting. Applicants will be contacted in early September regarding the specific date and time of their interview.

Admission Ceremony

A ceremony to admit attorneys to the U.S. District Court for the Western District of Washington will be held Friday, August 15, 1986 at 9:30 a.m. in the 9th Circuit Courtroom on the 8th Floor of the U.S. Courthouse in Seattle.

WSBA Young Lawyers Section Notices of Elections: Vice-President and Board of Trustees

Two September Elections will be conducted to fill positions in the WSBA Young Lawyers Section:

The current Board of Trustees will elect a person to serve one year as Vice-President and then succeed to a one-year term as President. Any member of the Section in good standing is eligible to run for the office, with the proviso that (s)he must succeed to the presidency before age 36 or during the year of reaching that age.

If you are interested in running for the office of Vice-President, send a written notice to: **Thomas M. Fitzpatrick**, Chairman Elections Committee, 1111 Third Avenue, Suite 2500, Seattle, WA 98101. Please enclose a resumé, not exceeding two pages and listing personal and professional information and qualifications for office, which will be submitted to the Board of Trustees. You may also submit a statement, not exceeding 100 words, of why you are seeking the office. The deadline for filing (postmark or receipt) is September 5.

Elections will also be conducted to fill seats on the Young Lawyers Section Board of Trustees in the following districts: Full, three-year terms of office for representatives of the Third and Seventh Congressional Districts and King County at Large: an approximately two-year term for the representative of the Second Congressional District (to fill the vacancy created by the resignation of Linda Sullivan, who has moved to the Sixth Congressional District).

If you reside or maintain your office in any of the aforementioned districts and are a member in good standing of the Section, you are eligible to run for office. Send a written

notice to Thomas Fitzpatrick at the above address; enclose a resumé, not exceeding two pages and listing personal and professional information and qualifications for office, which will be mailed to the eligible voters. You may also submit a statement, not exceeding 100 words, of why you are seeking the office. The deadline for filing (postmark or receipt) is September 5.

Interdisciplinary Family Law Seminar

SKCBA Family Law Section will present an advanced interdisciplinary family law seminar September 26-27 at the Battelle Institute in Seattle: "Preparing a Custody Case with Mental Health Professionals." Fee is $150. Anticipated CLE credit is 10 credits; course also will be approved for Continuing Professional Credit (for psychologists). Lunch is included both days. A major focus will be communication between mental health professionals and attorneys. Faculty include **Bernice Jonson, Bill Kinzel, Wendy Gelbart**, and many local mental health professionals.

Hawaii, Here We Come!

Great plans are afoot for the 1986 Annual Meeting November 3-9 in Honolulu, Hawaii. By now WSBA members have received information and reservation forms for both hotel reservations and special convention programs. In order to bring you the most up-to-date information, the *Bar News* will publish its Convention Issue in October, but NOW is the time to make your reservations with the WSBA Coordination Center, GTU, 720 North Saint Asaph Street, Alexandria, Virginia 22314-1997, (800) 233-0084.

Interim Suspension

Vancouver attorney **Jeffrey M. Witteman** (admitted 1969) was suspended from the practice of law pending the outcome of disciplinary proceedings against him by order of the Supreme Court entered June 12, 1986, and effective immediately.

Worker's Compensation referrals invited. Thirteen years experience before agency and courts throughout Washington.

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Robert E. Mack, former Legal Counsel to the Governor, Assistant Attorney General, and Assistant Secretary of State, is available for work on matters involving environmental law, land use, and government relations, and for appellate consultation.

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