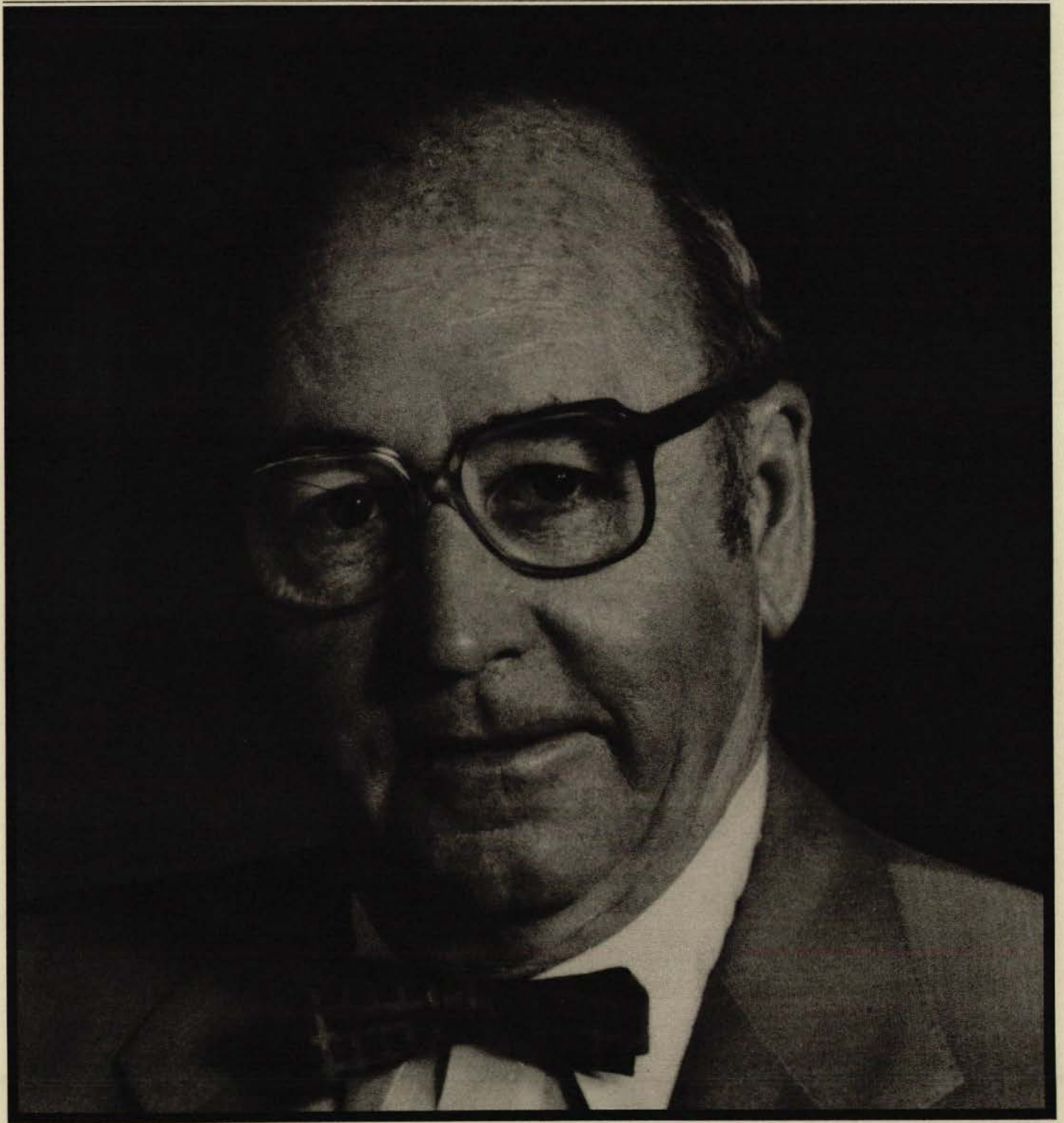


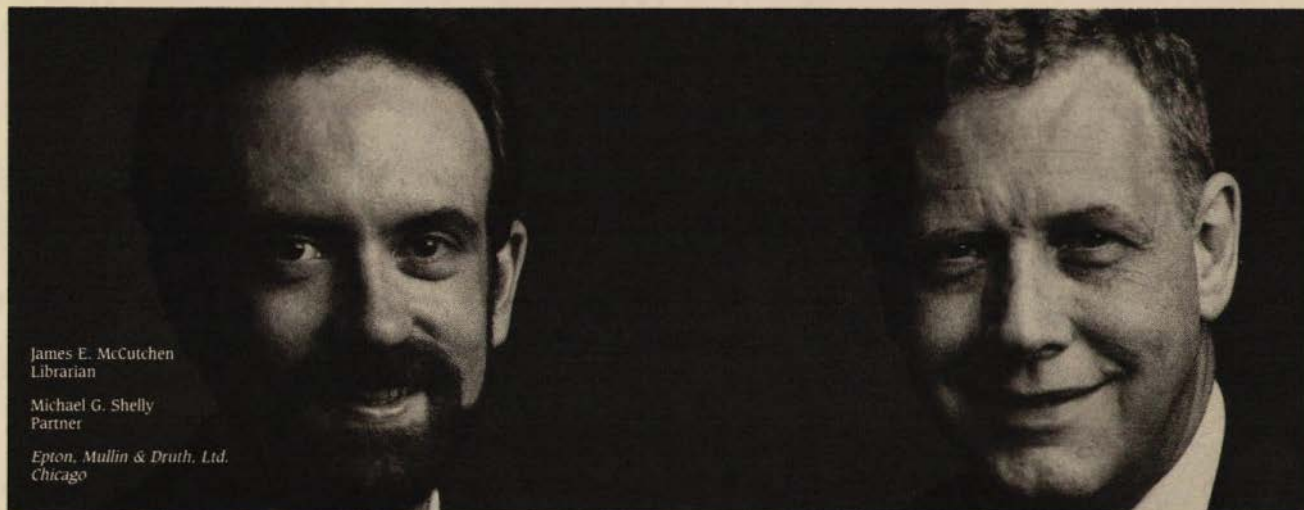
Washington State **Bar**
News

Vol. 41, No. 10, October 1987



Jack R. Dean, President

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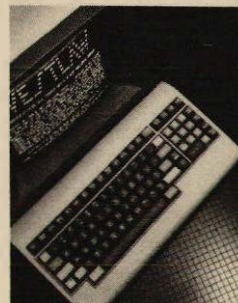


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FEATURES

FIFTY YEARS AGO: 15 THE BEGINNINGS OF LAW CLERKING WITH THE WASHINGTON SUPREME COURT

by Charles H. Sheldon

REPRESENTING YOUR CLIENT 21 AT THE SOCIAL SECURITY DISABILITY HEARING

by William Justin DeLeonardis

ANNOUNCEMENT

The *Bar News* is now accepting applications for the position of editor. Applicants must be practicing attorneys in good standing with the WSBA. Submit resumé and writing samples, if available, to *Bar News* Editor Search, WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599. Applications must be received no later than December 1, 1987.

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Sir John Tenniel

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

Calculation of Legal Interest Rates

Editor:

Each time I take up the task of calculating interest on judgments (or maximum interest rates generally), I am frustrated by the RCW 4.56.110/19.52.020 merry-go-round. The adoption of RCW 19.52.025 in 1986 is some help, but only to those attorneys who have quick and ready access to copies of the Washington State Register.

Please consider publishing in each issue of the *Bar News* the relevant information taken from the Washington State Register as required by RCW 19.52.025. It would seem to be a minimal task to provide a maximum benefit to all the members of the Bar Association.

Thank you.

BERNARD L. PEREZ
Yelm

Editor's note: Please see page 39 of this issue for a table of the 26-week treasury bill averages, which was

kindly supplied to the Bar News by Joyce Feely, the executive director of the Tacoma-Pierce County Bar Association.

Proposed RLD Amendments

Editor:

Some years ago a friend brought me a replica of a lion's mouth which used to exist on a Hall of Justice in Italy. The practice was for one to walk by and slip a complaint against an individual in the lion's mouth, which would then fall into the Hall of Justice. The person against whom the complaint was made would then have to answer.

My friend and I remarked many times how marvelous it was to live in a country where one never had to answer an anonymous complaint—where one always had the right to confront his accusers.

Now we have a proposed rule where anyone, be it a disillusioned spouse, neighbor, or just one's worst enemy, can make an anonymous complaint which would require one to be subject to a review by an in-house psychologist of the Bar Association to assess competency to continue practicing law.

Lawyers should be subject to discipline; they nonetheless should retain some rights: The right to confront one's accuser is primary.

K. R. ST. CLAIR
Mount Vernon

Skilex 1988

Editor:

Skilex was founded 25 years ago by members of the European bar and judiciary. Annual conventions of Skilex are held firstly, to develop contacts among members of the international legal community and secondly, for attorneys and judges to compete as national team members in alpine and cross-country ski racing. In 1988 the Skilex meeting is to be held at Whistler Mountain, British Columbia from February 28 to March 5.

The Skilex races are fun-oriented, and skiing ability is not required. Races are divided according to sex and age and weighted to favor skiers over 50 years. Spouses are welcome to

participate and there is a guest category for other family members.

On behalf of the skiers from the British Columbia Bar, I am authorized to issue a challenge to the skiers from the Washington Bar. It is the view of the British Columbians that our three best times in the giant slalom course will be better than the Washington lawyers' three best times and that our three slowest times on the giant slalom course will be slower than those of the three slowest Washington lawyers. We challenge you to prove us wrong.

If you are interested in attending this meeting, please contact D. Ross Clark, 2800-666 Burrard Street, Vancouver, B.C. V6C 2Z7 or Tom Olson, c/o Reed McClure Mocerri Thonn & Moriarty, 3600 Columbia Center, 701 Fifth Avenue, Seattle, Washington 98104-7081, and we will forward you an application form. Early registration is a necessity because the meeting is scheduled during the same week as the Whistler World Cup and Downhill races.

D. ROSS CLARK
Skilex 1988
Organizing Committee
Vancouver, B.C.

Mailing List, Anybody?

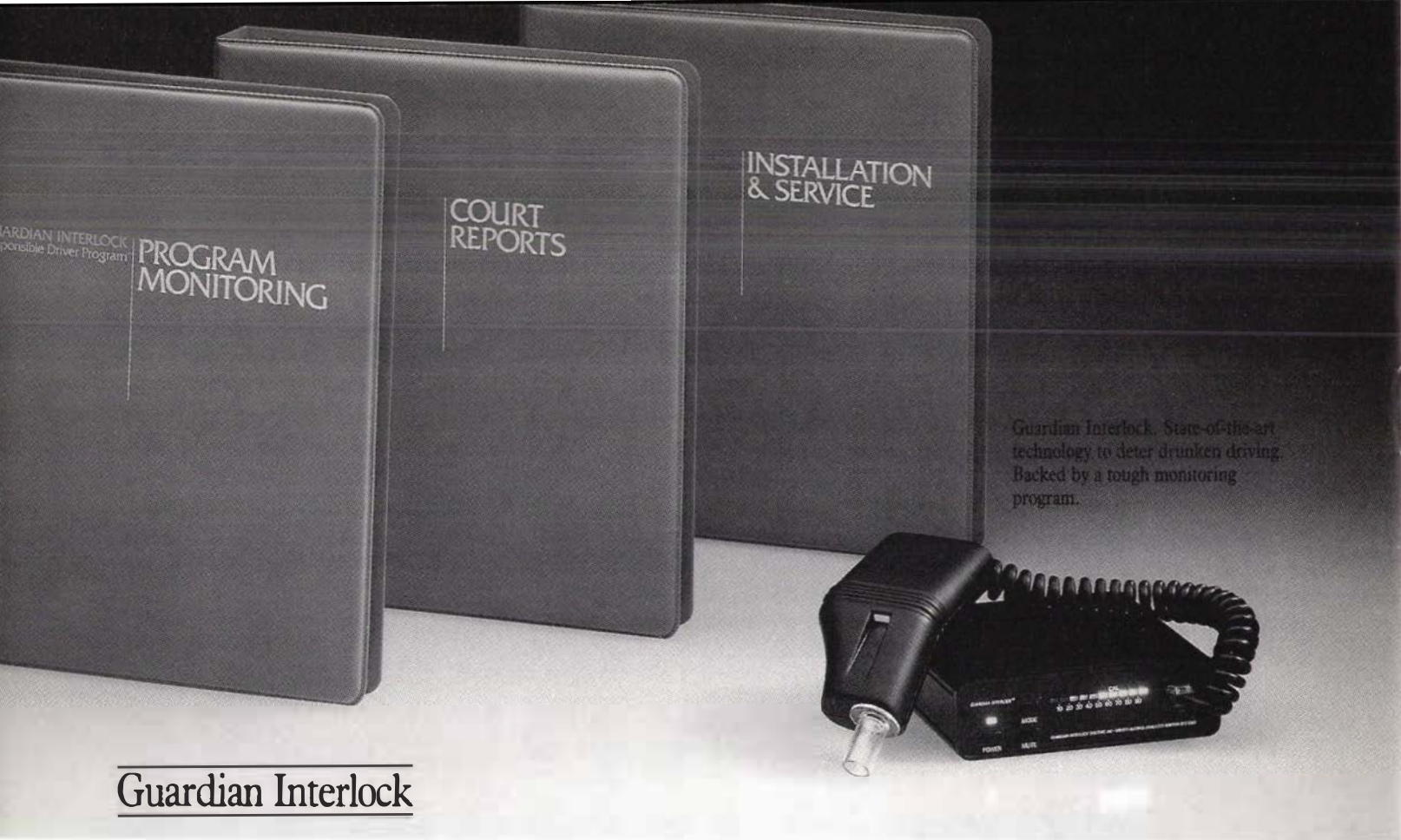
Editor:

First, I share the sentiments expressed by Edward Huneke of Seattle in his letter to the editor in the June *Bar News*. I would appreciate more information about the substance of the Bar convention rather than hearing about all the "bells and whistles."

Second, I received in the mail today a fund-raising letter from the ACLU. It was apparent from the mailing label that the ACLU obtained my name and address from the Bar Association. I would appreciate a column from the WSBA Executive Director describing the policy of the Bar Association on providing the Association mailing list to third parties.

DEANE W. MINOR
Everett

Editor's note: Please see page 13 of this issue, where executive director John Michalik addresses the Bar mailing list topic.



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the interlock, and begin regular monitoring of program compliance. (Guardian Interlock's industry-leading technology includes safeguards to deter—and report—attempts to tamper with or bypass the interlock.) Verification of compliance is complete and quick.

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Jack R. Dean Elected WSBA President for 1987-1988 Term

With the conclusion of the 1987 Annual Meeting in Vancouver, B.C., the leadership of the Washington State Bar Association moved to the east side of the Cascades as the gavel was passed to our new president for 1987-1988, Jack R. Dean of Spokane.

An affable gentleman well-known for his professional competence and continuing service to the profession, Jack Dean brings to the presidency a strong commitment to uphold the high standards of his predecessors and to continue the innovative leadership for which the Washington State Bar Association has become nationally known.

Dean has served his profession in many ways in his 37 years as a lawyer. Most recently, he was a Trustee of the Legal Foundation of Washington, a position he held 1984 through 1987. He was President of the Foundation in 1986. He is a former member of the WSBA Board of Governors, 1979-1982, and has served terms as a member of the Legislative Committee, as Chairman of the Criminal Law Committee, and as a member of the Association's Long-Range Task Force.

He has been active in local bar affairs as well, having served as a Trustee of the Spokane County Bar Association, Chairman of the Judicial Liaison Committee, and as Co-chairman of the Pro Bono Committee.

In addition to his activities in the Spokane and State Bar associations,

Dean has been a staunch advocate of maintaining strong contacts with our state Legislature. In support of law-related programs and legislation, Dean chaired the BAR-PAC political action group from 1981 through 1986 and was instrumental in raising substantial support during that time.

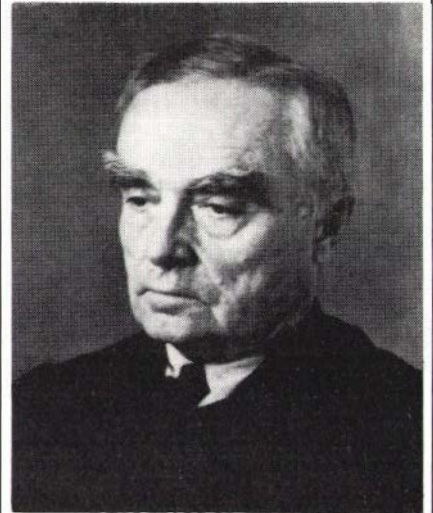
Jack Dean's legal career began with graduation from Gonzaga Law School in 1950. He became a member of the Washington State Bar Association that year and for the following four years was associated with Spokane lawyer George W. Young. From 1954 through 1958, he was in partnership with William H. Williams, a long-time friend who later became Chief Justice of the Supreme Court of the State of Washington. After a three-year stint as a sole practitioner, Dean went into partnership with (now United States District Court Judge) Justin L. Quackenbush from 1961 through 1980. Since that time, he has been a partner in the Spokane law firm of Dean, Keane, Smith & Hemingway.

Dean's public service activities have not been limited to the legal profession. He is a former President of the Spokane Eagles and also of the Washington State Eagles. He has twice been President of the National Guard Association of Washington State. A decorated former United States Army Officer, Jack Dean served in World War II and was discharged after service in Europe with the 11th Armored Division, for which he was awarded a Bronze Star with cluster, a Purple Heart, and an E. T. O. Ribbon with 3 Battle Stars.

Jack and his wife Elise reside in Spokane. The Dean legacy will be carried on by four grown daughters.

Anyone who has met Jack Dean knows him to be approachable, an earnest listener, and concerned about the interests and needs of both lawyers as individuals and those of the Washington State Bar Association as an organization. We look forward to the benefits of those qualities as the Association faces the coming year of opportunities for professional growth and service to both its members and to the public-at-large.

A FEDERAL CASE MAY TURN OUT TO BE A MINEFIELD



Federal jurisdictional and procedural law do create traps.

And the factual and legal issues raised by federal substantive law can have their own very special complexity.

Since 1964, I've taught, written or practiced in the areas of federal procedure and jurisdiction and federal regulatory legislation. I've been president and legal education chairman of the Federal Bar Association of Western Washington.

If you have a federal case and would like some pre-trial, trial or appellate help, please give me a call.

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See *Biography in Notices Section*

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Committee Handbooks: Out of the Dark

In "A Healthy Step," my November 1986 editorial, I commended the Governors on their study of Bar purposes. I now suggest that the 32 Bar committees undertake the same analysis and ask themselves, as I wrote then, "Who are we? Where are we? And where are we going?"

How? Let each committee come up with a handbook. For what reasons? To orient and educate new and old members. To prevent history from being rewritten by those closest to the sources of power or whose motivations might be suspect. To avoid reinventing the wheel.

And every five years or so, let each committee put together, as the Editorial Advisory Board did last year, a long-range planning report. Periodic assessments are a key to health.

What would these cost? Virtually nothing: just copying and long-distance calls to old committee members from way back when. What benefits, though! A sourcebook, a bible. For the present and the future. For committee members and the Bar as a whole, not to mention the Governors, who would be enlightened beyond the brief report given at their meetings by committee chairs.

It is written records that separate us humans from all other forms of life. Our compulsion to leave this memento takes us back to our cave-dwelling ancestors; it is recognizable now in our compulsion, as lawyers, to leave paper trails or paper each other to death.

In its 40-year existence, the *Bar News* has generated a wealth of apocrypha, enough turmoil to fund a revolution, enough reconciliation to bode a relationship well.

Is the history of other Bar committees similar?

In August, the Governors heard from the chair of the Law Examiners Committee. He was appearing pursuant to the Governors' informal policy designed to advise them of goings-on at the committee level. And from him, the Governors learned that the Law Examiners Committee also has produced a handbook for its members.

How many other committees can say the same?

In *Roots*, Alex Haley introduced us to the "griot," the chronicler of tribal history. Twentieth-century America has, lamentably, rendered the griot extinct, but at what cost?

Today, we rely on the written word... perhaps, too much. As lawyers, how many of us have any independent recollection of what we did two days ago, let alone two weeks ago? Have we become so dependent on our calendars that independent recollection is something we expect from witnesses but not from ourselves?

As editor, perhaps my greatest lessons have been those learned off the record, or during a recess, or during socializing. At these times, in listening to present or former Bar presidents, Governors or involved lawyers, I've come to realize this: While I appreciate my contacts with the current generation of Bar personalities, it's from their predecessors that I gain a wider perspective. It is from them that I learn what themes have run constant through Bar history. Yes, I learn from those who have come before me: my elders, my mentors.

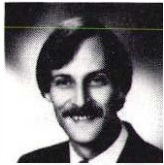
And what I have learned, and continue to learn, is that those who fail to remember history are doomed to repeat it.

Despite the John Rupp of the world, we no longer have designated historians. For information, we are left to depend on those with knowledge or the written record. Lawyers' sense of satisfaction in committee work is related to the knowledge which they bring to their posts. And if on a committee, they are expected to use their efforts and knowledge to further the committee. So should the committee inform its members about its origins and goals. Contrary to what some might believe, a little knowledge is not a dangerous thing. No. Knowledge sets us free... and makes us better lawyers and committee members.

And that's how we learn.

Carole Grayson

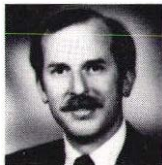
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Pro Bono—A Growing Opportunity

I was asked to appear before the Judiciary Committee of the Washington State Senate and to testify on the question of mandatory pro bono. The subject for discussion was a proposal asking the Legislature to mandate a certain amount of hours per given period that each of us would have to devote to providing legal services for those in need. They, of course, asked me what we were doing, and more importantly, what we plan to do to fill the need that they see existing. The conclusion of the committee seems to be that they are not at this time seeking legislative action on a mandatory program, but they want us to know that they are waiting in the wings and may well attempt to take some action if we fail to do our part.

We are well aware of the part of our oath that states as follows:

"I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay unjustly the cause of any person."

together with that portion of Rules for Lawyer Discipline that states as follows:

"A lawyer should render public interest legal service. The lawyer may discharge his responsibility by providing professional services at no fee or reduced fees to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means."

I pointed out to them that successful programs exist in several coun-

ties. We are particularly proud of the Tri-Cities, where 100% of the attorneys have volunteered for pro bono work, and of Spokane, where 75% of the attorneys have volunteered for pro bono work. Good programs also exist in Snohomish, Whatcom and King counties. I pointed out to the Legislature that the Legal Foundation of Washington has been funding local pro bono programs for local bar associations.

At the time of the hearing, only seven bar associations had submitted grant applications and attempted to take advantage of the funds available through the Legal Foundation of Washington and from IOLTA funds generated. However, since that time, we have sent to each of the local bar associations a grant application which points out to them that if they submit a viable program to the Legal Foundation of Washington, it is in all likelihood that such a program would be approved and funding made. I also asked each local bar president at the Annual Meeting to make pro bono one of the top priorities of his/her association and, where appropriate, to apply to the Legal Foundation for funding. In the instance of Spokane County Bar Association, it is funded about one-half from funds from the Legal Foundation and the other half from dues from the members of the county bar itself.

At the present time nationally, seven jurisdictions require pro bono legal work. Four bar associations: Du Page County, Illinois; Eau Claire County, Wisconsin; Orange County, Florida and Tallahassee, Florida each require that their members take a minimum number of assigned cases



each year. In the Federal Eastern District of Arkansas, New York's Westchester County and El Paso County, Texas mandatory programs have been imposed by court order. In addition, the states of North Dakota and Oregon have recently drafted legislation that would require pro bono work for licensed attorneys in their jurisdictions.

I asked the Legislature to look at us after the conclusion of this year. I am satisfied that our record will not only be better, but that it will show the Legislature that we can handle our responsibility without a mandatory requirement.

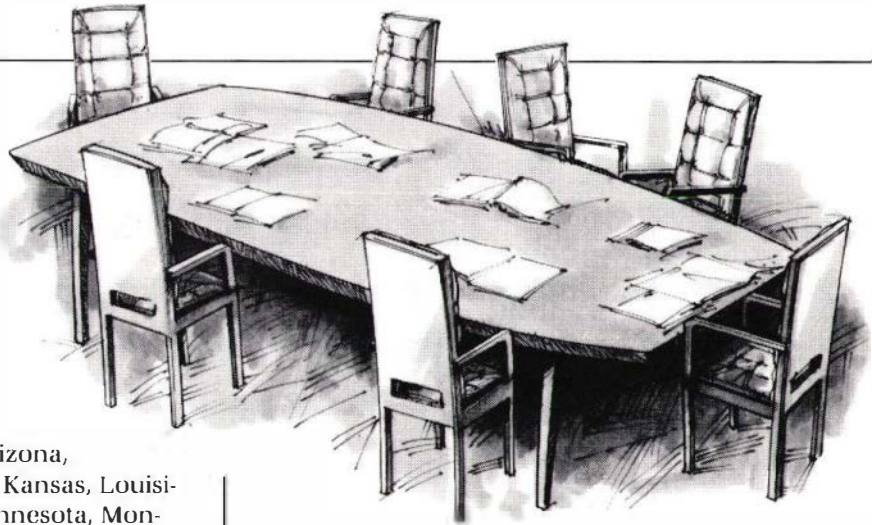
Limited Directors' and Officers' Liability Comes to Life in Over 20 States!

IT BEGAN last year in Delaware. The state passed landmark legislation enabling Delaware corporations to limit or eliminate the personal liability of their directors under certain circumstances. The reaction among the business community was overwhelming.

So far, 25 other states — Arizona, Colorado, Georgia, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, Wisconsin and Wyoming — have passed legislation affecting the liability of directors and/or officers. (Details are contained in our new publication, *Provisions Relating to the Limitation of Directors' and/or Officers' Liability*, available from your local C T office.)

A reminder: C T handles thousands of amendment assignments annually — from typing waivers of notice and unanimous written consents to compiling and filing certificates of amendment, obtaining required certified copies, and effecting recording and/or publication, where required.

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The Mailing List

by John J. Michalik
WSBA Executive Director

In the past couple of months I have received three separate letters concerning one general topic: the State Bar Association's policy concerning access to the membership mailing list. It occurs to me that that may be a topic of some general interest.

Approximately ten years ago the Board of Governors established our existing policy concerning access to the mailing list by third parties. It is a fairly restrictive policy. Initially it needs to be noted that we do *not* sell the mailing list as such. We will, in proper cases and as described below, sell mailing labels to certain organizations and for certain limited purposes. In addition, we will, again in proper cases, provide labels which represent only a portion of the total membership—for example, all lawyers in King County or all members in the Fifth District. We do not, however, provide the mailing list either in typed form, on computer disks or otherwise. This major distinction between providing labels as opposed to the list in some form has been to control third-party-access to the membership base for purposes not fitting within the categories which the Board of Governors has established as proper ones under existing policies. Those policies are, in turn, based upon a desire to avoid providing such unrestricted access as would lead to the membership being flooded with offers, inducements, "junk mail", etc.

Virtually all (approximately 95% I'd guess) of our label sales are to the providers and sponsors of continuing legal education programs which have been approved for mandatory CLE credit by the Washington State Board of Continuing Legal Education. In making labels available to these organizations, the State Bar Association is assuring that State Bar members receive notices of such programs. This is an educational and service-motivated policy concerning mailing

labels. Again, labels are sold to such organizations only *after* CLE credit has been obtained for the course or seminar involved. In most instances the course provider/sponsor is interested in the entire membership label set. In some cases, depending upon the nature of the program or the sponsor's interest, the request may be limited to mailing labels for attorneys working in certain geographic areas of the state.

The present Board of Governors policy on mailing labels does allow for providing sets of labels in certain other very limited circumstances. For example, we will provide a set of labels for a given county to that county's local bar association for purposes of making general mailings to attorneys in that county regarding local bar activities. In the same vein, we supply sets of labels for the mailing of county bar association newsletters. Another example of a situation in which a set of labels for a particular area was provided was that presented a few years back when Legal Services Corporation funding cuts forced the closure of certain Evergreen Legal Services offices in the state. In that case we provided Evergreen Legal Services with mailing labels covering the attorneys in the affected counties so that Evergreen could inform them of the office closures. As another example of a permitted use of a portion of the mailing "list," the chairperson of each of the Association's Sections can authorize the sale of sets of labels covering that Section's membership to groups providing particular services which he or she feels may be of interest to the Section membership. There are a few other, similarly restricted situations in which sets of mailing labels will be provided to third parties.

As the above paragraphs should indicate and illustrate, the State Bar Association does not make labels available for fund-raising efforts, political campaigns, other types of solicitations, commercial purposes or other activities of similar character. When labels are provided, as for seminar brochure mailings, we provide labels which bear the member's *business* address; third parties do not have access to home addresses. In addition, when labels are provided they have imprinted on them only the member's name and address, without other computer identification or other information.

Over the years I have become aware of the fact that certain commercial mailing houses have, from time to time, obtained copies of the annual Directory of Attorneys and have gone to the time and expense of having that information put into computer form in order to construct a salable list of "Washington lawyers". I assume that those sorts of lists do have some market and may account for mailings some of you may receive which seem targeted to Washington State Bar members and involve products or services of various types. The point there, of course, is that while the State Bar Association has *the* list it is not necessarily the *only* list available to third parties.

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Fifty Years Ago: The Beginnings of Law Clerking With the Washington Supreme Court

by Charles H. Sheldon

When the first law clerk arrived at the Temple of Justice in Olympia in early summer, 50 years ago, nearly half of the courts of last resort throughout the United States were already employing short-term clerks in some capacity.^{1,2} For example, the U.S. Supreme Court had already experienced over a half-century of these personal assistants to the justices.³ Many lower federal court judges and some state courts of last resort had been hiring young law school graduates to help in decisional matters by the 1930s.⁴ But for the judges of the Washington State Court it was, in 1937, a new experiment.

The idea of engaging the services of short-term, young law graduates to assist the Washington judges in their tasks can be attributed primarily, if not exclusively, to Judge William J. Steinert.⁵ He was anxious about the increasing case load confronting the state's high bench.⁶ Perhaps these "elbow clerks" could help the judges attack their case assignments more effectively and thoroughly? Judge Steinert was also beginning to find that his eyes could not easily endure the strains placed on them from the prolonged reading of briefs, records and case precedents which he reviewed in preparation for the Court's deliberations. He might be able to shift some of the burden to the clerks. Simply stated, Steinert was attracted to the idea of law clerks because both he and the Court needed help.

Previously, some research assistance had been available to the judges through the law librarian, secretaries, bailiffs, and the clerk's office. For example, Donald McDonald had been serving as the Court's bailiff

and as secretary to the Chief Justice for a number of years. He was a licensed attorney and familiar with appellate procedures. Mark H. Wight, the State Law Librarian, and his assistant also conducted research for the judges. However, unlike the law clerks, these persons were permanent members of the Court staff with assignments other than assisting judges in decisional matters.

The first effort to add law clerks to the staff of the Court was mounted in the 1935 Session of the State Legislature. On March 14, an item was added to the supplemental appropriations bill which increased the Supreme Court's funding by \$18,000 in order to provide salaries for law clerks. The monthly stipend was not to exceed \$150. The judges anticipated hiring at least a few clerks for the first year of the biennium and increasing the number for the second year. Substitute Senate Bill 305 passed the upper house on a 38-to-7 vote and, after amendments (none of which touched on the law clerk funding), the House approved by a 28-to-8 (13 absent) vote. A conference committee resolved the conflicts between the Senate and House versions, and on March 14 both houses approved and sent the budget bill to Governor Clarence D. Martin.

At the time, Chief Justice William J. Millard was not a strong supporter of the law clerking idea largely because of the costs; he also was not altogether convinced of the need for them.⁷ With such lukewarm support from the administrative head of the Court, the Governor, in an attempt to keep the supplemental budget low, "blue-penciled" the law clerk item. His reasons were given in his veto message to the Legislature:

I disapprove and veto the item
FOR THE SUPREME COURT.

For salaries of law clerks not to exceed one-hundred and fifty dollars (\$150.00) each month, \$18,000 for the reason that I am advised by the Chief Justice [Millard] that this amount is not needed and for the further reason that there is included in the budget and the regular appropriation made for the Supreme Court, the sum of \$6,000 for extra and temporary clerical assistance.⁸

The \$6,000 went toward paying the salaries of secretaries and other personnel. Law clerks did not arrive at the Temple of Justice until two years later.

The biennial appropriation for the Supreme Court staff salaries was increased by \$29,800 in 1937. This allowed the judges to hire at least three law clerks beginning in September. The salary was \$175 a month. John N. Rupp, one of the first clerks, placed the salary scale in perspective:

Perhaps \$14,900 (annual) for a full year doesn't sound like much to us now, but in 1937 you could hire as many as seven fine, young law clerks for it and still make all the law firms mad at you for grossly inflating the salary market. Imagine, paying a young squirt fresh out of law school \$175 a month—\$2,100 a year! (The figure seems bizarre now, but one must remember that you could buy a good lunch for 25 cents and a comfortable house for about \$4,500).⁹

The judges were ready to begin the experiment for the Court's fall term.¹⁰

The first arrivals followed diverse paths. Ernest Howard Campbell had been hired as Assistant Law Librarian at the Temple of Justice shortly

after graduation from the University of Washington School of Law. He left in 1936 to serve in the State Inheritance Tax Division in Olympia for six months and in private practice for another six months. He was invited back to clerk for judges O. R. Holcomb and Warren W. Tolman. Campbell knew his way around the Court, was known to the judges, and needed little time to become acquainted with

the duties of clerk.

Judge Steinert turned to the Dean of the University of Washington School of Law, Judson F. Falknor, to recruit a clerk to begin service with the Court at the start of the September 1937 term. Falknor recommended the school's top student and law review editor, John N. Rupp, the son of a prominent Seattle attorney, Otto Burton Rupp.¹¹ After passing

the Bar in August, Rupp reported for work at the Temple of Justice the day after Labor Day.

Judge John S. Robinson was persuaded to hire for his first (and as it turned out permanent) law clerk an older attorney, Robert W. Reid. Reid had passed the Washington Bar in 1909 and was a permanent associate with Peters, Powell, Evans & McLaren in Seattle. By mutual agreement, his special assignments with the firm had been limited to library research, brief preparation, and memo writing. He never saw a client or the inside of a courtroom, and he was not in line for a partnership. His work space was the firm's library, and he did his work well. In the late 1930s, the firm expanded, and a different division of legal labor was contemplated. The senior partner, William G. McLaren, persuaded his close friend, Judge Robinson, to hire Reid as his law clerk. The judge had known Reid when both were with Ira Bronson in 1910. Reid's skills were exactly what Robinson was looking for, and with the enthusiastic approval of Reid, the move from Seattle to Olympia was agreed upon. Reid came down that summer from Seattle, and Rupp arrived in September. Campbell was already at work.

The experiment caught on, and a fourth assistant was added in 1939. World War II interrupted the growth; only two clerks served the entire bench from 1943 to 1946. However, by 1949, each judge had his own law clerk to provide whatever assistance was deemed necessary and appropriate. In 1962 the Chief Justice was responsible for securing two additional clerks whose primary task was to work with pro-tempore judges when added to the Court to help with the crowded dockets. In 1984 four more assistants were hired, and by 1986 each justice was authorized to hire two law clerks. Thus, the clerking institution has grown from three young assistants in 1937 to at least 18 by 1987.

Since 1937, 366 law clerks have served with the Washington Supreme Court. For most, it was an unforgettable learning experience. Typical of the recollection of their year with the

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Court is the commentary of one former clerk:

Having served as a law clerk...has provided me with two definite advantages...The first of these is a deeper understanding of the appellate process. I do not believe that a person can be a successful trial lawyer without also having a deep insight into the appellate process. Clerking taught me not only the technical rules of procedure on appeal, but more importantly, those factors which the Court actually looked to in making a decision and how the decision comes about. Secondly, and closely related to the first, clerking sharpened my skills in briefing and the writing of appellate briefs. It is my firm belief that cases are won or lost on appeal by virtue of the memorandums filed, not the oral argument.¹²

But the legal system also benefits from the law clerking experience.

Karl Llewellyn, astute observer of the appellate system, expressed this succinctly:

[T]he spread of this institution spills out annually into the Bar a batch of young lawyers—future leaders—who *know* from the inside that the appellate courts move with continuity, and move with responsibility, that they answer to their duty to the “law,” that they move not as individuals or as persons, but as officers; a batch of young lawyers who have learned to see growth, and yet to feel the stability, the reckonability of the lines of growth—or of growth-resistance.¹³

What Judge Steinert began in 1937 assisted in the work of the Supreme Court, provided young lawyers with post-graduate training, and enhanced the Washington legal system as well.

Notes

1. Funding for the research on law clerks in Washington, from which this brief article was drawn, was

provided by the National Science Foundation (Grant #SES-8207282). Interpretations or conclusions are the author's alone and do not necessarily represent those of the Foundation.

2. The most complete bibliographies on law clerks are found in *J. B. Oakley and R. S. Thompson, Law Clerks and the Judicial Process* 157-171 (1980) and C.H. Sheldon, “Law Clerking with a State Supreme Court: Views from the Perspective of the Personal Assistants to the Judges” 6 *Just. Sys. J.* 346 (Fall 1981).
3. C. Newland, “Personal Assistants to Supreme Court Justices: The Law Clerks,” 40 *Or. L. Rev.* 299 (1961).
4. The earliest record of law clerking with any court was the time when Judge Horace Gray, while on the Massachusetts Supreme Judicial Court, appointed an honor student from Harvard to assist him in judicial deliberations for one year in 1875. When

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Gray was promoted to the U.S. Supreme Court in 1882, he continued the practice. See S. Wiliston, "Horace Gray" in *Eight Great American Lawyers* 156-158 (W.L. Lewis, ed. 1909).

- Steinert was a former King County Superior Court judge who won appointment to the Supreme Court from Governor Roland Hartley in 1932. Steinert

began his term as Chief Justice in September 1937.

- Many years later, Ernest H. Campbell, one of the first three clerks, recalled: "When I became the first Law Clerk of the State Supreme Court and was assigned to Justice Warren W. Tolman and Justice O.R. Holcomb, I think that my employment as Law Clerk was prompted

by the fact that these two Justices felt their workload was such that they needed someone to assist them with their legal research." Letter to author dated April 19, 1982.

- Millard did not engage a short-term assistant until later after all the other judges had availed themselves of clerks. He had been trained as a stenographer, served two years as legal secretary to Judge Stephen J. Chadwick (1917-1919), remained at the Court in a clerical capacity when Chadwick retired, and then was appointed Supreme Court Law Librarian in 1924. Governor Hartley appointed Millard to the bench from his librarian position in 1928.
- Senate Journal* (1935) at 855-6.
- J. Rupp, "How It Used To Be" (Unpublished paper, 1978).
- Rupp recalled the tentative nature of the new experiment: "As Chief Justice, Judge Steinert was entitled to have a law clerk all to himself so I worked for him alone. Of course, he had never had a law clerk, and I had never been one, so we ploughed new ground." *Id.* at 9.
- Years later, Rupp recalled the reasons for his selection: "I should like to report that Judge Falknor recommended me because of his rare perception in recognizing fine character, but I suspect that he was more statistical about it than that and that he did so because I was high man in the senior class and the editor of the law review. At any rate I was offered the job, and I accepted with alacrity. Oh, boy! A job!" *Supra*, note 9 at 2.
- Anonymous response to a survey of former law clerks conducted by the author.
- K. Llewellyn, *The Common Law Tradition* 322 (1960).

Charles H. Sheldon, Professor of Political Science at Washington State University, is author of A Century of Judging: A Political History of the Washington Supreme Court, just published by the University of Washington Press.

A PPEAL: *The Ninth Circuit denied our opponent's petition for rehearing, but granted our request to modify the court's earlier decision. The court's decision was based on the response to a judge's question during reargument. This change saved our client from a potential exposure on remand exceeding \$1,000,000.*

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**Data compiled by
Lawyers' Assistance
Program Staff**

In this issue and future issues of the Bar News, peer counselors of the Lawyers' Assistance Program (LAP) will detail the distress that led to their impairment and their eventual recovery. Each appears anonymously. Confidentiality is critical to the success of the Lawyers' Assistance Program. It will be preserved for all clients and counselors.

The Hope and Joy of Sobriety

"I am a woman, an attorney, and an alcoholic. I went to law school as a single mother in my mid-thirties. Although I did well there, I worried constantly about being good enough. I sipped wine at night while studying, rarely getting drunk, to relieve the dual stresses of school and single par-

enthood.

"After graduation, I joined a major Seattle firm. I was impressed by the lawyers I worked with, but this intensified the fear that I couldn't measure up. I worked hard, put in long hours, received outstanding reviews. From the outside, everything looked great. Inside, I couldn't keep the pace: the more I succeeded, and the more the firm expected from me, the more panicked I became. I put all my time and energy into my job, withdrawing from my few friends, even from my children. I just worked. And drank.

"I didn't drink socially. In fact, I didn't do anything socially. Just worked, went home, and drank alone. My law school 'glass or two' of wine became a liter or two. The more insecure I was, the more I drank; the more I drank, the more terrified I was that someone would discover I was an alcoholic. By day I was a successful attorney, by night a personal failure with a powerful addiction.

"On the verge of suicide, I made one desperate call to an acquaintance, a woman who worked in the

area of alcoholism referral. For the first time, I admitted the nightmare I had been living. The sense of relief was even more intense than the pain. Within two days, at her recommendation, I told my story to an alcohol counselor and to an attorney who was two years into her own alcohol recovery. Thus began my recovery.

"I refused to enter a formal treatment program, for fear the firm would find out. My confidants urged me to attend Alcoholics Anonymous, saying it would greatly increase my chances of staying sober. I couldn't imagine myself in AA. People like me don't join those groups. But some AA groups are filled with professionals, and one in Seattle is exclusively for attorneys. My peer counselors said people in AA would welcome me, even though I felt unacceptable. And they convinced me that I could truly be anonymous there.

"Finally, I tried it. I did fit in! Listening to other people's stories, I began to believe that if they could recover, I could too. The AA program helped me quit drinking. It continues

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to help me handle the stresses of daily living. With this program and my new friends in AA to rely on, I quickly lost the compulsion to drink. Gradually my feelings of inadequacy are being replaced with those of well-being and serenity. Isolation has given way to many friendships.

"My career is thriving. I have told several partners at the firm about my disease and recovery. They have been very supportive. A partner myself now, I still work hard, but I am no longer haunted by the fear that someone will 'find out' about me.

"My new focus is on helping other alcoholics who want a way out of the nightmare of alcoholism. When in that nightmare, I felt hopeless. Sharing my story helps me to share the hope and joy of my sobriety."

What it Means

This is another true history of a lawyer who has suffered from chemical dependency and is now in recovery. Although this lawyer's personal

story is unique, her answers to the *Lawyer Ways of Living and Health Questionnaire* (completed with the answers she would have given prior to recovery) show the same two strong themes as the history printed last month: alcohol dependency and clinical depression. Some of her signs were:

- She often felt nervous, stressed, and fearful about all aspects of her life, including her practice.
- She frequently felt inadequate and unable to cope with her work.
- Her relationships with family and friends were deteriorating.
- She frequently "needed a drink" to cope with good or bad happenings.
- She often felt difficulties were piling up so high she could not overcome them.
- She had few, if any, friends or family members she felt she could turn to for support.

This woman nearly died before she

finally cried out for help. Her recovery began as soon as she let qualified, caring people help her.

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Representing Your Client at the Social Security Disability Hearing

by William Justin DeLeonardis

Trial lawyers frequently find themselves representing clients in an unfamiliar forum: the non-adversarial social security disability hearing. This article provides an overview of the issues to be addressed in such a proceeding.

Disability Defined

The client ("claimant") may file for disability insurance benefits pursuant to Title II of the Social Security Act ("Act"), or for supplemental security income payments pursuant to Title XVI of the Act, or both. Entitlement to the former requires a prescribed number of quarters of coverage, and benefits may be retroactive for up to one year.¹ Entitlement to the latter depends on financial need and carries no retroactivity.² In either instance, the claimant must be unable to engage in any substantial gainful activity by reason of a medically determinable impairment which can be expected to result in death or which has lasted, or can be expected to last, for a period of not less than 12 consecutive months.³ A "physical or mental impairment" is defined as an anatomical, physiological, or psychological abnormality which is demonstrable by acceptable clinical or laboratory diagnostic techniques.⁴ The claimant is under a "disability" only if the impairment(s) is of such severity that it not only prevents the successful performance of his past work but also, considering age, education, and work experience, prevents successful performance of any other work that exists in significant numbers in the national economy.⁵

Sequential Evaluation

The lawyer's brief, or oral argument at the hearing, should address the issues in the set order required by the regulations:

1. whether the claimant is presently engaged in substantial gainful activity, since no one will be found "disabled" if he is working;⁶
2. whether the claimant's impairments, either singly or in combination, are "severe" in that they impose more than a slight limitation on his ability to perform basic work-related activities such as lifting, walking, bending, understanding instructions, or relating to coworkers;⁷
3. whether the claimant's impairments, either singly or in combination, are attended by clinical or laboratory findings which are the same as, or equivalent to, the medical criteria specified for any impairment listed in Appendix 1 of Subpart P of Regulation No. 4 ("Listing of Impairments"), thereby establishing a presumption of disability based on the medical facts alone;⁸
4. whether the claimant is able to perform his past relevant work;⁹ and
5. whether the claimant, considering his vocational factors (age, education, and past work) and his physical and mental limitations, can perform other work.¹⁰

The criterion for determining disability under the Act is the inability to *perform* work, not the inability to *obtain* work because of the state of the economy or hiring practices.¹¹ A determination made by another governmental agency or by a private employer may be considered as evidence of disability in a social security claim, but is not determinative of the claim.¹² The disability standard for widows under Title II of the Act or for a child under the age of 18 under Title XVI of the Act is more restrictive in that vocational factors are not

considered.¹³

Procedure and Evidence

Since the administrative proceeding is non-adversarial, the administrative law judge ("ALJ") has a duty to develop a full record "ensuring that favorable as well as unfavorable facts and circumstances are elicited."¹⁴ Rules of evidence are relaxed. Evidence is admissible unless it is irrelevant or cumulative. If the record contains insufficient information on which to make a decision, the ALJ may order a consultative medical examination at government expense.¹⁵ He can also issue a subpoena for documents material to the issue at the hearing when they are necessary for a full presentation of the case.¹⁶

The burden of proof rests with the claimant to show that an impairment prevents him from performing his work. Thereafter, the burden shifts to the Secretary of the Department of Health and Human Services to show that other work exists in significant numbers in the national economy which can be successfully performed.¹⁷ Most cases focus on the claimant's residual functional capacity ("RFC"), *i.e.*, his physical and mental capabilities despite his impairment(s). His RFC is compared to the functional demands of his past work or with the functional demands of other work to determine disability. The RFC may be derived from (1) the reports and opinions of the treating physicians, (2) the reports and opinions of consulting physicians who conduct medical examinations on behalf of the Social Security Administration, (3) the opinion of a medical advisor who will review the medical reports and offer an expert opinion as to the severity of the claimant's impairments, and (4) the testimony of the claimant and his witnesses concerning the degree of pain experienced and other subjective symp-

toms which limit his ability to work. The opinion of a treating physician is generally entitled to more weight than the one-time examination and assessment of a consulting doctor; however, the treating doctor's opinion must be supported by objective evidence. A conclusory pronouncement written on a prescription pad that a patient is "totally and permanently disabled" does not bind the

ALJ, since such an opinion, if required to be accepted as conclusive on the issue of disability, would render the administrative hearing nugatory.¹⁹ More weight may be accorded the conclusion of a consulting specialist in the field of medicine in which the claimant's impairment lies.²⁰ Moreover, expert testimony from a medical advisor may be considered with all of the other medical

reports and opinions.²¹

The legal standard for evaluating testimony concerning pain and work-related limitations has been a controversial one. The Social Security Disability Reform Act of 1984 enacted a temporary provision (expired as of December 31, 1986) providing that statements as to pain and other subjective symptoms were not conclusive evidence of disability. The statutory language required objective clinical and laboratory findings to support the claimant's allegations of disabling symptoms.²² Some decisions, however, have suggested that a claimant may be found disabled based on his subjective complaints alone without corroborating medical findings.²³ The Ninth Circuit, however, does not follow this line of cases.²⁴ The credibility of testimony is also judged by other factors which include, but are not limited to, activities of daily living, response to past treatment, the need for ongoing treatment, efforts to seek relief from disabling pain, the dosage and side effects of medication, and the consistency of the complaints or clinical findings in the medical record.

Vocational Considerations

The inability to do one's past relevant work merely shifts the burden of proof to the Secretary to show that other jobs can be successfully performed. Past work is "relevant" if the claimant performed it within the 15-year period prior to adjudication of the claim and long enough to learn the job.²⁵ A claimant who is still able to perform the work-related demands and duties of a particular past relevant job, or the work-related demands and duties of the occupation as generally required by employers throughout the national economy, will not be found disabled.²⁶

The existence of other work may be established either by expert vocational testimony or by administrative notice.²⁷ A vocational expert testifies to the level of exertion and skill required in the claimant's past work. Exertionally, occupations are classified as sedentary, light-, medium-, or heavy-based on weight lifted and

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other physical demands.²⁸ Occupations are also classified as unskilled, semiskilled, and skilled.²⁹ The vocational expert identifies the claimant's skills, and in response to hypothetical questions, gives his opinion as to whether an individual with the same vocational profile (age, education, and work history) and same RFC could perform his past work or could transfer his skills to other work.

For example, consider a claimant who worked as a carpenter in the construction industry before a back injury limited him to light work (defined as work which requires lifting 20 pounds occasionally, standing and walking six hours a day, and bending or stooping occasionally). The vocational expert may testify that carpentry was medium in exertional demands and a skilled occupation. He may testify that the claimant's skills included the ability to use tools, to make measurements, and to read blueprints; that such skills could be transferred to light-work occupations such as a furniture finisher, a quality control inspector, or a tool crib attendant; and that such jobs exist in the tens of thousands throughout the national economy. The ALJ will then conclude that the claimant cannot do his past work which the vocational expert stated was medium in exertional demands (requiring that the claimant lift 50 pounds occasionally, stand and walk for eight hours a day, and bend or stoop constantly); however, in light of the vocational testimony, he may conclude that the claimant is able to do other work (whether or not such work exists in the region where he lives) because the jobs named in the testimony are within his physical limitations.

In lieu of vocational testimony, the ALJ may take administrative notice of the existence of unskilled work in the national economy in the proper case. The Medical-Vocational Guidelines ("grid rules") may be used only when the claimant has solely exertional limitations or when non-exertional limitations do not significantly compromise his ability to perform the full range of work at any given exertional level.³⁰ The factors of age, education, transferability or non-trans-

ferability of skills, and RFC must coincide with, or approximate, a "rule" which directs a conclusion of "disabled" or "not disabled" based on the number of unskilled jobs in the occupational base. The grid rules take administrative notice of approximately 200 unskilled sedentary occupations, 1,400 unskilled light occupations, and 900 unskilled medium occupations.

Exertional limitations include restrictions on lifting, standing, walking, and various postural positions. Non-exertional limitations include impairment of sight, hearing, speech, and intellectual or emotional functioning. They also include restrictions on the ability to handle objects that arise from a neurological disorder or restrictions on atmospheric environment that arise from a pulmonary disorder. The disabling effects of pain must also be considered. When the occupational base is significantly eroded by the presence of non-exertional limitations, or by pain, the grid rules may not generally be used to determine disability.³¹

Prescribed Treatment

Although a claimant may be found "disabled" based on medical factors alone or on medical-vocational factors, disability benefits will not be

paid if he refuses to follow treatment which is prescribed by a treating physician and expected to restore his ability to work. There are, however, certain acceptable reasons for failure to follow prescribed treatment.³² Lack of financial resources for medical care is generally not an acceptable reason when a community health facility providing free or low-cost medical care is available.

Attorney Fees

The Act provides for the payment of attorney fees from past-due benefits. The payment is the smaller of (1) 25 percent of past-due benefits, (2) the amount of the fee fixed by the ALJ, or (3) the amount of the fee to which the attorney and the claimant agreed.³³ The regulations require that the attorney file a written request for approval of the fee with the ALJ *before* he charges or receives a fee for his services. The ALJ decides the amount of the fee based on factors specified in the regulations.³⁴ The attorney may not charge or receive any fee in excess of the amount approved.³⁵

With this synopsis of the social security disability hearing process, counsel should be better prepared to represent their clients. □

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Footnotes

1. 42 USC 423(a)(1)(A) and 423(c)(1); 20 CFR 404.131
2. 42 USC 1382(a); 20 CFR 416.335
3. 42 USC 423(d)(1) and 1382c(a)(3)(A)
4. 42 USC 423(d)(3) and 1382c(a)(3)(C)
5. 42 USC 423(d)(2)(A) and 1382c(a)(3)(B)
6. 20 CFR 404.1520(b) and 416.920(b)
7. 20 CFR 404.1520(c) and 416.920(c); see also: *Stone v. Heckler*, 752 F. 2d 1099 (5th Cir. 1985)
8. 20 CFR 404.1520(d) and 416.920(d)
9. 20 CFR 404.1520(e) and 416.920(e)
10. 20 CFR 404.1520(f) and 416.920(f)
11. 20 CFR 404.1566 and 416.966
12. 20 CFR 404.1504 and 416.904
13. 42 USC 423(d)(2)(B) and 1382c(a)(3)(A)
14. *Cox v. Califano*, 587 F. 2d 991, 998 (9th Cir. 1978)
15. 20 CFR 404.1517 and 416.917; see also: *Steiner v. Gardner*, 395 F. 2d 197 (9th Cir. 1968)
16. 20 CFR 404.950(d) and 416.1450(d)
17. *Gallant v. Heckler*, 753 F. 2d 1450 (9th Cir. 1984)
18. 20 CFR 404.1545 and 416.945
19. 20 CFR 404.1527 and 416.927
20. *Oldham v. Schweiker*, 660 F. 2d 1078 (5th Cir. 1981), adopted by the Social Security Administration as Social Security Ruling 82-48c, 1982 C.E. 92.
21. *Richardson v. Perales*, 402 US 389, 91 S. Ct. 1420 (1971)
22. 42 USC 423(d)(5)(A)
23. *Freeman v. Heckler*, 739 F. 2d 565 (11th Cir. 1984); *Cook v. Heckler*, 739 F. 2d 396 (8th Cir. 1984); *Marcus v. Califano*, 615 F. 2d 23 (2nd Cir. 1979).
24. *Cotton v. Bowen*, 799 F. 2d 1403 (9th Cir. 1986); *Howard v. Heckler*, 782 F. 2d 1484 (9th Cir. 1986).
25. Social Security Ruling 82-62, 1982 C.E. 158
26. See: *Villa v. Heckler*, 797 F. 2d 794 (9th Cir. 1986)
27. *Heckler v. Campbell*, 461 US 458, 103 S. Ct. 1952 (1983)
28. 20 CFR 404.1567 and 416.967
29. 20 CFR 404.1568 and 416.968
30. 20 CFR 404.1569 and 416.969; see also: Social Security Ruling 83-10, 1983 C.E. 174
31. *Gonzales v. Secretary HHS*, 784 F. 2d 1417 (9th Cir. 1986); *Bel-lamy v. Secretary HHS*, 755 F. 2d 1380 (9th Cir. 1985).
32. 20 CFR 404.1530 and 416.930
33. 42 USC 405(a) and 1383(d)(1)
34. 20 CFR 404.1725 and 416.1525
35. 20 CFR 404.1720 and 416.1520

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William Justin DeLeonardis, admitted to the Washington Bar in 1979, is the Supervisory Attorney-Advisor in the Office of Hearings and Appeals, Social Security Administration, in Houston, Texas. (This article represents the views of the author and not an endorsement or recommendation to attorneys by the Social Security Administration.)



How the Small Law Firm Can Compete Effectively

featuring

J. Harris Morgan, Donna Killoughey and Loretta A. Harris

by **John M. Redenbaugh**

Associate Director of CLE

"How the Small Law Firm Can Compete Effectively" will be presented in Seattle at the Westin Hotel on Friday, November 20. The program features three excellent speakers: **J. Harris Morgan**, **Donna Killoughey** and **Loretta A. Harris**. It is sponsored by the WSBA Law Office Economics and Management Section and Continuing Legal Education Committee and the ABA Section of Economics of Law Practice.

Program chair is **Dale E. Sherrow**, secretary/treasurer of the WSBA section. He currently chairs the Substantive Systems Committee of the ABA's section. He is a member of the Seattle law firm of Sherrow & McDonell, P.S.

J. Harris Morgan is a former chair of the ABA's Section of Economics of Law Practice. He has lectured in all 50 states and has appeared on several ABA video tapes. In 1980 the Association of Continuing Legal Education Administrators honored him with the Harrison Tweed award. He is from Greenville, Texas.

Donna Killoughey of Phoenix, Arizona, has been in practice for eight years with several small firms in Phoenix. Since May 1987 she has been a solo practitioner, sharing space with other solo practitioners. She edited the Economics of Law Practice Section's *Flying Solo: A Survival Guide for the Solo Lawyer*. She serves as vice-chair of the Products Media Board of the ABA's section of Economics of Law Practice.

Loretta A. Harris, CPA, CDP, CMC, of Seattle, is the senior manager in the Management Consulting Division for the accounting firm of Moss Adams. She emphasizes helping clients identify and implement pragmatic, workable solutions to given problems. The majority of her auditing and consulting engagements have

been concentrated in the areas of EDP audits, operation reviews, definition of information requirements, systems analysis, computer acquisitions and implementation.

For further information regarding this program, please contact Debbie Kirchhauser at the WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599 or telephone (206) 448-0433.



On October 23, the Civil Rights Committee and the Continuing Legal Education Committee will present a seminar on "Discrimination Law for the General Practitioner (An Update on Washington Law Against Discrimination Under Chapter 49.60 RCW)." This seminar will help the general practitioner to recognize potential discrimination issues under Washington law. For further information, please contact Karla Ellison at the WSBA, telephone (206) 448-0433.



"Out-of-Court Resolution of Federal Tax Disputes" will be presented in Seattle on November 13, at the Westin Hotel. IRS District Director, **Robert E. Mirsberger**, will open the program by describing the current and probable future organizations and activities of his office and the IRS Service Center. The general sessions to follow will adopt a panel discussion format permitting active participation by the registrants. Program chair **Matthew W. Stanley** (Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, Tacoma/Seattle) has designed a program which will cover the following topics: "The IRS: An Inside View;" "IRS Exam/Appeals:

Genesis and Settlement of Tax Issues;" "IRS Collection: Structure, Policy and Practices; Facts and Myths;" and "The IRS Criminal Tax Function."

For further information about this program, please contact program coordinator Lita Spratt at the WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599, or telephone (206) 448-0433.

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For further information on the following CLE courses, call or write the listed contacts directly.

Fall Symposium— Employment at Will

Labor Law Section, SKCBA, will sponsor a fall symposium on "Employment at Will." Speakers will be Washington Supreme Court Justice Robert Brachtenbach; former California Supreme Court Justice Joseph Grodin; Katherine J. Heller, management employment law practitioner from Vancouver, B.C.; and Richard Busse, plaintiffs' employment law practitioner from Portland, Oregon. Members of the employment law bars from British Columbia and Oregon will be invited. It will be held at the Crowne Plaza/Holiday Inn Hotel on Saturday, October 31, 1987, from 8:15 a.m. to 12 noon and will include lunch. For registration information call Jon Rosen, (206) 682-6711.

This special conference will focus on the mentally ill offender in Washington state. Participants will consider the adequacy of the criminal justice and mental health systems, especially their efforts to identify, intervene, divert, adjudicate, control, treat and re-integrate mentally ill persons who commit criminal offenses. Special attention will be paid to the interaction of the offender with the community. The findings of a new report, especially created for presentation at the conference, will provide an objective baseline of information for the proceedings. The conference has been uniquely structured to assess public policies in this controversial area.

Fifth Annual Conference
of the
Washington Council On Crime & Delinquency
Co-Sponsored by
Community Action For The Mentally Ill Offender

The Mentally Ill Offender: Who Is Responsible?

Date: November 4, 1987 (Wednesday)

Time: 8:00 a.m. - 4:45 p.m. (Registration 7:30 a.m.); Reception to follow conference

Place: Crowne Plaza/Holiday Inn, Sixth & Seneca, Seattle

CLE Credits: 8 hours

Cost: \$45 (Registration by 10/19/87); \$55 (Registration after 10/19/87) WCCD and CAMIO Members deduct \$15.

Speakers: State Senator Phil Talmadge, King County Executive Tim Hill, King County Prosecutor Norm Maleng, Seattle criminal lawyer John Henry Browne, King County Superior Court Judge Anne Ellington, WA State Secretary of Corrections Chase Riveland, Bonnie Busick, the author of *Ill Not Insane*, Don Richardson, President of the National Alliance for the Mentally Ill, and many more.

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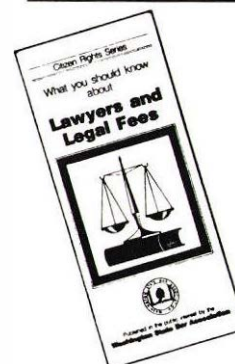
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The Board's Work



Compiled from the official meeting minutes and the Executive Report

VANCOUVER, B.C., SEPTEMBER 7-12, 1987

Present: President Gates; Governors Jay White, Steve Reisler, Julie Weston, and Hal Vhugen (Seattle); Mike Carlson (Everett); Jim Vander Stoep (Chehalis); Roy Mocerl (Mercer Island); Ed Shea (Pasco); Frank Johnson (Spokane); and Ed Lane (Tacoma).

Also present: Thomas Fitzpatrick (Young Lawyers Division); Jack Dean (President-elect); Bill Bergsten, Jim Turner, Steve DeForest and Paul Stritmatter (Governors-elect); and John Michalik (WSBA Executive Director).

ADVICE AND... In light of the fact that a new federal judgeship will arise with the retirement of Judge Walter McGovern, former WSBA president Paul Steere will chair a reconstituted special committee to report directly to U.S. Senator Dan Evans regarding federal judicial appointments. The committee was appointed to work in conjunction with the Federal Bar Association for the Western District of Washington.

STATE BAR CREDIT UNION Subject to approval by the state Division of Savings and Loan Associations, the State Bar Credit Union will expand its membership field to include "those employed by the legal profession or the court system, including but not limited to court reporters, clerks and bailiffs unless presently eligible for membership in another occupation-related union.

SNIP, SNIP The Board was provided with a breakdown of items for the Public Affairs budget and chose to make an across-the-board reduction instead of eliminating any particular programs. After a \$25,000 cut, the Public Affairs proposed budget was passed. It largely affects public service programs. This was the final

item in the WSBA Fiscal 1988 overall budget. (Resources, the expanded attorney directory, will be funded as proposed for Fiscal 1988.)

INFORMAL SESSION WITH GOVERNOR GARDNER For nearly an hour, the Board discussed, among other things, tax reform and administrative procedure act revision with Governor Booth Gardner, who had come to Vancouver expressly for the session.

RESOLUTIONS: BYLAW CHANGE? After considerable discussion of potential revisions to Bylaw Article VII, §§3-5, the Board voted to carry the matter over to its November meeting. Governor White and Exec. Dir. Michalik will work on preparation of final language on the proposals for the November meeting.

REMINDER: At the August meeting, the Board discussed whether to change Bylaw Article VII, §8(b), regarding referendums. That section, along with options discussed for action, appears on page 33 of this issue. The Governors plan to consider this at their November meeting as well; they seek member comments.

DISCOVERY RULES; The Board spent considerable time reviewing various and final proposals in connection with proposed amendments to Civil Rules 5, 26, 30, 31, 37, 43 and 78. Ultimately, the Board approved a recommendation to the state Supreme Court that it adopt the simplified discovery rules patterned after those adopted by the Federal District Court of Washington. The motion prevailed by a vote of 7-3, with White, Lane and Weston opposed. Proposals by the WSBA Trial Section, including that of filing a "tracking device" for discovery, were rejected by the Board 6-4.

YOUNG LAWYERS DIVISION: Retiring Young Lawyer President Fitzpatrick gave a final report to the Board and noted the complete publication of the first issue of the Division newsletter, De Novo.

SETTLEMENT MONTH: Seattle attorney Kenneth LeMaster, on behalf of SAFECO Insurance, requested the Bar's endorsement of a proposed "Settlement Month" to first occur in December 1987. After discussion and review, the Board decided to take no action on this proposal, since it seemed to relate to a King County situation which should first be addressed at that level prior to any action by the State Bar Association.

THE GAVEL IS PASSED Outgoing president Gates delivered a few final comments and observations regarding the disciplinary system,

the potential of a compulsory membership questionnaire concerning various aspects of the practice of law and thoughts concerning the present limits on the Client's Security Fund.

At 12:00 noon on Friday, September 11, incoming president Dean assumed office following an introduction by two former law partners: Federal District Judge Justin Quackenbush and former State Supreme Court Chief Justice William Williams.

THE NEXT MEETING: The Board will meet next at The Coeur d'Alene Hotel in Coeur d'Alene, Idaho on October 16 and 17.

ANNUAL MEETING

A report on actions taken at the Annual Meeting on September 11, 1987, will appear in the November Bar News.



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A student honors America... Happy Birthday to US

by Jo Rosner
Attorney & Educator

A tenth-grader in Highline School District's (Seattle area) Evergreen High School was one of the winners of an essay contest this spring. Barbara Jones had to read her work out loud as part of the contest sponsored by Toastmasters, but even in print, her words carry a depth and meaning beyond her years.



Barbara shared the honor of her achievement with her father, an engineer, and with her Language Arts teacher, Dr. Robert Taeschner. She plans to go to college, major in business administration, and travel to third-world countries.

In celebration of the 200th anniversary of the U.S. Constitution (September 1787-September 1987) here are Barbara's words:

Honor America

The members of the Second Continental Congress belonged to the elite of colonial society. They were men of status and wealth.

In July 1776, these men—successful lawyers, merchants, ministers, plantation owners, and artisans—signed their names to one of the most revolutionary documents of modern times in which they pledged to each other "our Lives, our Fortunes, and our sacred Honor"; in the cause of American independence and the visionary ideal that "all men are created equal."

For fifteen months, North American colonies had been in revolt. On July 4, 1776, representatives of those colonies met to formalize that rebellion by adopting a Declaration of Independence. No man among those present on that day could foresee the outcome. Yet, each knew that before peace could be restored, he and his countrymen would have to strive for a long period of time.

For the next five years, the sound of cannon and the flash of musketry were seldom silent. American troops, who were ill-trained and poorly equipped, harassed the British forces that were quite superior in numbers and weapons. Occasionally the Americans advanced, but more often they retreated. Britain, having grossly underestimated the determination and courage of her subjects, was confronted with a combination too powerful to conquer, and was forced to yield.

Then was the United States of America born. The United States was not a nation at first, but a loosely knit confederation brought together by common dissatisfaction and shared aspirations. The Constitution was not designed as a plan for building a communist world, a new world, or a universal capitalism. The Constitution is about means and methods.

The men who wrote it knew that a government using means that are fair and decent cannot go wrong. The Constitution defined responsibilities, outlined processes, listed duties. It included flexibility that allowed later generations to change and amend the charter to fit new circumstances. These men had strong opinions which built respect for each others' rights. They left us broad ground on which we could set our path.

We would have to agree: If not the best, then it is certainly the best yet. We should keep it that way, forever.

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



Editorial Advisory Board

by Duane M. Swinton



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A BONDED, LICENSED PROFESSIONAL

Just what is this Editorial Advisory Board, the members of whom are afforded the luxury of having their names printed in each issue of the *Bar News*, and how does the EAB fit into the scheme of the *Bar News* as a whole?

EAB is one of 32 standing committees of the Washington State Bar Association. As with the other committees, its members are appointed by the Board of Governors—in the case of the EAB, for terms of three years each.

The EAB was born in controversy in 1972 and has recently weathered and participated in a nearly-year-long review by the Board of Governors of the internal structure of the *Bar News*. The end result of this intensive look by the Board of Governors at the *Bar News* and the functions of the EAB means that the EAB is on its way to becoming one of the more active committees of the Bar Association.

Although the first edition of the *Washington State Bar News* appeared in March 1947, it was not until October 1972 that an editorial advisory board was established by the Board of Governors. The establishment of the EAB arose out of a controversy involving the Board of Governors and then-editor of the *Bar News*—Ed Raftus—who was removed from his editor's position by the Board of Governors because of a dispute over content of the *Bar News*. The EAB was directed by the Board of Governors to come up with guidelines concerning the publication of the *Bar News* and to consult with the editor on issues of editorial policy. In essence, the EAB was, in part, established to act as a buffer between the Board of Governors and the editor to insure, in the words of the initial report of the EAB, that the "editor . . . be sufficiently independent to provide examination

and criticism of the Bar Association, its governors and officers."

Through the years the EAB evolved into a Bar committee that met only on a quarterly basis, discussing with the editor general content issues relating to the *Bar News* and assisting the editor in developing "theme" issues. In addition, the EAB periodically undertook a selection process concerning a new editor and made a recommendation to the Board of Governors concerning filling the editor's position. However, the day-to-day operation and publication of the *Bar News* was left to the editor with the assistance of the Bar staff.

In the fall of 1986, the rather placid existence of the EAB suddenly changed. The Board of Governors requested that the EAB undertake a thorough analysis of guidelines and procedures of the *Bar News* and develop an "editor's handbook" for *Bar News* editors. More significantly, the Board of Governors eventually requested that the EAB make a recommendation whether the editor should continue to be an "independent" editor selected from among the practicing attorneys of the Bar membership, or whether the editor should become "in-house"—in essence, a paid member of the Bar staff.

As a result of these directives from the Board of Governors, the EAB recently submitted to the Board of Governors a 23-page editor's handbook containing policies and procedures relating to the *Bar News*, including defining the duties of the editor, various members of the Bar staff, and the EAB itself. What appeared at the outset to be a fairly simple task resulted in representatives of the EAB appearing before the Board of Governors at the Board's January, April, May, June, July and August meetings to submit reports on various issues relating to the *Bar*

News.

After much debate within the EAB and the Board itself, the Board of Governors eventually decided at its June 1987 meeting that the editor of the *Bar News* would continue to be selected from among the Bar membership. A critical factor in the Board's making this determination was the EAB's proposal that it become more involved in the operation and publication of the *Bar News*, in essence, relinquishing its former placid existence and taking a more hands-on approach to the content and production of the *Bar News*.

As a result, the EAB is now becoming one of the more active committees of the Bar Association, meeting on at least a monthly basis. More importantly, the EAB has set up three subcommittees to monitor closely the production of the *Bar News*.

The first of these subcommittees is the production subcommittee, whose primary function is to assist the editor and the Bar staff in resolving any problems associated with the production of the *Bar News*, including making determinations concerning final content of the *Bar News*. This includes review of all letters to the editor that appear in the *Bar News*. The production subcommittee participates in monthly meetings involving members of the Bar Association staff and the editor. In addition, the production subcommittee will be reviewing budget recommendations made by the WSBA Director of Public Affairs.

The second subcommittee is the content and writing subcommittee, whose primary function is to prepare an advance "menu" of upcoming issues of the *Bar News*. This involves coordinating with the new publication of the Young Lawyers Division—*De Novo*—to insure that there is no duplication between the two publications. The content and writing subcommittee also maintains a liaison with the Bar membership to determine what the membership's attitudes are toward content of the *Bar News* and coordinates with the editor in recruiting authors for articles to appear in the *Bar News*. Members of the subcommittee may themselves be

preparing articles for inclusion in the *Bar News*.

The final subcommittee that has been established is the review and critique subcommittee which, to some extent, acts as a counter-balance to the content and writing subcommittee. The primary duty of the review and critique subcommittee is to critique each issue of the *Bar News* in the following areas: general content, editing practices, and errors or omissions. It is also the function of the review and critique subcommittee to establish a liaison with Bar membership concerning reaction to the *Bar News* and to formally evaluate and critique the editor of the *Bar News* on at least a semi-annual basis.

After the year-long analysis of the *Bar News* and the interplay that occurs between the editor of the *Bar News*, the Bar Association staff and the Board of Governors, what has evolved is a determination that the EAB must play an active role in monitoring this constant interplay. From its beginning in 1947, it has been apparent that the *Bar News* is not intended to be a publication that reflects the viewpoint only of the Board of Governors or the Bar Association staff. The intent is that the *Bar News* act as a forum for presenting issues and ideas of interest and im-

portance to the Bar membership as a whole. However, since the Board of Governors, in essence, also acts as publisher of the *Bar News*, there is a natural tension that develops between the Board of Governors and the editor when it comes to reporting certain issues. This same tension may also exist between the Bar Association staff and the editor. It is the role of the EAB to insure that this natural tension does not impinge on the stated goals of the *Bar News* as reflected by the Board of Governors over the years, nor on the quality of production of the *Bar News*.

Although the *Washington State Bar News* survived for 25 years without any input from an EAB, those first four-page issues of the *Bar News* pale in comparison to the 50-plus page issues of the *Bar News* that are now common on a monthly basis. And, as the *Bar News* becomes even more detailed and sophisticated in its coverage of issues relating to the Bar membership, it is apparent that the activities and duties of the EAB will become even more numerous and important in the future.

Duane Swinton, outgoing chairman of the Editorial Advisory Board, is a partner in Witherspoon, Kelley, Davenport & Tool's Spokane law office.

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Group and Prepaid Legal Services A "New" Employee Benefit

by Carla J. Higginson

Can employers do anything to prevent loss of employee productivity when their workers face legal problems? One possible solution is to provide a legal services plan. Legal services plans decrease lost work time and reduce stress levels by providing legal services to assist in resolving an employee's legal problems. Plans offer a wide range of legal work, either without cost beyond an annual fee or at very low rates. Group and prepaid plans may be attractive to lawyers as well, due to the certainty of payment for services covered under the plan and the opportunity to have an expanding client base.

Why should employers consider the advantages of prepaid legal services plans for their employees? Consider the following:

Although lawyers may drag themselves to a hearing even while deathly ill, most other people lose occasional time from work. If it is a planned or compensated time loss, such as vacation or sick leave, this is manageable for the employer. However, approximately 48% of the total reasons for time loss are due to law-related matters such as consumer problems, death in the family, family problems, and financial difficulties. Many people do not recognize that a lawyer can help prevent or resolve problems in these areas. When employees attempt to handle problems themselves, they often receive and initiate calls during working hours, solicit advice from co-workers, and worry about the problem, all of which can cause an average of 51.5 hours per year of lost work time. This is the equivalent of an extra eight days off, in addition to the usual sick leave and vacation time—an expensive proposition for an employer both in terms of money and productivity.

Legal services plans offered as an employee benefit are one possible solution. There are two basic types of plans: a group plan or a prepaid plan.

Groupplan. This is an arrangement between an organization and a lawyer (or a law firm) to provide legal services to group members under specified conditions. In its most basic form, the legal services plan provides a system whereby group members are referred to a lawyer. A "closed panel" of lawyers in private practice might be used. This consists of lawyers selected by the plan sponsor to provide services to members. Arrangements may involve full-time staff lawyers who work only for the plan members or lawyers in private practice who are under contract to provide services for plan members at a "standard" rate.

Alternatively, there may be an "open panel." This allows members to use any lawyer for services, subject to the provisions of the plan. (In some instances, plan members may have to pay legal fees for services in excess of those provided for by the plan.) Consultation and basic legal services are often included in the annual fee paid by the subscriber. There may be deductible involved and/or set limitations on the amount of coverage available per matter. Typical benefit areas include wills, consumer problems, landlord-tenant, civil disputes and misdemeanor criminal or traffic matters.

Prepaid legal services. In exchange for regular payment of a premium (similar to that of a health insurance plan), a subscriber is entitled to a fixed number of legal services (often non-complex or preventive), such as: phone or office consultation with a lawyer; correspondence or phone calls to adverse parties; review (and sometimes preparation) of simple basic documents such as wills; and discounts on fees for more complex legal matters.

Studies show that each employee in a work environment experiences an average of three problems per year in the categories set forth above in the second paragraph. If legal services are readily available through a group

or prepaid legal services plan, employees are more likely to take advantage of legal assistance. Plan members/subscribers usually have:

- Easy access to a lawyer (*i.e.*, freedom to call a lawyer without worry about an initial consultation fee;

- Easier payment of legal fees, particularly under a prepaid plan;

- More certainty about legal costs because of established fee schedules;

- Assurance of quality services and good treatment by the lawyer (as excessive complaints could result in the lawyer leaving the panel).

(The statistics in this article are derived from a study entitled *Lost Work Time: Categories, Cost and Prevention*, by Lynn Sandra Kahn, Ph.D., published in 1986.)

For more information about such plans, see the pamphlet entitled "What You Should Know About Prepaid and Group Legal Services" published by the WSBA as part of the Citizen Rights Series.

Carla J. Higginson is a sole practitioner and municipal court judge in Friday Harbor and a member of the Group and Prepaid Legal Services Committee.

On October 22, 1987 the Group and Prepaid Legal Services Committee of the WSBA will sponsor a Symposium on Group/Prepaid Legal Services from 1:00 to 4:45 p.m. at the downtown Seattle Sheraton Hotel (Sixth and Pike, Seattle, WA 98111; telephone (206) 621-9000). The program is designed to appeal to employers, employees and other interested parties who may want to learn more about legal services plans.

Tuition for the Symposium is \$20 per person; if more than one individual from the same organization wishes to register, each additional registrant from the same organization will be charged \$10 per person. For further information, please contact Lita Spratt, WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599, or telephone (206) 448-0433.

NOTICE

The Board of Governors of the Washington State Bar Association is considering whether to amend Article VII, Section 8(b) of the WSBA Bylaws. The section currently reads:

Section 8. REFERENDUMS. Any proposal upon which action has been taken at an annual meeting of the Association may be referred to a vote of the entire active membership of the Washington State Bar Association by order of the Board of Governors. The Board of Governors shall order a proposal referred to a vote of such membership in each of the following circumstances:

(a) If the proposal were acted upon at the annual meeting of the Association and if the action taken were requested to be referred by a two-thirds vote of the active members who voted at the meeting; or

(b) If there has been filed with the Association a petition signed by two hundred fifty (250) active members of the Association requesting such referral in respect to a proposal.

(i) acted upon at an annual meeting of the Association, or

(ii) to amend a Bylaw of the Association, or

(iii) to adopt any new rule on any of the subjects contained in Section 7 above, or

(iv) to modify or reverse a decision of the Board of Governors.

Such a petition to be valid must be filed within sixty (60) days after the taking of the action under (i) above or the publication of the decision in the *Bar News* or otherwise under (iv) above. Participation in the referendum by not less than fifty (50) percent of the active membership of the Association shall be required in order for any referendum under this Section 8 to prevail.

At its August 1987 meeting, the Board of Governors discussed whether to change the language—"a petition signed by two hundred fifty (250) active members of the Association"—to some other number or a percentage of the active membership. The Board of Governors took no action on the merits and directed this notice be published in the *Bar News* to solicit comments from the membership.

Options discussed by the Board of Governors in August were:

1. Keep the section as is, *i.e.*, do not amend it.
2. Require a petition to be signed by 500 active members of the Association.

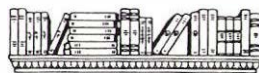
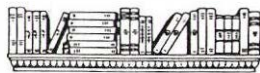
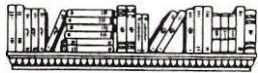
3. Require a petition to be signed by 10 percent of the active membership.

4. Require a petition to be signed by 5 percent of the active membership.

"The Board's Work" in the September 1987 *Bar News* described more fully the discussion by the Board of Governors on this subject.

The Board of Governors contemplates again addressing this question at its meeting in Portland, Oregon, on November 20-21, 1987.

The Board of Governors would like to know what you think. Please contact your Governors. Their districts are indicated on the table of contents page of this magazine.



Notes From the Academy

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

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Real property. State threatened to take all of owner's land by eminent domain. Owner negotiated sale of part of land to state, retaining part. Part retained was thereby rendered landlocked. Owner then sought to condemn private way of necessity over neighbor's land to retain part under RCW Chapter 8.24. Neighbor argued that, since owner voluntarily made his land landlocked, condemnation was not "necessary for its proper use and enjoyment" under RCW 8.24.010. Held: Condemnation of private way of necessity was reasonably necessary. Owner's sale to state was forced on him; if he had not sold part of his land, state would likely have taken it all. *Olivo v. Rasmussen*, 48 Wn. App. 318, 738 P.2d 333 (6/30/87).

W. B. Stoebuck

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EAST KING COUNTY REPORT by DOUGLAS W. HARRIS

Things seem to be heating up in the drive to have an East King County Superior Court Clerk's Office and part-time ex-parte commissioner installed in Bellevue. King County Councilman **Bill Reams** has shown support for such a proposal, and now the battle looms with the King County budget process. There are now some 1,200 lawyers on the East-side, and the membership of the EKCBA almost unanimously indicates it could use such a facility. Bellevue District Court has provided space for both the office and commissioner's room.

A report on the annual EKCBA Golf Tournament will have to wait until next time. The event is scheduled just after the deadline for this column, but I'm sure we all had a good time. **Doug Cowan** has threatened to boycott the tournament in future years if his string of prize-

less participation is not broken this year. We hope some token prize can be arranged to soothe Doug's feelings. More to follow.

Richard Nelson and **Valerie Knecht Hoff** announce the formation of a professional service corporation under the name of **Nelson & Hoff, P.S.**, with offices located at 304 ONB Plaza, 10800 N.E. 8th Street, Bellevue; (206) 451-3812. Also, the firm of **Bundy, Meyer & Home** announces that **Mark J. Wilson** joined the firm as an associate.

The AEES P.C. Users Group has been meeting approximately every five weeks since March 1985. The goal of the group is to keep abreast of what is new on the market in both hardware and software. It also assists members in all areas involving the selection and use of computer products. Meetings are held from 6-8 p.m. at Suite 1000, Plaza Center Building, 10900 N.E. 8th, Bellevue. Anyone interested should call **Richard Bernstein** at (206) 462-7750.

Finally, the EKCBA Christmas

party will be held December 17, 1987. This year the event will be at Marian's in the new Rainier Bank Building in Bellevue from 4-8 p.m. This will be a change from the past years at the Bellevue Athletic Club, and it is expected to be a good time. Elections will be held at that meeting, and the Gaudio administration will be ushered out after an extremely productive year. Watch your mail for invitations.

PIERCE COUNTY REPORT by ROBERT W. MARSDEN

For the second consecutive year **Wally Cavanaugh** finished atop the field in the annual Tacoma-Pierce County Bar Association's golf tournament. Cavanaugh shot a five-over-par 76 at Tacoma's Allenmore course, edging out **Michael B. Smith** by one stroke. **Steve Hemmen** won the handicap division with a net score of 65 (obviously a sand-bagger). The Calloway division winners with net

SUCCESSFUL APPELLATE PRACTICE Begins in the Trial Court

Every trial lawyer knows that appellate success depends upon the record made in the trial court. Not all trial lawyers, however, know how to make a winning record.

The pitfalls facing trial counsel are all too well documented. Too often, meritorious appeals are lost due to procedural errors committed at the trial level. The simple act of stating the issue before the Court can be critical to the outcome of an appeal. As a Supreme Court Justice observed, "to state the question often is to decide it. And it may do this by failure to reveal fully what is at stake." *Yakus v. United States*, 321 U.S. 414, 482 (1944).

Similarly, at the appellate level, procedural traps for the unwary practitioner abound. For example: "there must be specific assignments of error before we will go behind the trial court's findings." *Dave v. Nastos*, 39 Wn. App. 590, 595, 694 P.2d 686 (1985).

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JAMES E. LOBSENZ, former Clerk to Associate Justice **Mathew O. Tobriner**, California Supreme Court, and Chief Justice **Vincent L. McKusick**, Supreme Judicial Court of Maine; author of numerous law review articles; successful appeals include *In re Addleman*, *State v. Ryan* (amicus), *State v. Pam*, *State v. Sargent*, *Lang v. Lang*. Federal appeals include *Watkins v. United States*.

PARIS K. KALLAS, former staff attorney for the Washington Appellate Defender Association; successful appeals include *State v. Hicks*, *State v. Shriner*, *State v. Gore*, and *State v. Griffin*.

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scores of 71½ were **Tim Gosselin** and **Monte Hester**, and **Corrinne Dixon** won the women's division. Particular praise and condolences to **Sue Keers** who had the high gross score of 173 (no, that's not a typo).

Mary Ellen Goodwin has moved her Tacoma offices to the Norton Clapp Law Center.

The Tacoma firm of **Davies Pearson** has announced that **Andrea Conklin**

and **Clifford Morey** have joined the firm as associates. **Conklin** was graduated last year from Willamette University School of Law and **Morey**, a University of Puget Sound Law School graduate, has been with the Pierce County Prosecuting Attorney's office for the past several years.

John A. McNeish, a former Army JAG officer, has opened offices in Tacoma.

Professor **Jenifer Schramm** has stepped down as Director of the University of Puget Sound Clinical Law Program. Replacing **Schramm** is **Marsha Pechman**, formerly with the Seattle firm of **Levinson, Friednan, Vhugen, Duggan, Bland** and **Horowitz**.

Judith Mandel and **Kurt Salmon** have formed a new partnership, **Mandel and Salmon**, with offices in Gig Harbor.

The "Land Sharks," a relay team composed primarily of Pierce County attorneys, recently participated in the "Hood to Coast" run in Oregon. The team completed the 170-mile run from Mt. Hood to Seaside in 23 hours and 26 minutes for a team average of 8.27 minutes per mile. Team members included **Norm Margullis**, **Kitty-Ann Van Doorninck**, **Elizabeth Day**, **Anna Hibbard**, **Sandy Kindig**, **Jeff Gross**, **Steve Hansen**, **Joe Holeman** and Family Court Commissioner **Craig Adams**.

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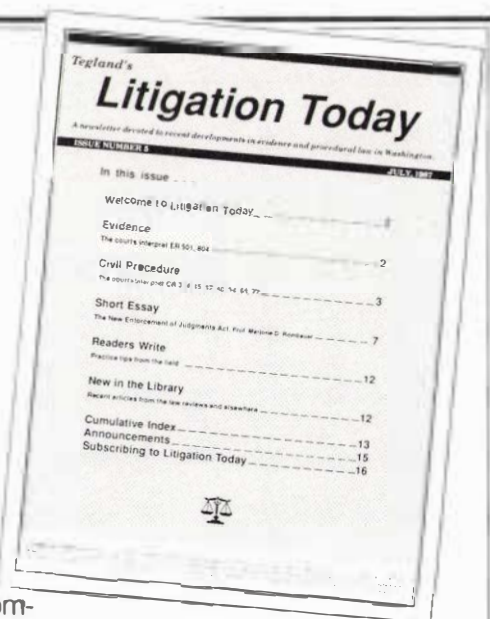
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SEATTLE-KING REPORT

by JAMES L. VARNELL

Office Moves. **Ronald J. Knox** has become an associate with **Williams, Kastner & Gibbs**. **Peggy Nagae Lum** has joined **Betts, Patterson & Mines**, P.S. as an associate. **Andrea Conklin**, **Clifford G. Morey**, **James Feutz** and **Andrea Kiehl** have joined **Davies Pearson, P.C.** as associates. **Ralph A. Leaf** has relocated to One Union Square. **Richard C. Nelson** and **Valerie Knecht Hoff** have formed a professional service corporation and opened their law office in Bellevue.

Daniel F. Sullivan announces that **Thomas R. Golden** is now a partner in **Sullivan & Golden**; other members include **Theodore Spearman**, **Robert McAllister**, and **Phillip Offenbacher** of counsel. **Roger M. Leed** has relocated to 1001 Fourth Avenue Plaza. **Cook, Berst, Landeen & Butler** has moved to the IBM Building. **Peggy Admodt** has become an associate of **Reed, McClure, Mocer, Thonn and Moriarty**. **Stuart Rolfe** has been named vice president, corporation counsel and manager of **Washington Mutual Bank's** legal department. **Gloria Lung Wakayama** has been

named an associate and **Sanford Kinzer** has been appointed of counsel with **Harris, Mericle & Orr**.

Seed and Berry has added two members to the firm's partnership: **Jeffrey Miller** and **David Maki**. **James Fowler** has become an associate with **Graham and Dunn**. **Peter D. Preston** [Cf. Inre *Edwards*, 99 Wn.2d 913 (1983)] has moved his office to the Bank of California Center.

Honors. King County Superior Court Judge **Warren Chan** has been named chairman of the National Conference of State Trial Judges of the American Bar Association Judicial Administration Division.

News Makers. **Jim Sanders**, formerly with the Seattle Public Defender's office, has recently returned to his Nashville office from a one-year trial in Los Angeles in the successful defense of movie director **George Lucas** for charges arising from the filming of "The Twilight Zone: The Movie." Jim's new office in One Nashville Place is only slightly smaller than the Presiding Department of the King County Superior Court.

Congressman **Norm Dicks** was seen shepherding another Tennessee, Senator **Albert Gore, Jr.**, around various Seattle campaign appearances. Prominent by their presence at the \$50-per-person reception were "high rollers" **Chuck Blumenfeld**, **Stan Barer**, **Mike Heavey**, **Ernie Crane** and **Vicki Vreeland**.

Laurence "Mr. Jam" Mosler was a member of one of the division-winning teams in the 3-on-3, all-comers basketball tournament held recently at the Kingdome. Apparently, the services of such erstwhile basketball stars as **E. Gary Donion**, **Dale "Sky" Frank** and this correspondent weren't necessary.

YAKIMA COUNTY REPORT
by **RAYMOND GESSEL**
& **MARK KUNKLER**

James B. Hovis, partner with the former firm of **Hovis, Cockrill, Weaver & Bjur** in Yakima has been

named the new Federal Magistrate for the Federal District Court for the Eastern District of Washington to replace the retiring **Smithmoore P. Myers**. He assumed his duties in Spokane on August 3. Hovis is a former president of the Yakima County Bar Association and has practiced in Yakima County for more than 34 years. Because of Hovis' depart-

ture, his former firm has a new name: **Cockrill, Weaver & Bjur, P.S.** To help fill the place vacated by Hovis, the firm has named **Rafael A. Gonzales** of Tacoma as an associate. Gonzales joins the firm from Division II of the Washington State Court of Appeals, where he served as a clerk for Judge **Stanley W. Worswick**.

Several other attorneys have been

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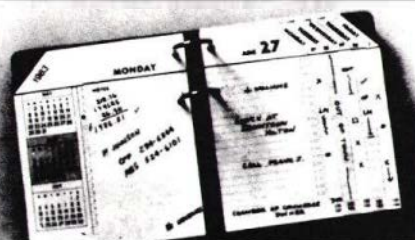
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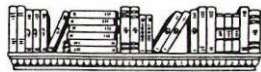
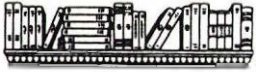
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The Commission, established in 1982 under RCW 1.30, is conducting a survey of Washington State statutes containing errors, unintended ambiguities, or anachronisms. If you know of a statute that needs technical revision (as distinct from substantive amendment or repeal), please let us know. Write to Washington State Law Revision Commission, Ms. Lynn B. Squires, Chair, c/o Bogle & Gates, 2100 Bank of California Center, Seattle, WA 98164.

added to the roster of the Yakima County Bar Association. **Steve Tilson** has joined the firm of Lyon, Beau-laurier, Weigand, Suko & Gustafson. **Sharon Carberry** has commenced work as the Assistant City Attorney, where she was chosen to replace **John Vanek**, who was named City Attorney when **Fred Andrews** retired. The firm of Weeks, Dietzen & Skala also announces the association of **C. Bruce Hanify**, formerly in private practice in Spokane.

A committee has been formed by several attorneys who indicated that they had an interest in planning and preparing a local program to commemorate the Bicentennial of the United States Constitution. A steering committee consisting of **Adam Moore**, **Raymond Gessel** and **Scott Bruns** has been formed to speed the plans to fruition. **Mark R. Fortier**, chairperson of the general committee formed to plan the celebration of Constitution Day, has indicated that programs are being considered for several different areas in Yakima County.

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Average Coupon Equivalent Yields from the Auction of 26-week Treasury Bills: 1982 to Date

THESE ARE THE AVERAGE COUPON EQUIVALENT YIELDS FROM THE AUCTION OF 26-WEEK TREASURY BILLS FROM MARCH 1982 TO DATE. THE HIGHEST RATE OF INTEREST PERMISSIBLE UNDER RCW 19.52.020(1) IS COMPUTED BY THE ADDITION OF FOUR PERCENTAGE POINTS OR IS 12% PER ANNUM, WHICHEVER IS HIGHER.

THE YIELDS SHOWN ON THE CHART ARE THOSE APPLIED TO THE MONTH SHOWN, COMPUTED ON THE COUPON EQUIVALENT FROM THE FIRST MARKET AUCTION AVERAGE IN THE MONTH PRECEDING, AS SPECIFIED IN THE STATUTE.

These limits apply to loans which are made during the designated month. Note: Any loan made pursuant to a commitment to lend at an interest rate permitted when the commitment is made is lawful.

The average coupon equivalent yield from the first September 1987 auction of 26-week treasury bills, applicable to the computation of the maximum allowable interest rate for October 1987 is 6.66%. According to the state treasurer's office, the maximum allowable interest rate for October 1987 is 12%. Production deadlines and available space permitting, the *Bar News* will publish this information monthly.

March	1982	15.10%	January	1985	9.19%
April	1982	13.86%	February	1985	8.48%
May	1982	13.88%	March	1985	8.78%
June	1982	13.85%	April	1985	9.54%
July	1982	13.09%	May	1985	9.06%
August	1982	14.08%	June	1985	8.38%
September	1982	11.44%	July	1985	7.53%
October	1982	10.24%	August	1985	7.44%
November	1982	9.82%	September	1985	7.93%
December	1982	8.71%	October	1985	7.69%
January	1983	8.73%	November	1985	7.71%
February	1983	8.39%	December	1985	7.69%
March	1983	8.83%	January	1986	7.64%
April	1983	8.67%	February	1986	7.48%
May	1983	9.26%	March	1986	7.42%
June	1983	8.53%	April	1986	7.22%
July	1983	9.35%	May	1986	6.46%
August	1983	9.81%	June	1986	6.37%
September	1983	10.21%	July	1986	6.72%
October	1983	10.03%	August	1986	6.11%
November	1983	9.50%	September	1986	5.98%
December	1983	9.61%	October	1986	5.38%
January	1984	9.77%	November	1986	5.34%
February	1984	9.80%	December	1986	5.52%
March	1984	9.71%	January	1987	5.69%
April	1984	9.97%	February	1987	5.79%
May	1984	10.49%	March	1987	5.83%
June	1984	10.98%	April	1987	5.76%
July	1984	11.32%	May	1987	6.07%
August	1984	11.29%	June	1987	6.46%
September	1984	11.45%	July	1987	6.40%
October	1984	11.53%	August	1987	5.95%
November	1984	11.07%	September	1987	6.45%
December	1984	9.64%	October	1987	6.66%

The editor wishes to thank Tacoma-Pierce County Bar Association's executive director, Joyce Feely, for sharing this chart from the Tacoma-Pierce Bar's newsletter.



DISCIPLINE

Censured

Tacoma attorney **William A. White** (admitted 1978) was ordered to receive a Censure for his conduct during representation of a DWI client. A hearing officer found that White failed to keep his client informed and advised during the time he was rep-

resenting the client, causing the client to undertake to represent himself and to attempt to negotiate the disposition of his case; failed to return unearned fees when discharged by his client; and failed to file an answer to the formal complaint within the time period required by the Rules for Lawyer Discipline. White was also ordered to return unearned fees

of \$300 to the client.

Reprimanded

South Bend attorney **John M. Wolfe** (admitted 1966) has been ordered reprimanded pursuant to a stipulation for discipline, based upon his failure to either file a bankruptcy proceeding or withdraw and his conduct in entering a voluntary order of dismissal of a personal injury claim without the consent of his clients.

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IN MEMORIAM

Richard A. Montgomery of Seattle died August 16, 1987 at the age of 35 while vacationing with his family at Lake Chelan. A native of Buffalo, New York, Montgomery was graduated from St. Lawrence University and Albany Law School of Union University. A partner in the firm of Bogle & Gates, Montgomery had an extensive maritime practice. Remembrances to the Richard A. Montgomery Memorial Scholarship Fund at St. Lawrence University, Canton, NY, or the American Heart Association.

William M. Robinson of Seattle died June 12, 1987 at the age of 55. The Centralia native was an honor graduate of the University of Washington and its Law School, where he served on the law review. He had practiced law in Seattle since his graduation from law school in 1957. A brother, **David W. Robinson**, is an attorney in Bellingham. Remembrances to the American Cancer Society.

Richard Marcus Rohlfs of Seattle died June 13, 1987 at the age of 43. A graduate of the University of Washington and Willamette Law School, he was a partner in the firm of Friedman, Rohlf and Maslan.

ET ALIA

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Three Seattle lawyers, **Frederick Myers** of the Karr, Tuttle firm, **Richard Clinton** of Bogle & Gates, and **Jerry McNaull** of the Culp,



Dwyer firm, have become fellows of the American College of Trial Lawyers.

Municipal Attorney Pool Directory

The Washington State Association of Municipal Attorneys (WSAMA), in conjunction with the Municipal Research and Services Center, is implementing a program to maintain a directory of attorney experts in various municipal fields. The purpose of the directory will be to assist Washington cities and city attorneys in obtaining "outside" counsel or defense counsel when needed because of attorney conflicts of interest or other reasons.

Any Washington attorney or firm interested in being listed in the directory may contact **Robert F. Hauth**, Secretary, Washington State Association of Municipal Attorneys, 4719 Brooklyn Avenue N.E., Seattle, WA 98105, for details and forms.

Federal Judges' Award

Nominations for the 1987 Edward J. Devitt Distinguished Service to Justice Award are being received. Established to recognize the dedicated public service of members of the Federal Judiciary, the award is made available by West Publishing Company in the name of Edward J. Devitt, long-time Chief United States District Judge for the District of Minnesota. The award carries an honorarium of \$15,000. All Federal judges appointed under Article III of the United States Constitution are eligible for nomination.

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Michael S. Gillie, Founder and Executive Director of Washington Arbitration and United States Arbitration, is a 1977 graduate of the University of Puget Sound School of Law. He is an experienced arbitrator, mediator, and case administrator, and a nationally recognized author and speaker on alternative dispute resolution. He has received recognition from the Washington State Governor's Office and the U.S. Office of Consumer Affairs for his work with volunteer arbitrator programs.



Alan C. Alhadeff, Director of Mediation for Washington Arbitration and United States Arbitration, is a 1970 graduate of Stanford Law School. He has developed and presented numerous mediator training courses, and he is currently mediating major tort and business disputes around the country. Mr. Alhadeff is an adjunct professor at the University of Puget Sound School of Law, teaching "Negotiation and Mediation".

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