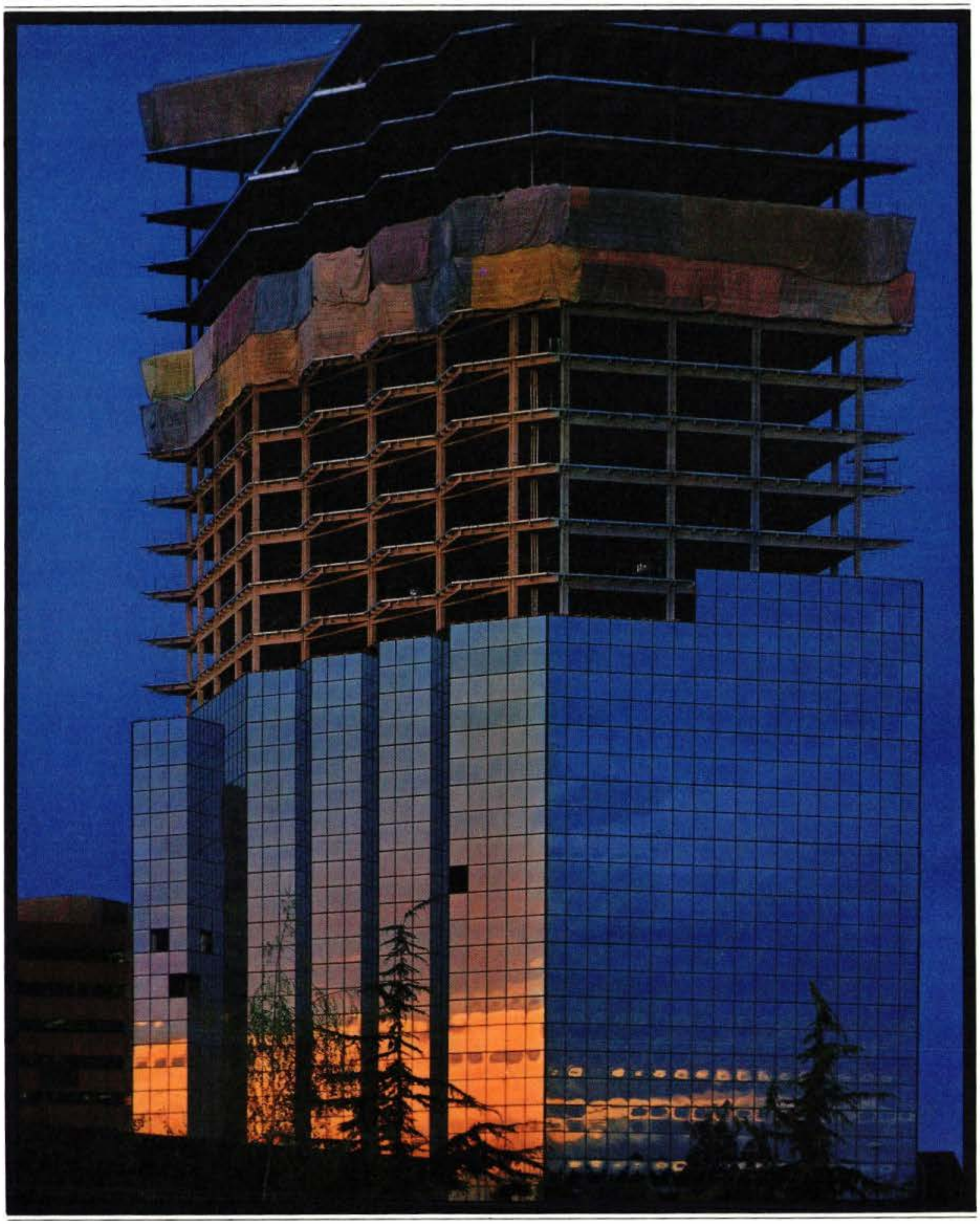
Washington State Bar News

Vol. 41, No. 3, March 1987



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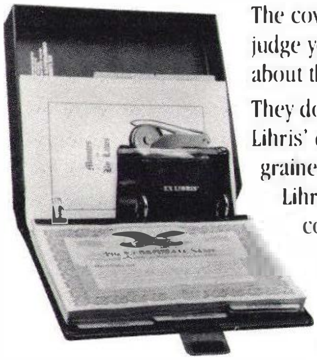

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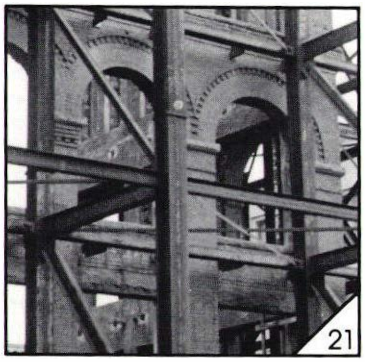

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Cover: **Mark Ricketts** created this sizzling photo of Rainier Bank Plaza in Bellevue. He is a Seattle architectural photographer whose work has appeared in *Architectural Digest, Metropolitan Home, Unique Homes, Washington Magazine* and numerous trade magazines dealing with the construction industry.

IN THE NEWS

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CASELAW CAPSULES

Notes From the Academy

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

COMMUNITY PROPERTY—FAMILY LAW—INSURANCE—WILLS AND ESTATES. In action by former wife on behalf of her minor son against estate of her former husband, she sought proceeds of life insurance under divorce decree which ordered that insurance be maintained for son. Court held that: (1) Antenuptial duty to maintain minor child as beneficiary of term life insurance policy as security for support may not invade interest of a subsequent community in that policy, *disapproving* ***Crozier v. Equitable Life Assur.***, 33 Wash. App. 828, 658 P.2d 39 (1983), and ***Puckett v. Puckett***, 41 Wash. App. 78, 702 P.2d 477 (1985). (2) Under RCW 48.18.410-.420, decedent was free to dispose of his community share of group term life insurance as he chose, free from claims of creditors, apparently including claims for support by former wife and minor child. (3) Second wife, presumptively entitled to community interest in cash-value policies, is estopped from asserting that interest as a result of listing the policies as separate property on her decedent husband's probate inventory. (4) Second wife, appointed as personal representative of her husband's estate, and trustee of his pour-over trust, would be personally liable for misuse of insurance proceeds that did not represent her community property; would be personally liable for estate assets used to defend herself from personal liability; and was properly removed as trustee on grounds of conflict of interest. (5) Former wife is entitled to attorneys' fees under RCW 11.92.180 only insofar as she was properly suing as guardian for her minor child, and not insofar as she sued in her own right. (6) Decedent's will, executed five years before his second marriage, was not revoked by operation of RCW 11.12.050 as to the second wife because the will adequately "provided for" his future wife by contingent bequests (*reaffirming* ***In re Steele's Estate***, 45 Wn.2d 58, 273 P.2d 235 [1954]), by specific bequests, and by a residuary bequest. ***Porter v. Porter***, 107 Wn.2d 43, 726 P.2d 459 (10/16/86).

—*T.R. Andrews*

EVIDENCE. *(Case 1.)* In wrongful death action arising out of skiing accident, brought against operator of ski area, statement by ski patrolman that accident site "should have been roped off beforehand" was not admissible as an admission, where patrolman had been instructed in employee's manual to report all necessary changes in sign placement to supervisor. In dictum court suggested it may be unconscionable and against public policy for employer to instruct all speaking agents not to make admissions, but found that defendant in this case had not done so. ***Codd v. Stevens Pass, Inc.*** ___Wn. App. ___, 725 P.2d 1008 (9/22/86).

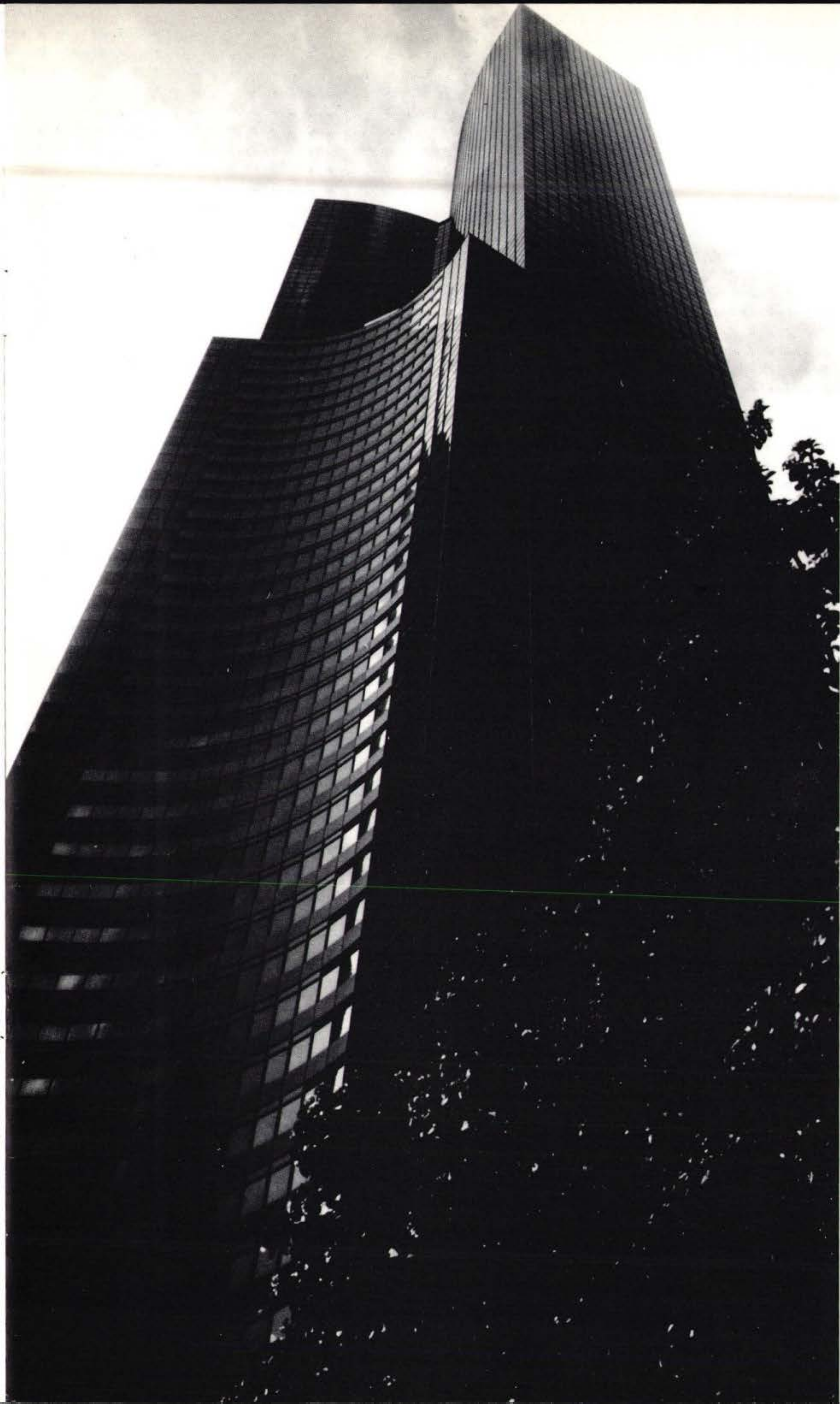
(Case 2.) In prosecution for indecent liberties, three-year-old child's hearsay descriptions of incident to her father, to emergency room nurse, to doctor, and to police officer were all admissible as excited utterances. Court pointed to several indications of reliability, including: (1) child's tender age, (2) short lapse of time between alleged act and child's visit to emergency room, (3) her continuing physical complaints at emergency room, (4) consistency of her story to the various witnesses, (5) her terminology in relating the story, and (6) lack of intervening influences on her. ***State v. Robinson***, 44 Wn. App. 611, 722 P.2d 1379 (7/31/86).

(Case 3.) Best evidence rule does not require that all corporate affairs be proved by reference to written corporate records. In prosecution for securities fraud and related charges, court held that prosecution witness could properly testify as to corporate affairs, so long as witness satisfied Rule 602's requirement of personal knowledge. In dictum, however, court stated that corporate records must still be produced to prove corporate *act* or to prove something about which witness has no personal knowledge. ***State v. Mahmood***, ___ Wn. App. ___, 724 P.2d 1021 (4/28/86).

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

TORTS. Strict-liability standard of ***Seattle-First Nat'l Bank v. Tabert***, 86 Wn.2d 145, 542 P.2d 774 (1975), controls in product liability actions arising before effective date of Tort Reform Act. *Tabert*'s consumer-expectations test bars claim that a product is defective if jury finds only that risks in using product outweigh its utility. Inherent potential of products (such as mini-trail bike at issue in this case) to cause injury or death is insufficient, standing alone, to classify product as proximate cause of plaintiff's harm in either negligence or strict-liability suit. For a product's risk to be proximate cause of plaintiff's harm, risk must result from inadequate warnings or "something wrong" with product in sense that product failed to perform consistently with reasonable consumer expectations. Manufacturer need not warn of all obvious dangers inherent in product. Common law breach of implied warranty claim for personal injury has been superseded by strict liability in tort, and requirement of privity bars direct claim by purchaser against manufacturer under U.C.C. ***Baughn v. Honda Motor Co.***, 107 Wn.2d 127 (11/6/86).

—*J.T. Richardson*



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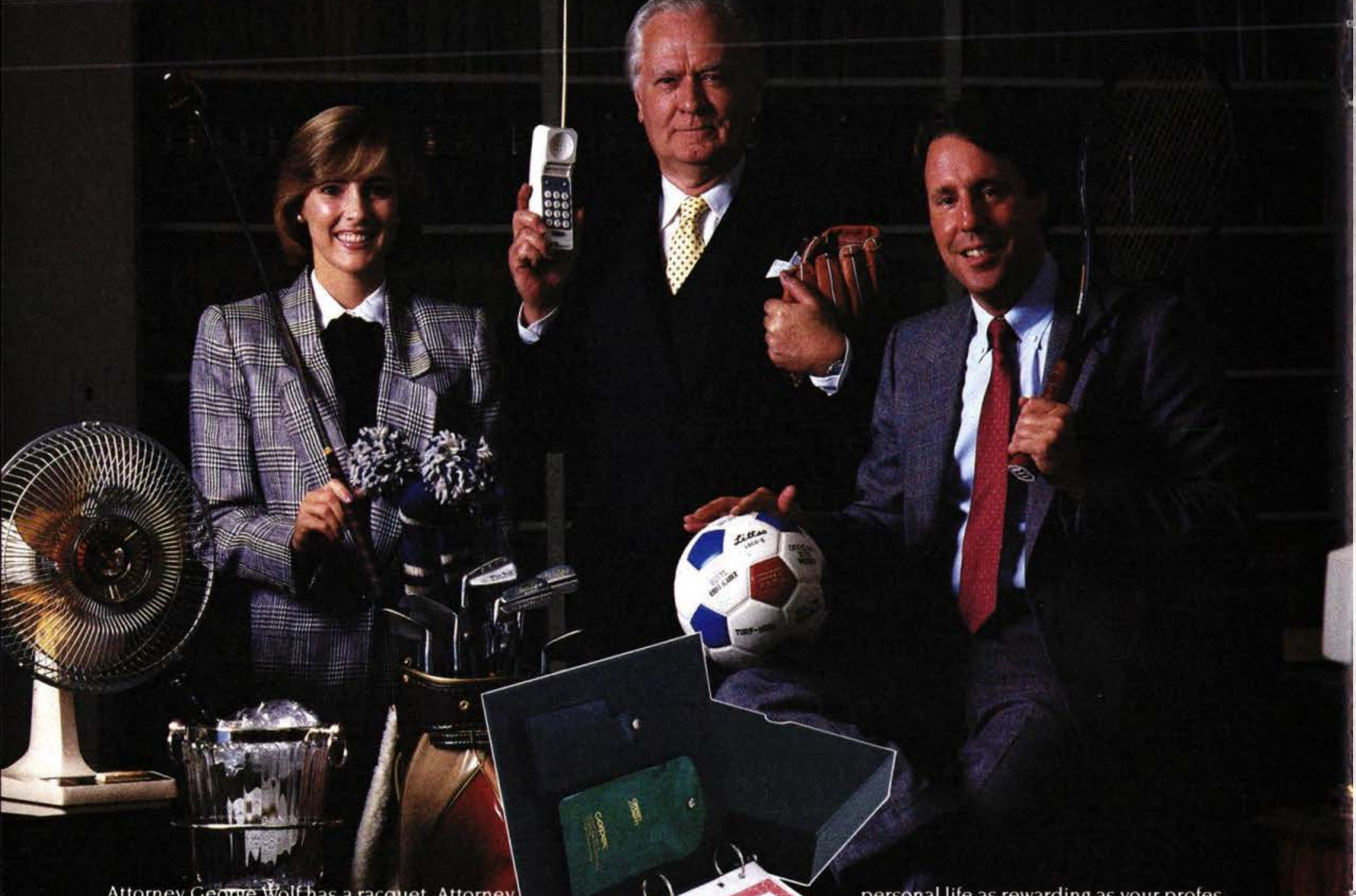

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The Bottom Line in Bar Work

The State Bar Association is many things. It is the regulator of admission and discipline; it is the conductor of a wide variety of professional activities; it is the supporter of local bars; it is the spokesman for the profession. These roles are all very evident.

Less obvious, but in fact the ultimate, crucial mission of the bar is the preservation of the independence of the bar. In the vernacular, professional independence is the family jewel of the bar.

I see the independence of the bar as standing on two pillars. One of these is that set of substantive principles which ensures the ability of lawyers to represent clients free from interference by the state. The key ingredients are principles like the attorney-client privilege and the lawyer's obligation of single-minded representation. The other pillar is the right of self-governance. These are the pillars which support professional independence, and either of these will fall if the legal rules which support it are removed.

Legal rules are not immutable. Legal rules are formally enunciated public policy and, very clearly, the changing or preserving of any particular public policy is the work of a political organization. Your bar is indeed a political organization.

Now you will ask: Are these pillars really threatened? I say they are.

The first consideration in understanding the threat is to focus upon the enormous volume of political activity today. Education and total, immediate communication of current events have made Americans an extraordinarily sophisticated society. We have all learned one very practical fundamental—public policy is fashioned by government, and if you want to affect government you have to form a political organization. We have thousands of these now, and all of them have a lengthy agenda. The consequence is that there now are millions of intersections—by this I mean simply that every idea someone has to change something is going to cross with that of someone else who wants to leave things as they are. With so many organizations generating new rules and new legislation, there are inevitably many of these which would impair the rules which support the independence of the bar. The amount of political activity all by itself is a threat to our independence and requires that we effectively monitor the political scene.

In general, the series of substantive legal rules that protect the independence of the individual lawyer in effectively representing his client are fairly secure. They are grounded in old precedents, generally respected by the public at large and under the protection of courts which can be expected to preserve time-honored precedent. But, notwithstanding all this conservative anchoring, there are currents from time to time that challenge this wisdom. For example, as I write this column, there is a bill in our legislature which would oblige each attorney to report to authorities any instance in which (s)he learned about a case of child abuse.

On the other hand, the preservation of the right of the bar to govern itself is under constant threat. Unlike the substantive legal rules, this principle is not an ancient one, and it is not accorded any favor by a significant portion of the public. There is an active movement in sections of our country working to remove this right.

Actually, our right of self-governance is unique even among the professions. When you put this uniqueness in an equation with the general unpopularity of lawyers and the comparatively small number of lawyers in our legislature, you must recognize that our continued ability to govern ourselves is not to be taken for granted.

If the factors enumerated above are not enough to generate apprehension, just look down the shore to California where the state bar has been required to include several lay persons on its board and to go to the legislature every year to

get its membership dues approved.

The fact is that the independence of the bar is a political proposition—not an axiom. Like state-owned liquor stores, dog racing and a state income tax, it is apt to show up on the political agenda any time.

The implication of this fact is that we cannot avoid running the bar in the public interest, and what is public interest in this context is more a matter of how the public interest is defined by the media or by strong political figures than by being looked up in the dictionary. Some elements of this requirement are very evident—we must have a fair admissions process and we must effectively discipline our miscreants. We also have to work at public interest projects—court congestion, pro bono service, security for client funds. Compulsory continuing legal education is an example of a bar program whose adoption was based in large part on demonstrating the bar's concern for the public interest.

It is in this requirement to operate the bar in the public interest that another constant in the tensions affecting bar governance is disclosed—membership satisfaction. Any serious disaffection of the membership would be a threat to the bar's larger mission. A membership uprising, even by a noisy minority, could attract a lot of attention we really do not want. Obviously, good bar policy cannot yield to noisy threats. However, every president and governor of this bar has been very conscious of two basics: do not make significant decisions without giving ample opportunity for the input of concerned members, and do not get too far out in front—at least not very often. It appears to me that even in the pressurized atmosphere of recent years, your governors have shown a lot of wisdom in dealing with this aspect of bar politics.

I hope I will not be heard as portraying work with the Board of Governors as some sort of continuous, high-wire balancing act. It is not that. But it is true that very often the issues in bar politics do have implications for bar independence, and occasionally those implications are very direct. Over the long term, the success of this association in carrying out its mission will be its ability, in the face of a hyperactive and frequently hostile electorate, to preserve the independence of our profession.

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Georgia Story

by **John J. Michalik**
WSBA Executive Director

The December 1986 issue of the *Bar News* contained the tabulated results of our recent economic survey of Washington lawyers. About the time those figures and results crossed my desk I also had before me the results of another survey: one conducted on behalf of the State Bar of Georgia and involving, in part, public attitudes toward lawyers and the practice of law. Now, I suppose a question might be asked as to why we should devote space in this publication to talk about a Georgia survey. There are a number of reasons including the very simple fact that the Georgia results are interesting; the additional fact that those results are, in many ways, supported by the conclusions expressed in similar surveys in other states and on a nationwide basis; and because the questions asked and answers provided involve perceptions and attitudes only minimally impacted by any factors which might reasonably be concluded to be unique to Georgia. In addition, the methodology and structure of the survey tend to provide additional support for the validity of the results. That structure involved a public study in which 300 respondents were interviewed over the telephone by professional interviewers and under circumstances in which neither the respondents nor the interviewers knew that the study was sponsored by the State Bar of Georgia.

Of the respondents, over two-thirds had used an attorney before and of these over one-third had an "association" with an attorney—basically, frequent enough contact to call him or her "my lawyer." Most of the respondents had found out about their lawyer by way of word-of-mouth referrals and more than half of those who had used a lawyer were referred to that lawyer by a friend or relative. Only eight percent of those who had used an attorney listed the Yellow Pages as their source of information or referral and a very low two percent indicated that they had learned of their attorney through other forms of advertising. The survey results, including the two percent source of information figure, supported the conclusion that the general public in Georgia did not view advertising as a major issue or as having a major bearing on selecting an attorney. On the other hand, 61 percent of those respondents who had used an attorney expressed the belief that advertising is a legitimate way to increase attorneys' business and 67 percent of those who had never used an attorney expressed the same opinion.

Most of those people polled who had used an attorney were extremely satisfied: 92 percent of them said they were satisfied with the service they received and most said they would use the same lawyer again. Not surprisingly, 73 percent rated their lawyer as being "good" or "among the best."

One very interesting result of the Georgia study was that more than one-half of the respondents who had used an attorney (and even more of those who had not) thought that they should be able to go to one attorney to handle all of their legal matters. This led the Georgia surveyors to conclude that ". . . unlike the segmentation in the medical industry, the general public does not realize the extent to which lawyers specialize." It may also be that these results signal a general public attitude toward a simpler approach to legal problems and, speculatively, some desire to establish a continuing relationship with one lawyer. That speculation has some support in a further survey result showing that 93 percent of those respondents who had used a lawyer preferred to use an individual lawyer in private practice or in a small (under 10 lawyers) firm.

One other interesting and final portion of the Georgia survey involved a series of statements regarding the legal profession and the request that the respondent express either agreement or disagreement with each statement. The overall tabulations in this area revealed that the Georgia public seemed to view lawyers, on the whole, positively—with the response being even more positive where their own lawyer was concerned. The majority of people believed lawyers to be trustworthy and knowledgeable in the law, though there were some underlying negative feelings regarding finances. This financial concern surfaced most often in the form of "Agree" responses to the statement, "Lawyers charge you in such a way that you are not sure how much your case will cost." This seems to express a clear public desire for more information and that view also surfaced in very strong responses expressing the view that opinions of lawyers would improve if lawyers would provide people (at least in the view of those in the responding group) with educational materials that would help them handle simple legal matters themselves.

The Georgia survey results present a far better picture of the lawyers' "image" than we are sometimes accustomed to seeing in those polls which rank the profession at the lower end of the occupational totem pole and in those stories in the public press which tend to focus on isolated, though, in whatever measure, too frequent, cases of lawyer misconduct. As always, the profession as a whole gets a "black eye" from the few. However, there is in the Georgia survey an indication that Americans not only trust their own lawyer but may have a better view of the profession at large than we give them credit for in the press and otherwise. It may also be that we, as lawyers, should shift, if only ever so slightly, our own internal perceptions of how the public views "us"; it may not be as bad as we sometimes think.

John Michalik

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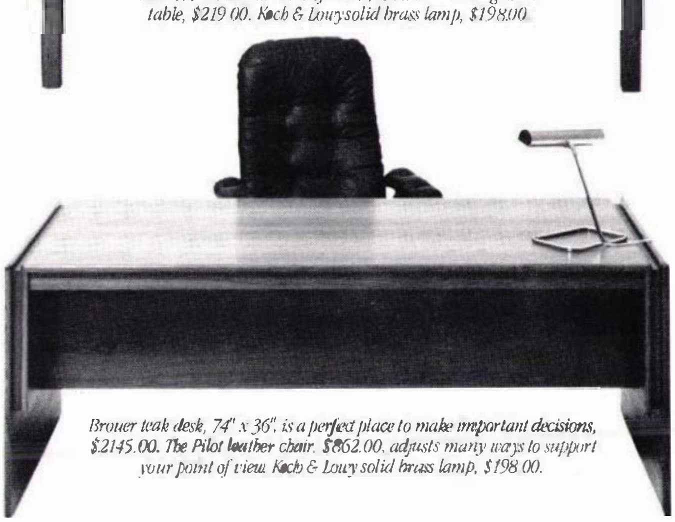

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Editor:

As a founder and past president of the Washington State Chapter of the American Association of Attorney/Certified Public Accountants, Inc., I was most pleased to read Jim Rigos' article regarding our recent chapter meeting (December 1986 *Bar News*). Fellow Washington Bar members may be surprised to find that mere acknowledgement of AAA/CPA is a sign of a progressive bar.

In many states, the resistance to dually qualified practitioners from both lawyers and CPAs is substantial. Although dual practice has been around as long as the two professions, and our national organization has been in existence for over 25 years, many lawyers around the country would deny both the right of an individual to practice both professions and the existence of a formal organization of dual practitioners.

I speak for the AAA/CPA members in our state and nationally when I thank the Bar Association for its consideration and recognition.

JOSEPH L. BROTHERTON
Vice-president,
American Association of Attorney/Certified Public Accountants, Inc.

Adult Child

Editor:

I read with great personal interest the January 1987 article on adult children of alcoholics. Your readers may find it interesting to know that the processes of alcoholic families are also true of other dysfunctional families. Physical, sexual and emotional child abuse may occur in families with or without alcoholic parents and result in many of the same defensive reponses described in the reviews. As a person abused in childhood, I can testify to the pain and lifelong payment described. The processes breed repetition; I discovered after 20 years of marriage that my spouse was a victim of repeated abuse from an alcoholic father. Overcoming the response patterns practiced for over 40 years is extremely difficult even under the best of circumstances.

My point and plea for my fellow attorneys is this: Working with clients in stressful stituations, where alcoholism or other behavioral dysfunction affects the family, take a real interest in the *true* best interests of the children. Encourage counseling, placement or resolution that reduces the children's need to deal without support in the dysfunctional setting.

The recent Eli Creekmore case (the death in Everett of an abused 3-year-old) may help direct focus on the true extent of the problem, which goes far beyond death or grievous bodily harm. Perhaps Eli was the lucky one, as he will not have to grow up in abuse or live with its effects during his life. Neither will he face the guilt common to many abused persons of passing his curse along to his children.

Name Withheld
Upon Request

Editor's Note: The January 1987 article by and about being an adult child of alcoholics has generated more letters to the editor and letters to the author than any other article published since the editor commenced her duties two years ago.

Author's note: The author of the aforementioned article is still receiving letters and will personally contact all letter writers. All correspondence will continue to be held in the strictest confidence.

Yes

Editor:

In response to the question asked by President Gates' Professional Pride article in the December *Bar News*, "Will you join me?", the answer is "Yes".

LEMBHARD G. HOWELL
Seattle

What Makes Us So Special?

Editor:

. . . I agree that many attorneys lack professionalism, however defined, but I disagree that the public is increasingly exasperated with us. The only people I hear slandering the bar and its members are certain of its leaders, such as Warren Burger and more than one of our recent Bar presidents. Inside or outside of my office, I find the public friendly and interested in the profession. Almost everybody I meet who is under 40 expresses a wish or former intent to become an attorney, or proudly tells me about a family member who

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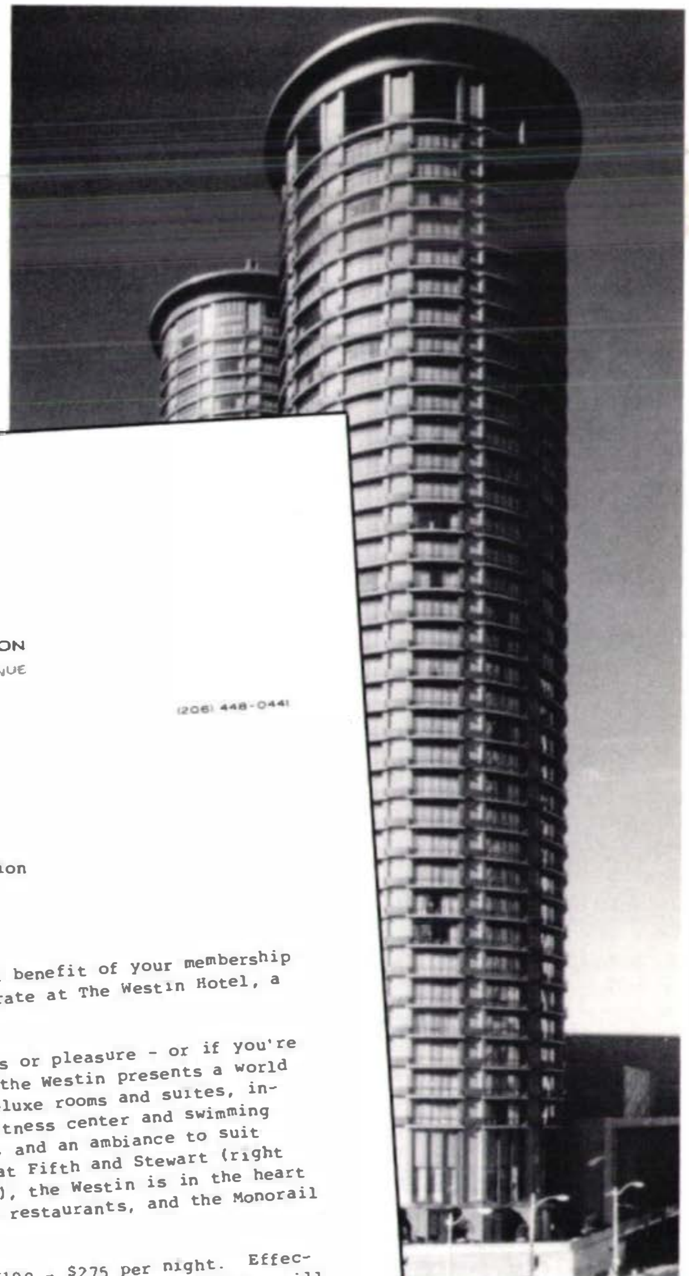

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(206) 448-0441

JOHN J. MICHALIK
EXECUTIVE DIRECTOR

TO: All Members of the Washington State Bar Association
DATE: January 2, 1987

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practices.

Now President Gates has asked us to join him in "stand[ing] mute" whenever levity is directed at attorneys. What makes us so special? President Reagan, together with every other personage or institution in these United States is a constant butt of humor. Religion and the medical profession have always been staple targets. Can there be any better way to thoroughly alienate the public than by brusquely injecting our pride into any conversation that turns our way?

I enjoy legal humor, and I'm big enough to take a joke. If we want the public to respect us, we must show our own self-respect by taking a little kidding, or even criticism, now and then, just like everybody else.

KENNETH P. TICKNER
Tukwila

Self-Flagellation

Editor:

We have seldom seen so much self-flagellation as the legal profession's collective guilt over being lawyers. The profession is many times harsher on itself, it seems, than is the general public. When fifty percent of litigants necessarily lose a lawsuit, there are going to be many unhappy people. But, as President Gates points out in his December 1986 column, the public likes their own lawyers very much. In many years of practice I have not experienced the public scorn or criticism the bar so often complains of. I wonder if those critical spokesmen for the Bar are not suffering from selective perception. I agree wholeheartedly with Gates that the Bar must speak out for itself and not against itself.

DAVID L. BOVY
Seattle

Stereotypes?

Editor:

We believe the cartoon pictured on page thirty of the *Bar News* December 1986 is in questionable taste.

The domestic violence victim portrayed as a tearful, buxom blonde woman (in an otherwise all-male court setting) suggests undesirable sexual stereotypes and trivializes family violence.

Because your efforts to deal sensitively with these issues are generally apparent, we hope that the publication of this particular cartoon was merely an unfortunate oversight.

LORI L. GUZZO
Seattle
MARK A. LEVIN
Seattle

Let Us Serve

Editor:

In reply to Douglas Shaw Palmer's comment, "Hearing From Each Other," in the November *Bar News*, if my experience is anything but a rarity, I know why there is a Bar Association committee on antitrust law *and* a Young Lawyers committee in the same field; a Bar Association probate committee *and* a Young Lawyers committee, etc.

I was admitted in 1978. To the best of my recollection, every year since, I have completed and submitted my first, second and third choices for assignments to a Bar committee. Never have I been appointed to serve. Even the tactic of varying the areas indicated has been of no avail.

Perhaps the duplication could be avoided by affording young attorneys more opportunities to serve on Bar committees.

LARRY R. SCHREITER
Kent

A Random 10% of You

. . . will be receiving a "stress" survey from the Bar's Lawyer Assistance Program some time in March. These anonymous returns will help us develop the best, most relevant program possible to help lawyers with various medical/behavioral problems that affect their practice of law. Our office is scheduled to open June first of this year. We look forward to hearing from you.

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BRITISH INNS & COUNTRYSIDE—Sept. 18-Oct. 3, 1987. A tour of England and Scotland emphasizing the Study of English and Scottish Law, designed expressly for WSBA. $3550 per person double.

AUSTRALIA AND NEW ZEALAND 1987—Oct. 1-17. $2830 per person double. Airfare via United. Visit Auckland, Rotorua, Mt. Cook, Queenstown, Sydney, Canberra, Melbourne. Optional extension to Great Barrier Reef $970 per person inc. 3 nts Cairns and 2 nts Dunk Island.

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Beyond the Pyramids

Guest Editorial
by Donna M. Peck-Gaines

Although I did not represent any of the parties, I am reasonably certain that no one ever filed a construction claim on the Pyramids. But I'll bet there was plenty of grousing. Some things change; some things remain the same.

This issue devoted to construction law is designed to serve two purposes. The first and most obvious one is to offer the "non-specialist" practical guidance in advising a construction client. The three feature articles focus on effective representation in construction matters, but each does so from a different client perspective. Owners, contractors, and architects rarely see things in the same light, particularly when the claims start to fly. The second purpose is to introduce you to one of the Bar's newest sections, the Section of Public Procurement and Private Construction Law, created in July 1986.

Construction law is and is not a distinct area of practice. Or, maybe, it is more accurate to say it is a distinct blending of practices. Representing a construction client requires you to tap a wide variety of skills. Written agreements are central to the relationships on most projects, so construction law contains a strong dose of contracts. You will be called on to demonstrate your drafting and negotiating prowess. Claims and complex litigation are now commonplace, increasing the need for litigators whose construction expertise goes beyond knowing the difference between concrete and cement. You need to be familiar with the law on insurance and suretyship as well as the various aspects of labor law, such as prehire agreements and the Davis-Bacon Act, that are unique to the construction industry. Clients face a bewildering array of rules and procedures for liens, bonds, and stop notices. Every construction lawyer should have, as a rite of passage, the experience of explaining how materialmen's liens work when a frustrated owner or general contractor asks: "What do you mean, I might have to pay this twice?"

The relationship between an owner, architect/engineer, and contractor can be a complicated one. Having recently participated in a building project of my own, I can appreciate the delicate balancing act required of my clients to protect their own interests yet the need to preserve that relationship so that projects get completed reasonably on time and reasonably on budget. Projects too easily and too often end up with each side pointing an accusing finger at the others. The articles in this issue offer some useful advice in avoiding or minimizing that result.

The Section of Public Procurement and Private Construction Law was formed to bring together the lawyers who are or want to be involved in the distinct blending of practices that construction law provides. But its rather unwieldy title also reflects the inclusion of another important practice group. Federal, state, and local authorities contract not only for the building of buildings, highways, bridges and other public improvements, but also for a multitude of goods and services. Public procurement has increasingly developed and expanded into a "specialized" practice and body of law. The grouping of these two practices is a natural one.

The Section is currently headed by Donald Davidson and has 135 members. Annual dues are $15. There are a lot more of you who could benefit from joining the Section in its formative stages. I urge all interested members of the Bar to join and participate. Even if you don't know the difference between concrete and cement.

Donna Peck-Gaines

The Board's Work

by Carole Grayson

Tacoma Sheraton, February 20-21, 1987.

Present: President Gates and all Governors. Also present: Rudy Tollefson (2/20) and Gary Utigard (2/21), (District Court Judges Assn.), Tom Fitzpatrick (WSBA Young Lawyers), Patrick Sutherland (Wa. Assn. of Prosecuting Attys.), Robert Farrell (WSBA counsel), Scott Smith (SKCBA Young Lawyers), Patty Smith and Janet Gaunt (Wa. Women Lawyers), John Michalik (WSBA exec. dir.), Solie Ringold (Ct. of Appeals Judges Assn.), Thomas Swayze (Superior Ct. Judges Assn.), Craig Campbell (2/20) and Margaret McKeown (2/21) (SKCBA Trustees).

LIABILITY FUND By more than a 4-1 margin, lawyers rejected the proposed professional liability fund in the recent referendum. 8,664 valid votes (64% of the Bar) were counted: 6,971 "no" votes and 1,693 "yes" votes. The result binds the Governors for two years.

What lies ahead? The WSBA Professional Insurance Committee will study whether the Bar should act on the availability of malpractice insurance coverage, set up a captive Bar insurance company or join a new multi-state captive insurance company, or pursue other action.

Roy Moceri and Harold Vhugen reiterated their desire for hard data. Said Vhugen, "A fundamental question" remains: What is the actual problem? Jay White suggested that nonmandatory options be examined.

NO SMOKING The Governors acted on the most consistent CLE complaint over the years and unanimously approved a resolution which the 30 member CLE Committee had unanimously passed for the last two years. The effect is to prohibit smoking at WSBA CLE seminars. "I prefer to let attrition take its toll," said pipe smoker Jay White; "We are a dying breed."

BAR EXAM As of June 1, 1987, bar examinees who pass one section, e.g., substantive, will have two calendar years to pass the second section, e.g., ethics. Those who don't pass the second section in the two years will have to retake and pass the first section.

PRESIDENT'S REPORT President William Gates, an ABA delegate, reported on the ABA convention in New Orleans:

- "A lot of states are urging lawyers to commit 20 hours to pro bono work...A lot is going on in this state with pro bono but mostly at the county level. It may be that the state should be more involved."
- A new 10 state captive insurer includes, inter alia, the state bars of Alaska, Delaware, Montana, North and South Dakota. Michigan, Florida, and Pennsylvania are setting up their own captive companies.
- Ohio has a nonbinding summary jury trial procedure in which lawyers present cases with no testimony. Only 5 of the 70 summary jury trials have gone to de novo trials, and 4 of these came out with the same results.
- Should foreign lawyers be allowed to practice in Washington as foreign law consultants? Japan allows foreign lawyers to appear from jurisdictions which grant reciprocity, e.g., California and Oregon.

FROM THE ACADEME Michael Green of Seattle, chair of the Law School Liaison Committee, and Deans John Price (Univ. of Wash.), James Vaché (Gonzaga), and James Bond (Univ. of Puget Sound) discussed UW's trial advocacy program, UPS' two year legal writing program, and Gonzaga's mentorship program.

Do the law schools counsel students about the Bar's character and fitness requirements for admission to practice? The response by Bond was typical: "It is incumbent on us to advise students that they may have difficulty with admission to the Bar where they have some prior involvements with the law."

CHARACTER AND FITNESS COMMITTEE The Governors voted 9-1 (Lane nay) to allow the newly formed Character and Fitness Committee to act conclusively on applicants who the committee determines should be allowed to take the bar exam. All negative recommendations by the committee will be reviewed by the Governors for final action.

The committee includes former WSBA presidents David Hoff, F. Lee Campbell, Patrick Comfort, Edward Novack; former Governors Joseph Delay and Donald Bond; T. Jerome Greenan, former chair of the Disciplinary Board; and Stephen Ellis, former chair of the Committee of Law Examiners.

IN OTHER WORK, THE GOVERNORS:

- adopted 9-1 (Lane nay) a formal ethics opinion dealing with a lawyer's obligation when a client requests return or release of a file and the ethical implications in asserting a statutory lien under RCW 60.40.010.
- appointed Wesley Nuxoll of Colfax to the Judicial Qualifications Commission and Neil Hoff of Tacoma as an alternate to the JQC.
- approved 6-5 $7,500 for the Washington Courts and Community Committee for a state judicial survey. President Gates broke the tie.

UPCOMING MEETINGS: March 20 & 21 Seattle (Doubletree Plaza Hotel at Southcenter); April 17 & 18 Spokane (Inn at the Park); May 15 & 16 Wenatchee (Thunderbird Inn).

Legal Considerations For Architects And Engineers: Avoiding the Pitfalls

by **David C. Groff**

In the traditional scheme of construction projects, architect/engineers ("A/Es") occupied a sacred perch above the fray between owner and contractor. They were professionals—insulated from suits by third parties and answerable to the owner only for negligent acts as defined by their peers and by the standard form agreements prepared by the American Institute of Architects and the National Society of Professional Engineers. In the unlikely event of a meritorious negligence claim by the owner, A/Es were at risk only for the $10,000 deductible on their errors and omissions policy.

Design professionals now find themselves operating in a different world. Market competition has forced A/Es to expand into specialized areas where they lack experience. The pressure to cut costs may diminish quality control. Claims and lawsuits by disgruntled owners, contractors and subcontractors are now part of doing business. Personal injury actions by third parties, sometimes filed years after completion of a project, are commonplace. Professional liability insurance has become increasingly difficult—and in some cases impossible—to obtain. The price of insurance has skyrocketed; deductibles have soared. The availability of "claims made" insurance next year is a question mark. "Going bare" and "captive insurance" have become part of the industry vernacular. At the same time, public and private owners have become more sophisticated and aggressive in contracting with A/Es.

In response to these pressures, A/Es must become more sophisticated and self-protective in their marketing and contract negotiations. They must focus on internal quality control and prudent contract administration. They must also become more aggressive in recognizing and resolving potential disputes. To protect their interests, A/Es must be aware of this shift in contractual responsibilities and attitudes. Lawyers who represent design professionals must be expert contract drafters, complex case litigators, experts in insurance law, and counselors who can assist their clients in proper project documentation and avoidance of disputes.

Expanding Theories of Liability

The standard of due care owed by architects to their clients has not changed in almost 100 years:

> The undertaking of an architect implies that he possesses skill and ability, including taste, sufficient to enable him to perform the required services at least ordinarily and reasonably well; and that he will exercise and apply, in the given case, his skill and ability, his judgment and taste, reasonably and without neglect. But the undertaking does not imply or warrant a satisfactory result.

Coombs v. Beeds, 89 Mo. 197, 36 A. 104 (1896). While the standard of care has not changed, the application of it has expanded to encompass third parties, and new theories of liability have arisen. Most jurisdictions, including Washington, now include contractors and subcontractors as being within the scope of parties foreseeably injured by an A/E's negligence. *See, e.g., Detweiler Bros., Inc. v. John Graham & Co.,* 12 F.2d 416 (E.D. Wash. 1976).

Washington is one of the few jurisdictions to impose an implied warranty on an A/E's services. *Prier v. Refrigeration Engineering Co.,* 74 Wn. 2d 25, 442 P.2d 621 (1968). While *Prier* probably should be limited to design-build contracts, it nonetheless supports an argument that A/Es in Washington should be held to a higher warranty standard.

Courts have upheld claims against A/Es for almost every aspect of their services. Courts have denied compensation to A/Es when the lowest bid received by the owner exceeded the maximum limit specified in the contract. *Graham v. Bell-Irving,* 46 Wash. 607, 91 P. 8 (1907). A/Es who prepare insufficient or defective plans are liable to the owner for damages. *See, e.g., Bates & Rogers Constr. Corp. v. North Shore Sanitary District,* 414 N.E.2d 1274 (Ill. App. 1980).

A/Es are not immune from the doctrine of informed consent. Courts that have addressed the duty-to-warn issue have generally held that an architect has the duty to disclose potential design problems to the owner and provide alternatives if they are available. *See, e.g., Zannoth v. Boch Radio Station, Inc.*, 52 N.W.2d 678 (Mich. 1952).

The A/E has a nondelegable duty to the owner for all professional services rendered under the A/E contract. Reliance on subconsultants is not a defense against owner or third party claims even if the A/E can show that the reliance was professionally prudent. *See, e.g., Columbia Mississippi v. Clark-Dietz & Assoc.*, 550 F. Supp. 610 (Miss. 1982). An A/E may also be liable for negligent specification of a component part of a project design. Mere reliance on the manufacturer's representation of suitability is probably not an adequate defense. *See, e.g., Waldinger Corp. v. Ashbrook-Simon-Hartley, Inc.*, 564 F. Supp. 970 (C.D. Ill. 1983). A/Es have been held liable for negligent supervision or administration of contracts, including tardy approval of submittals, *see, e.g., Rosos Litho Supply v. Hansen*, 462 N.E.2d 566 (1984), and, in at least one case, liable for negligent review of shop drawings, despite the use of a common disclaimer stamp when the shop drawings were approved. *Jaeger v. Henningson, Durham & Richardson*, 714 F.2d 733 (8th Cir. 1983).

A Checklist for Avoiding the Pitfalls

Although the trend toward expanding legal liability provides little comfort to A/Es, they can better protect themselves by careful attention to contract negotiation and proper project documentation. Lawyers can provide significant educational support in this arena.

Scope of Work. The scope of work clause in the contract is sometimes used to expand the standard of care. A/Es must guard against expansion by excluding any warranty language in the contract for the professional services rendered. At least in Washington, it is preferable to expressly disclaim any warranties.

Construction Budget Overruns. Most owners operate under definite budgetary restraints. If the bids exceed the budget, the owner may look to the A/E for the cost of redesign and even for additional damages resulting from the inability to build the project within the specified budget. A prudent design professional should insist upon limiting liability to redesign costs. This is the remedy provided in the AIA and NSPE standard form agreements.

Indemnity Provisions. A/Es have long benefited from the indemnity of the contractor to the owner and members of the design team. More recently, owners have begun to insist upon comparable indemnity provisions from design professionals. These should be avoided, or at least approved, by the A/E's insurance carrier. For high risk projects, such as toxic waste projects, the A/E may want to ask for an indemnity from the owner.

Arbitration. Standard form contracts contain arbitration clauses that prohibit joinder of the A/E in any arbitration between the owner and the contractor. From the A/E's point of view, this is a very helpful provision. Unfortunately, sophisticated owners almost always insist on consolidating dispute proceedings.

Supervision. The scope of the A/E's duty to inspect the work or supervise the contractor is a frequent source of disputes. These disputes can be minimized by contract language that clearly defines the A/E's role in this critical part of construction projects.

Shop Drawing Review. Even the use of a disclaimer stamp may not be sufficient to exonerate an A/E from liability for negligent or tardy shop drawing review. A/Es are better served by knowing not to rely upon exculpatory language of an approval stamp in approving shop drawings and to staff the work accordingly. It is also preferable to specify a given turnaround time for shop drawing approval so that both parties know the time restrictions.

Limitation of Remedy. Increasingly, A/Es are attempting to limit their potential liability through the use of limitation of remedy and damage disclaimer clauses. Limitations of remedy clauses, if properly drafted, should provide some protection and may include a liquidated damages clause for delay damages. Perhaps the most marketable limitation of damage provision is one tying the recovery of damages to available errors-and-omissions insurance coverage at the time of judgment.

Documentation of Design Development Decisions. Architects and engineers should be encouraged to carefully document the predesign and design development phases of a

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project. Proper documentation includes a log, a correspondence file and memoranda reflecting discussions and decisions regarding design options and budgetary projections.

Avoid Undisclosed Project Risks. Any unusual risks inherent in a project should be clearly understood by the owner before the project goes forward. In their enthusiasm for a project, A/Es occasionally neglect to tell the owner when aspects of the project are experimental or may involve a substantial risk of performance difficulties. A/Es should be advised to document those risks in writing any time they sense the owner does not understand the complexity or risks inherent in a project.

Pass-Through Agreements With Subconsultants. The primary design professional on a project should always incorporate all material requirements of the contract with the owner into its contracts with subconsultants, particularly contract provisions regarding documentation, insurance, indemnification, payment, scope of work and arbitration.

Product Investigation. A/Es should properly document their investigation of the suitability of specific products for a project. This practice is particularly important when a specified product represents new technology or results from specialized owner requirements.

Recordkeeping and Claim Documentation. In the area of claim documentation, architects and engineers must be sensitized to the requirement for proper recordkeeping. Too frequently, A/Es naively go on about business as usual while the owner and contractor carefully paper their files. When a problem involving potential A/E liability arises on a construction project, a member of the project team should be assigned to monitor the claim and properly document the A/E's position.

Requests for Clarification. During the course of a project, the A/E should maintain a file documenting all requests for clarification and information relating to design discrepancies, errors, omissions, and conflicts in the specifications or drawings. The file should record the date of each request or occurrence and contain the A/E's response and a description of the affected work.

Work Modifications. Any verbal agreements that may ultimately affect the time or cost of performance of the project should be properly documented. This can be accomplished by speed memos utilized by field personnel.

Responses to Notices by Others. The A/E should understand the importance of responding to notices by others that involve any activity with a potential dollar impact. If the owner, contractor, or subcontractor makes a claim or alleges design deficiencies, the A/E should respond promptly and with sufficient detail to make its position clear.

Project Certification. Many contracts require the A/E to certify at the end of construction that the work conforms to the plans and specifications and relevant building codes. This type of certification requirement is particularly troublesome when the A/E's role during construction is limited to occasional inspection. From the A/E's perspective, the best solution would be to have the owner hire an independent inspector who would sign the construction certificate. Typically, this is not possible and would be strongly resisted by the owner. A/Es can obtain some protection by making sure that the certification language accurately reflects the actual role of the A/E during construction.

Avoidance of Warranties and Limitations to the Scope of the Contract. The A/E should be careful not to guarantee or warrant a questioned design or product. Assurances provided to the owner should be tempered by language stating that the work has been performed in accordance with the requirements of the contract or in a professional manner consistent with the standards in the industry.

Conclusion

Not all the liability news for A/Es is bad. The Tort Reform Act provides some increased protection in the area of indemnity agreements and compliance with codes. There are signs that insurance carriers are moving more aggressively back into the marketplace. The need for A/Es and their lawyers to develop prudent practices to minimize liability will, however, remain a fundamental and stimulating challenge as long as there are construction projects.☐

David C. Groff is a partner in the Seattle office of Davis Wright & Jones, where he chairs its Construction Law and Government Contracts group. He primarily represents engineers and general contractors.

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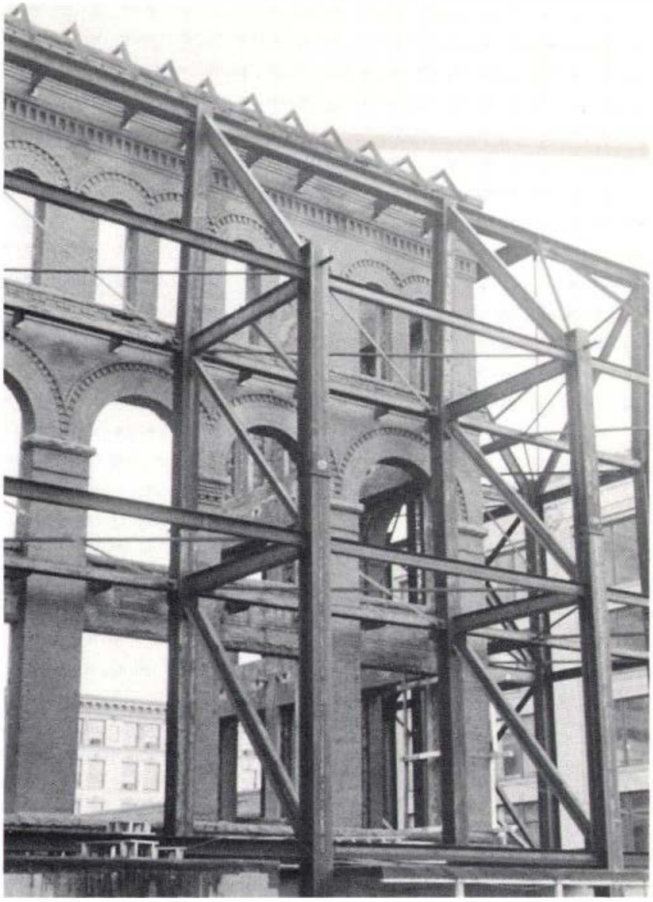

by **Lawrence H. Vance, Jr.**

Representing the owner of a construction project often begins long before the first nail is driven and continues long after the project is completed. This article provides guidance on projecting the owner's interest throughout this process.

Contract Review

The owner's lawyer may be asked to review the proposed contract before it is actually put out for bid or negotiation. Typically, the lawyer is asked to review contract plans and specifications prepared by the architect or engineer of the project rather than to draft the contract itself. The general contract terms are sometimes included in the specifications or may come from the standard form agreements issued by the American Institute of Architects, the Associated General Contractors, or other construction industry sources. If the project is a public works contract, the contract documents may also include the instructions to bidders, bid proposal form, and bond forms.

The lawyer asked to review all of these contract documents faces a difficult task. First, you should become familiar with and understand the basic nature of the project to the extent practicable. Funding and the permit process may also need review. Sometimes the best legal advice is to defer or terminate the project because the contract documents are incomplete or the project planning is flawed. It also helps to know your client. An owner with a large technical staff of its own may not need or want the same services as a smaller owner. Try to mesh the owner's need with the scope of services.

The next step should be to review the contract documents. The two most important are the owner/architect (engineer) agreement and the owner/contractor agreement. Most architects prefer to work with the standard form AIA agreements. Although the AIA form has long been utilized by the construction industry, it is drafted by the American Institute of Architects and is therefore slanted in the architect's favor. The owner's attorney should definitely review the fee provisions of the owner/architect agreement (which are not always so standard). In reviewing the owner/contractor agreement, make sure that the agreement with the contractor is consistent and compatible with the architect agreement.

All the general contract provisions deserve careful review, but the following clauses are especially important.

Arbitration Clauses. If the architect agreement contains an arbitration clause but the contractor agreement does not, a potential problem exists. From the owner's standpoint, many construction claims are either a contractor problem or an architect problem. An owner who brings the contractor and the architect into the same proceedings generally has a much better chance of prevailing. Conversely, if the owner is forced to litigate with the contractor in one forum and the architect in another, the potential exists for inconsistent results. For example, an arbitrator may find that the contractor is entitled to additional compensation because the plans and specifications prepared by the architect were defective. An owner who cannot bring the architect into the same proceeding and is forced to bring a separate action runs a risk of losing *both* actions.

Even if both agreements contain arbitration clauses, the standard AIA form provides that the architect cannot be joined in the owner/contractor arbitration. Consequently, the arbitration clause of one or both contracts may need to be rewritten or deleted to insure joinder of all parties.

Liquidated Damages. If you adopt a liquidated damages clause, the amount stated must be sufficient to cover the owner's anticipated damages yet reasonable enough to avoid being termed a penalty. If the actual damages (due to delayed completion) are reasonably certain of calculation, you may *not* want a liquidated damages provision. At a minimum, make the owner aware that a liquidated damages clause provides certainty, but also limits the amount of recoverable damages for late completion.

Indemnity. Under the new Tort Reform Act, contractors can only be required to indemnify for their proportionate share of negligence. Check to see whether the indemnity language meets the specific requirements of the new Tort Reform Act regarding concurrent negligence and whether it contains a waiver of immunity under the Worker's Compensation Act. The contract must also contain an express acknowledgment of negotiation of the indemnity clause.

Insurance. Advise the owner to have an insurance broker or agent review the indemnity of the contract and insurance provisions to make certain there is no gap in coverage and the required insurance limits are adequate. Contracts generally require the owner to take out property or builder's risk insurance; the owner needs to be aware of this obligation.

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Contract Termination. Although most standard form construction contracts have adequate termination for default provisions, they should be reviewed to make sure that they clearly spell out the owner's rights in the event of the contractor's default. Far more important in many cases is the owner's right to terminate the contract for convenience. A properly drafted termination for convenience clause permits the owner to terminate all (or part) of the contract at any time and for any reason, yet pay only the contractor's costs incurred through the termination date. A properly drafted clause also provides that any termination for default subsequently determined to be improper is automatically converted to a termination for convenience, thus eliminating the owner's exposure for lost profits and other consequential damages.

Representation During Construction

From the moment construction begins, the owner is in a potential claim situation. Some contractors are more claim-conscious or claim-oriented than others. Indeed, many contractors probably believe that if anything goes wrong on the project, the owner should pay. You can probably do your best work for the owner during the construction phase of the project. A client who contacts you *before* an actual dispute has arisen or a claim made has a reasonably good chance of avoiding costly litigation. You should therefore stress to the owner the importance of timely detection of claim situations *and* bringing you in early. Even if a dispute or claim cannot be avoided, you can at least help the owner mount the best defense of the claim.

Because the owner generally acts through the architect or engineer on the project, an agency relationship is created. Much of the lawyer's contact will necessarily be with the architect or engineer. This may create a strange relationship on private projects. More importantly, the owner's lawyer may sometimes be placed in a position of advising the owner of a potential claim for architect or engineering malpractice. Consequently, make it clear early on that you are representing the owner and not the architect/engineer. It is possible for a lawyer to jointly represent both the owner and the architect/engineer. Keep in mind, however, that in doing so, you potentially expose yourself to a multitude of potential conflicts of interest that can arise during the course of construction.

Architects and owners often assume that rigid enforcement of contract specifications will prevent claims. Actually, rigid enforcement frequently invites rather than prevents claims. The preventive practice of law can go a long way in avoiding costly claim litigation. For preventive law to work, however, the lawyer must be consulted early and must approach the problem with resolution rather than litigation in mind. There is an old saying to the effect that: "If the only tool you have is a hammer, then you tend to see all problems as a nail." Sometimes lawyers, because of their bent towards litigation, create an antagonistic and confrontational environment from the outset. In the vast majority of situations, however, the matter can initially be approached with a view towards settlement of the dispute and the avoidance of litigation.

Certain recurring situations account for the bulk of claims on construction projects. As the owner's lawyer, be aware of the more common ones which are:

- Review of shop drawings;
- Scheduling and coordination;
- Differing site conditions;
- Delays; and
- Changes in the work.

An owner who starts receiving correspondence concerning any of these situations should immediately contact legal counsel because a claim is likely to follow.

Your first involvement in the claim procedure is likely to be assisting the owner in preparing a written response to the contractor's letters concerning a claim situation. These letters may be attempting to lay the foundation for a subsequent claim. Many clients think that a threatening letter or written response from their lawyer will cause the other side to beat a hasty retreat. On a few occasions, this may actually work. In the vast majority of cases, however, it simply escalates the dispute.

When helping the owner respond to the contractor, you may want to take the following steps.

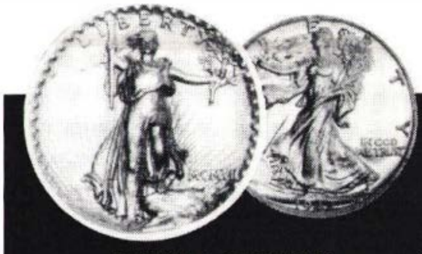
1. First, consider whether a written response is actually necessary. Most people feel a compulsion to reply to every letter written to them. Not all letters require a response. For example, if several letters have already been written by the parties setting forth their respective positions on a particular subject, it may do more harm than good to continue writing letters to the contractor.

2. Unless there is a compelling reason to do otherwise, most responses to the contractor should probably be through the owner's representative (usually the architect or engineer) and not the lawyer. The lawyer may assist in either drafting, revising or reviewing the owner's correspondence to the contractor.

3. Avoid painting yourself into a corner. The art of negotiation and settlement requires that you generally leave yourself with some room for negotiation. It is amazing how often parties succeed in taking an extreme or unreasonable position that leaves them with limited options. Before writing any letter, carefully review all your options. Remember that by threatening litigation, you may end up with costly litigation that neither party actually wanted.

Contract Terminations. Because of the risk involved, contract terminations deserve special attention. Thus, if you are asked by an owner for advice concerning a prospective contract termination, *carefully* review the facts and satisfy yourself that adequate cause, in fact, exists under the contract provisions. (Do not assume that the facts related by your client are accurate!)

Once you determine that adequate cause exists for the contract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termination, read the contract termination language several times. A proper termination for default requires that the *procedural* requirements of the contract be carefully observed. After you believe you thoroughly understand the contract, read it again! If you still think you understand it, then you are ready to begin drafting the termination notice.

Many contracts require that a "cure notice" be given before the contract is formally terminated. Follow the termination and cure notice procedures to the letter. Even if the contract does not contain a cure notice provision, you may want to consider giving a cure notice (especially if your real objective is to cajole performance by the contractor).

Termination of the contract is a radical step. It should be exercised only on rare occasions. Even when grounds for termination exist, it may not be a wise thing to do. Always make the owner decide what the objective is. Sometimes termination or cure notices are given by an owner in an attempt to cajole the contractor into performing. If the owner's real objective is to get the contractor to perform, you may want to write one type of letter. If, on the other hand, the owner really wants to get rid of the contractor, you may want to write an entirely different type of letter.

When terminating any contract (whether for default or for convenience), the lawyer should make sure that any required notices are also given to the contractor's surety. The express language of the performance bond generally dictates what obligations the surety has in the event of a contractor default. Normally, if the contract is terminated for default, the surety will be called upon to perform. The surety may attempt to have the owner complete the contract, thus forcing the owner to finance the completion of the work. If possible, the owner's lawyer should generally attempt to have the surety complete the work by hiring a completion contractor.

An owner is better off having the surety make the arrangements for completion if completion costs are likely to exceed the amount of the bond. An owner who completes the contract can generally recover only the amount of the bond. But if the surety enters into the completion contract, it becomes obligated for the full cost of completion without regard to the bond amount. Sometimes, however, it makes more sense for the owner to make direct arrangements for completion of the work yet seek the surety's agreement to finance the work.

Another potential procedural trap for the unwary owner's lawyer is contained in the AIA A201 General Conditions:

> . . . [t]hen the owner *upon certification by the Architect* that sufficient cause exists to justify such action, may, without prejudice to any right or remedy and after giving the Contractor and its surety, if any, seven days' written notice, terminate the employment of the Contractor. . .

Generally, this formal certification requirement is not observed by an owner. The architect may send letters indicating grounds for termination exist, but the certification is generally not obtained. A lawyer who drafts or sends out the actual notice of termination should be careful not to overlook this requirement. If you become involved *after* the owner has terminated the contract (and the court or arbitrator finds the contract termination *procedurally* improper), it may simply be unfortunate. If you actually drafted the defective termination notice, it may be malpractice.

Conclusion

Keeping a client out of litigation is not always easy. Construction disputes often become quite heated. Everyone has the propensity to self destruct. Nevertheless, you can often save your owner client a lot of money, time and anguish by mastering the skills of preventive law. The keys are early detection of and prompt attention to potential claim situations.☐

Lawrence H. Vance, Jr., is a partner in the Spokane law firm of Winston & Cashatt. He practices primarily in the areas of construction and insurance law.

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The Construction Contract From The Contractor's Viewpoint

by **Paul R. Cressman, Jr.** *and* **Andrew W. Maron**

In 1984, contractors, subcontractors, suppliers, architects, engineers, real estate developers, and others involved in the construction industry built projects valued at $313 billion. National Data Book and Guide to Sources of Statistics, Abstract of the United States (106th ed. 1986). While much of the construction world still operates on a handshake and one's word, the written contract has become central to the relationship between the parties to a project. Lawyers, therefore, should be prepared to advise their construction clients about the type of contracts to use and important contract clauses to consider.

Is a Written Contract Needed?

The first question is whether a written contract should be prepared at all. Of course, the parties in a construction project may proceed with only an oral agreement, and many do. Relationships on smaller projects often will not be reduced to writing. Informality may be acceptable for a $7,000 job to complete a basement, but it is not advisable for most construction projects. Lawyers should advise their clients in the construction industry that, in the long run, it is better to develop and use a written contract. By their doing so, many potential uncertainties in the relationship can be clarified ahead of time.

A related and common question is the extent to which a construction bid binds the parties before they enter into a formal written contract. Most construction projects involve the submission of bids by suppliers, subcontractors, and contractors. Once an owner or government entity awards a contract, disputes often arise when the prime contractor attempts to enforce a subcontractor's bid quotation or, conversely, when a subcontractor whose quote was incorporated into the prime contractor's bid tries to compel the prime contractor to award it the subcontract.

Generally, a bid by a subcontractor is nothing more than an offer to enter into a contract. In Washington, a contractor's use of a subcontractor's price in bidding a project does not in and of itself create a contractual relationship enforceable by a subcontractor. *Plumbing Shop, Inc. v. Pitts*, 67 Wn.2d 514 (1965). There is an exception to this rule. The general contractor's use of a subcontractor's bid, together with custom in the trade and conversations between the subcontractor and contractor, may result in the creation of an implied-in-fact contract between the contractor and subcontractor.

Industrial Electric-Seattle, Inc. v. Bosko, 67 Wn.2d 783 (1966).

While a subcontractor generally may not require a prime contractor who utilized its bid to employ it, it is fast becoming the general rule that a prime contractor in the same situation may require a subcontractor to perform the work for the price it bid provided that the necessary promissory estoppel requirements are present. *Ferrer v. Taft Structurals,* 31 Wn. App. 832, 587 P.2d 177 (1978).

Standard Form Contracts

Most lawyers are practical and don't desire to reinvent the wheel. Therefore, when called upon to advise on construction contracts, lawyers usually turn to the many standard form contracts available in the construction industry. The better-known form contracts are published by the American Institute of Architects (AIA) and the Associated General Contractors of America (AGC).

Form contracts are not interchangeable. Some contracts are useful in only certain types of projects. Others favor one party to the contract over another. For example, the AGC subcontract, drafted for use for prime contractors, gives the prime contractor more favorable treatment than the subcontractor. All of these contracts, however, have the advantages of thoroughness, familiarity, and predictability of interpretation through their widespread usage, and they allow the contractor or subcontractor to compare different approaches among standard contract clauses.

Lawyers should counsel against the tendency of many contractors, subcontractors, and suppliers to sign contracts furnished to them by owners and general contractors without reviewing them or adequately considering the serious legal implications of the documents. These contracts usually have been drafted by the owner's or general contractor's attorneys to obtain the maximum advantage. If the proposed contract contains terms objectionable to one party, this party should be aware of those terms from the outset and endeavor to negotiate appropriate modifications. Obviously, the terms of the final contract will depend very much on the negotiation strength of the respective parties.

Contract Provisions

No matter what contract the parties finally use, several types of clauses are common to most construction contracts and are important for the construction professional and attorney to consider. This section reviews some key construction contract clauses.

Incorporation by Reference. An incorporation by reference clause makes all or part of some other document (often a set of general conditions or plans and specifications) part of the agreement. Subcontracts often incorporate the terms of the prime contract by reference. The best advice to a contractor client is: *Always* get a copy of everything incorporated by reference into the contract to review before entering into a final agreement. This is the only way for a contractor to ensure that it knows all of the obligations it will be required to undertake by entering into the contract.

Scope of Work. The scope of work of a project is defined by the contract and all accompanying documents relevant to the contract, including specifications and drawings. Unfortunately, scope-of-work disputes are common, mainly because the definition of scope of work in the contract is either poorly composed by the drafter or misunderstood by one or more of the parties. Other common causes of scope-of-work disputes include lack of detail in contract drawings, overgeneralization and lack of particularity in contract specifications, and inconsistencies in documents bearing on the scope of work.

Scope-of-work problems can be minimized if certain practices are followed in the contract formation process. First, a prospective contractor should compare the scope of work described in the contract, including any exclusions, to the scope of work contemplated by the bid. If the two differ, the contractor should insist that the discrepancies be reconciled immediately. Second, the contractor should insure that references to drawings correctly indicate the date of the latest change. The best scope-of-work description is a definite, concise description of work that eliminates uncertainty and ambiguity.

Liquidated Damages. Construction contracts often contain a liquidated damages clause either

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directly or by reference incorporating another contract. A liquidated damages clause specifies the amount of damages to be paid by one party to another upon the occurrence of specified events (often delay by one party to a contract). Liquidated damages clauses are favored in the law and are generally enforceable if they do not constitute a penalty or are otherwise unlawful. To be valid, a liquidated damages clause must normally: (1) state as liquidated damages a reasonable forecast of just compensation for the harm caused by the contemplated breach; and (2) replace an award of compensatory damages resulting from the contemplated breach that would be very difficult, if not impossible, to ascertain. *Brower Co. v. Garrison*, 2 Wn. App. 424, 468 P.2d 469 (1970).

Right to Terminate. Construction contracts often include clauses describing the circumstances under which the contract may justifiably be terminated. Such clauses are extremely valuable for both parties to the contract because they help to eliminate the uncertainty that exists when a party to an agreement must make an independent determination of whether there are sufficient grounds to terminate a contract.

Absent contract language specifying justifiable grounds for termination, a party may not terminate the contract unless the other party's breach is material, *i.e.*, defeats a central purpose of the contract. *Cf. Kuswa & Associates v. Thibaut Constr. Co.*, 440 So.2d 1338 (La. 1983). The stakes in this area are extremely high. If the non-breaching party improperly terminates its contract on a mistaken belief that the breaching party's breach is material, the non-breaching party's wrongful termination of the contract may itself become a material breach. Good faith is not a defense. Given the risks involved, the parties should always look to include a "right to terminate" clause in their contracts.

"Pay When Paid." Many subcontracts contain a "pay when paid" clause. Although the language of these clauses varies from contract to contract, it usually provides that a subcontractor is entitled to progress payments and/or final payment for invoiced work only after the prime contractor has received payment from the owner for the invoiced work. Courts around the country have interpreted "pay when paid" clauses in two different ways. Most courts, including the Washington Court of Appeals in *Amelco Electric v. Drake Company*, 20 Wn. App. 899 (1978), interpret the "pay when paid" language to address the *time* for the subcontractor's payment, not the subcontractor's *entitlement* to payment. These courts interpret the "pay when paid" language to allow a subcontractor to be paid by the contractor for invoiced work after a "reasonable time," (*i.e.*, after the general contractor has had a reasonable opportunity to obtain the necessary funds from the owner). Some courts, however, have interpreted "pay when paid" clauses to mean just what they say; *i.e.*, the subcontractor gets paid only if and when the contractor gets paid. *A.A. Conte, Inc. v. Campbell-Lowrie-Laudermilch Corp.*, 477 N.E.2d 30 (Ill. App. 1985).

Indemnification. Prime contracts and subcontracts often contain indemnification clauses requiring the prime contractor or subcontractor to indemnify and hold harmless the owner or prime contractor, respectively, from liability for damages or other harm arising out of the work of the subject contract. These provisions have generated much discussion in recent years, following the Supreme Court's decision in *Brown v. Prime Construction Co.*, 102 Wn.2d 235 (1984), and the passage of the 1986 Tort Reform Act.

A thorough treatment of the impact of the 1986 Tort Reform Act on indemnification is beyond the scope of this article. Suffice it to say that the authors believe that the 1986 Act insures that an indemnification provision provides the indemnitee no additional rights against a *negligent* indemnitor beyond what the indemnitee would otherwise have without an indemnification provision. This result derives from the abolition of the traditional concept of joint and several liability and the requirement of the 1986 Act that courts enforce only such indemnification provisions to the extent of a contracting party's negligence. Undoubtedly, indemnification provisions will continue to be the subject of reported appellate decisions in Washington.

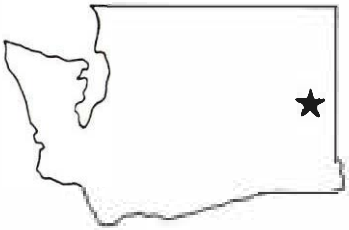
Change Orders. A change order allows the party authorizing the work to be done under a contract to change the work of a contract, the contract price, and/or the time for performing the contract. All but the most simple construction contracts should contain change order clauses. The clause should require the party requesting the change to give written notice to the other party. The clause should also include formulas for determining how the contract sum is to be altered due to changes in the contract work.

Changed Conditions. Unforeseen conditions that change the anticipated amount of work, time, and/or expense required to complete a project are an unfortunate fact of life for contractors. To deal with these unforeseen conditions, many form contracts contain a "changed conditions" or "concealed conditions" clause. Generally, these clauses adjust the contract price when certain specified conditions are met. If a contract does not contain a provision addressing changed or concealed conditions, it is generally more difficult for the parties to adjust the contract price for changed conditions.

Conclusion

Lawyers should counsel their clients not to sign a construction contract without carefully examining its contents. Even though the contracts are often forms and frequently contain small print, they should be reviewed thoroughly and changes sought if the terms are not acceptable. ☐

***Paul R. Cressman, Jr.** and **Andrew W. Maron** are partners in the Seattle law firm of Short & Cressman. Cressman practices primarily in the areas of commercial and construction litigation. Maron's practice is primarily construction, real estate, and business litigation.*



Spokane Pro Bono Efforts

by **Judy Foster**

Through a 1985 grant from the Legal Foundation of Washington of IOLTA funds, the long-standing Pro Bono program of the Spokane Bar Association was able to initiate a full-fledged program. Referrals were originally taken from Spokane Legal Services of the clients they could not take for reasons of conflicts, attorneys unavailable or the possibility of the case being fee-generating. However, since the inception of the program in September 1985, referrals have come from judges, court commissioners and other attorneys. Over 500 attorneys within the 850-plus membership have signed up to take referrals in domestic relations, debtor/creditor (including bankruptcies), landlord/tenant and administrative law areas. Referrals are also made for guardians ad litem, probate and wills, minor traffic infractions and most all civil law matters.

The program is located within the Spokane Bar Association office in the County Courthouse at W. 1116 Broadway, Room 404, in Spokane, and has a full-time coordinator, Mary J. Wardrop. Mary has worked with the bar's executive director, Judy J. Foster, in setting up the program, making the referrals, doing the follow-up and keeping accurate records for the bar and Legal Foundation.

Since the updated program was initiated, over 425 referrals have been made. Each month a "pro bono firm" and "pro bono attorney" are named. This is based on the number of referrals, hours involved and types of cases the individuals and firms have taken.

The First Annual Thank a Pro Bono Attorney hosted party will be held early in 1987 for all attorneys who have signed up to take pro bono referrals. It is the bar's hope this will be one small way to thank the membership for their ongoing support. Awards and prizes will be given to firms and individuals who have made outstanding contributions.

Booklets to assist the attorneys in the areas of domestic relations, administrative law and landlord tenant matters are available free of charge to attorneys within the program.□

Seattle District Court Judge Rules "Breath Alcohol" Standard Unconstitutional

On December 4, 1986, Judge Philip Killien of the Seattle District Court signed Findings of Fact and Conclusions of Law which held the State's new "breath alcohol" standard in DWI cases unconstitutional. During six days of hearings in November, Judge Killien heard testimony from experts in medicine, physiology, forensics and law enforcement regarding the substantive effect of the change in the law from the old .10 "blood alcohol" concentration to the new .10 "grams of alcohol per 210 liters of breath" standard.

After reviewing hours of taped testimony of House and Senate Judiciary Committee hearings on the proposed change in the law, Judge Killien specifically found that "the intent of the legislature in amending RCW 46.61.502 was to eliminate expert testimony . . . and thereby shorten trials and make convictions easier." (Conclusion of Law #7).

Judge Killien held that the amendment "impermissibly infringes upon a defendant's due process rights . . . by creating a conclusive presumption that breath alcohol equals blood alcohol and hence substitutes the judgment of the machine for the judgment of the jury." (Conclusion of Law #4).

The court found violations of the sixth and fourteenth amendments to the United States Constitution as well as "principles of fundamental fairness."

However, Judge Killien declined to rule on the defendant's challenge based upon the equal rights amendment to the Washington Constitution.

The entire transcript of the proceedings as well as the findings of fact and conclusions of law and Judge Killien's written opinion will be distributed by the King County District Court Administrator to district and municipal courts throughout the state. Currently, the King County Prosecutor and numerous municipal prosecutors have agreed to adopt the Seattle District Court record for review by each judge in lieu of presenting live testimony in each court. The case is entitled *State of Washington v. Brayman, et al.*, Seattle District Court Cause No. 4656897. The defendants were represented by Seattle Public Defenders Pat Long and Helen Halpert and Seattle attorney Steve Hayne.

Small firms take on MENTOR . . .

A Peek at the Privileged Classes

by Jo Rosner,
Attorney/Educator

Now that MENTOR is in its third year of creating partnerships between law firms and high school classes in Washington state, this State Bar program turns out to be more flexible than even its most optimistic proponents imagined.

The five original pilot program law firms selected in school year 1984-1985 were large firms with offices which could accommodate the 30 high school students who would visit as part of the MENTOR schedule.

Even as the number of MENTOR participants doubled the next year, it was the larger firms in each geographic area which were added to the roster of partnerships.

This year, however, smaller law firms and even sole practitioners have creatively adapted MENTOR to the scale of their offices, and the teachers and students who have benefited from these partnerships report outstanding results. Here's a report from Spokane attorney Stephen Phillabaum of the three-partner firm of Neff, Phillabaum & Harlow:

> I thoroughly enjoyed my MENTOR experience with Joel Harding's Legal Issues class from Mead High School. Before I went to the classroom, Joel asked me to be prepared to act as a consultant on the appellate process. He supplied me with several United States Supreme Court cases from which the students were appealing. I dutifully read the cases and went to class to help the students with their appeals. You can imagine how thankful I was that I had read the cases when the students asked me why the Supreme Court used strict scrutiny in some cases and the rational relationship test in others. It was extremely gratifying to work with students of that caliber.
>
> When we visited the courthouse, Superior Court Judge John Schultheis was our host. Judge Schultheis was discussing a recent murder case in which the jury had been waived and he had sentenced the defendant to life in prison without possibility of parole. I was concerned that the students might be overlooking the drama involved, so I asked Judge Schultheis where the defendant had been seated when he was sent to prison for the rest of his life. Judge Schultheis pointed to a seat at counsel table occupied by one of the students. Judging by the student's expression, I believe he gained some insight into the harsh reality of the criminal justice system.
>
> I enjoyed the MENTOR program very much and I am looking forward to doing it again next semester.

Attorney Ron Millheisler is a sole practitioner in Des Moines, just south of Seattle. His work with the Greater Des Moines Chamber of Commerce links such business groups as The Boeing Co. with the schools in his area. MENTOR partnering was a natural for adding the legal community to those who were helping the schools. He and Hester Mallonee, an attorney with whom he shares office space, led students on tours of Airport District Court in Burien and King County Superior Court in Seattle. Superior Court Commissioner Stephen Gaddis, who presided over one of the students' mock trials, applauded the work the attorneys were doing. "Because there has been so little education and information, many people are frightened and intimidated," he observed.

With MENTOR partners such as these at work, citizenship education in Washington state may help make a change for the better.

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

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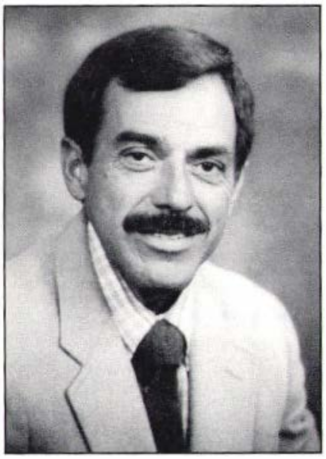

Angelo Robert Petruss
1937-1987

We regretfully acknowledge the passing of Board of Governors member Angelo Robert Petruss on January 11, 1987. As a third-year member of the Board of Governors, representing lawyers in the Third Congressional District, Angie Petruss was well respected for his insight and comments concerning the business of the Bar and the betterment of his profession. He will be missed and remembered by all.

Petruss became a member of the Washington State Bar Association in 1961 after graduating from Gonzaga Law School. He moved to Olympia that year and served one year as law clerk to Supreme Court Justice Frank Weaver. From 1962 to 1969 he was assistant attorney general for the State Department of Highways, then assistant attorney general in the tort claims division until 1982, when he became senior assistant attorney general acting as chief of that division.

Elected to the WSBA Board of Governors in 1984, Petruss gave freely of his time in many capacities. He was also a member of the Washington Association of Defense Counsel, Washington Trial Lawyers Association, Thurston County Bar Association, and the Governmental Lawyers Association.

To fill the remainder of Mr. Petruss' term on the Board of Governors through September 1987, James A. Vander Stoep of Chehalis has been appointed by WSBA President William H. Gates. Mr. Vander Stoep was formerly a member of the Board, representing lawyers in the Third Congressional District from 1981 through 1984.

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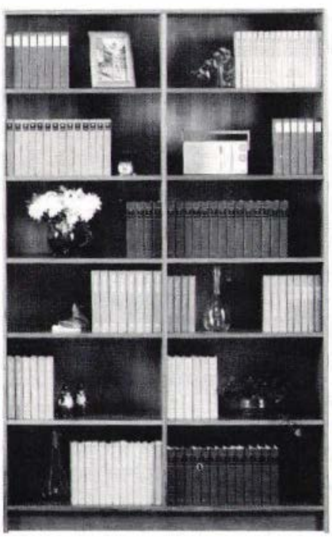

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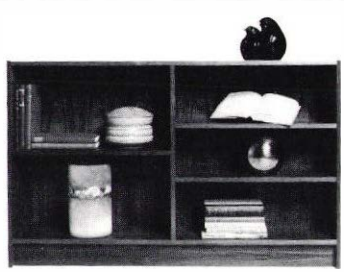

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Economic Survey of Washington State Lawyers Part 2

The following cross-tabulations were extracted from the answers to the recent *Economic Survey of Washington State Lawyers* published in the December 1986 issue of the *Washington State Bar News.*[1]

Limited space prevents publishing all of the cross-tabulated information available. Additional cross-tabulations include comparisons of income to population of city where practicing, gender, length of time in practice, method of client billing, unpaid bill follow-up program, and other categories. For a copy of the computer print-out of all cross-tabulations, mail a request to Economic Survey, c/o the WSBA Public Affairs Department, 500 Westin Bldg., 2001 Sixth Avenue, Seattle, WA 98121-2599.

[1] Percentages may not add up to 100.0% due to computer rounding. Percentages are given for both rows and columns to show the income ranges within categories as well as between categories.

INCOME VS. TYPE OF SALARIED PRACTICE

TYPE OF SALARIED PRACTICE

NET INCOME		Federal Government	State Government	City, Muni., or Local Gov't.	Insurance Life/Casualty	Corporation Employee	Law School Teacher	Bank or Trust Co.	Title Insurance	Other	Unknown	Totals
Under $15,000	ROW %	1%	4%	4%	1%	2%				6%	82%	100%
	COL %	4%	8%	8%	13%	6%	8%	11%		20%	13%	12%
$15,000 - $19,999	ROW %		3%	12%		3%			1%	12%	70%	100%
	COL %		3%	9%		4%			33%	17%	5%	5%
$20,000 - $29,999	ROW %	3%	9%	12%	1%	4%	1%		1%	3%	67%	100%
	COL %	22%	30%	34%	20%	17%	17%		67%	17%	15%	17%
$30,000 - $39,999	ROW %	4%	8%	10%	2%	4%	1%	1%		5%	66%	100%
	COL %	28%	29%	31%	40%	17%	17%	44%		30%	16%	19%
$40,000 - $59,999	ROW %	4%	6%	4%		6%	1%			2%	76%	100%
	COL %	35%	22%	13%	7%	27%	42%	11%		9%	19%	19%
$60,000 - $79,999	ROW %	2%	3%	2%	1%	6%		1%			86%	100%
	COL %	9%	5%	3%	7%	15%		11%			11%	10%
$80,000 - $99,999	ROW %		1%			7%	1%			2%	90%	100%
	COL %		1%			10%	8%			3%	7%	6%
$100,000 - $150,000	ROW %					2%		1%			98%	100%
	COL %					2%		11%			8%	6%
More than $150,000	ROW %					4%					96%	100%
	COL %					4%					4%	4%
Unknown	ROW %	2%	2%	4%	4%		2%	2%		4%	80%	100%
	COL %	2%	1%	2%	13%		8%	11%		3%	3%	3%
Totals	ROW %	2%	5%	6%	1%	4%	1%	1%		3%	77%	100%
	COL %	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

INCOME VS. TYPE OF PRIVATE PRACTICE

TYPE OF PRIVATE PRACTICE

NET INCOME

		Sole Practitioner	Sole Pract. Sharing Space	Partner in Firm	Assoc. of Sole Proprietor	Assoc. of Firm	Shareholder in Corp.	Non-Shareholdr. in Corp.	Unknown	Totals
Under $15,000	ROW %	36%	11%	12%	7%	9%	4%	3%	18%	100%
	COL %	30%	19%	6%	33%	7%	4%	15%	9%	12%
$15,000-$19,999	ROW %	14%	13%	8%	4%	21%	4%	5%	28%	100%
	COL %	5%	10%	2%	9%	7%	2%	11%	6%	5%
$20,000-$29,999	ROW %	12%	8%	11%	6%	24%	5%	2%	32%	100%
	COL%	14%	21%	8%	44%	28%	7%	17%	24%	17%
$30,000-$39,999	ROW %	12%	6%	10%	1%	29%	6%	4%	32%	100%
	COL %	16%	16%	8%	9%	36%	10%	28%	26%	19%
$40,000-$59,999	ROW %	11%	6%	27%	1%	15%	14%	2%	24%	100%
	COL %	15%	16%	21%	4%	19%	22%	20%	20%	19%
$60,000-$79,999	ROW %	12%	7%	44%	1%	2%	20%		15%	100%
	COL %	8%	10%	18%	2%	1%	17%		6%	10%
$80,000-$99,999	ROW %	8%	5%	50%		2%	26%		10%	100%
	COL %	4%	4%	13%		1%	13%		3%	6%
$100,000-$150,000	ROW %	9%	2%	50%		1%	33%	3%	3%	100%
	COL %	4%	2%	13%			17%	7%	1%	6%
More than $150,000	ROW %	4%	3%	60%			25%		7%	100%
	COL %	1%	2%	9%			7%		1%	4%
Unknown	ROW %	14%	4%	14%		12%	2%	2%	51%	100%
	COL %	3%	2%	2%		2%		2%	6%	3%
Totals	ROW %	14%	7%	24%	2%	15%	12%	2%	23%	100%
	COL %	100%	100%	100%	100%	100%	100%	100%	100%	100%

INCOME VS. SIZE OF FIRM OR DEPARTMENT

NET INCOME

NO. OF LAWYERS IN DEPT. OR FIRM

		Under $15,000	$15,000-$19,999	$20,000-$29,999	$30,000-$39,999	$40,000-$59,999	$60,000-$79,999	$80,000-$99,999	$100,000-$150,000	More than $150,000	Unknown	Totals
1	ROW %	31%	5%	14%	19%	15%	7%	3%	2%	1%	3%	100%
	COL %	47%	18%	14%	18%	14%	12%	10%	7%	7%	18%	18%
2	ROW %	14%	6%	22%	16%	18%	13%	6%	4%	1%	1%	100%
	COL%	14%	14%	15%	10%	11%	16%	11%	8%	4%	4%	12%
3	ROW %	12%	9%	20%	10%	24%	13%	5%	4%	2%	1%	100%
	COL%	9%	16%	10%	5%	11%	12%	7%	6%	6%	2%	9%
4	ROW %	9%	8%	18%	14%	22%	14%	7%	5%	2%	1%	100%
	COL %	6%	13%	8%	6%	9%	12%	8%	7%	4%	4%	8%
5	ROW %	6%	6%	21%	17%	23%	11%	7%	8%	1%	1%	100%
	COL %	6%	14%	14%	10%	14%	13%	13%	14%	3%	4%	11%
6	ROW %	4%	2%	25%	24%	19%	8%	9%	7%	2%		100%
	COL %	2%	3%	10%	9%	7%	6%	10%	7%	4%		7%
7	ROW %	6%	3%	18%	20%	13%	15%	9%	9%	7%	2%	100%
	COL %	6%	6%	11%	12%	8%	17%	16%	16%	21%	8%	11%
8	ROW %	5%	4%	13%	23%	21%	6%	9%	12%	7%	1%	100%
	COL %	5%	8%	9%	13%	13%	7%	16%	22%	22%	4%	11%
9	ROW %	5%	2%	10%	23%	25%	10%	4%	10%	10%	1%	100%
	COL%	2%	2%	3%	6%	6%	5%	3%	7%	13%	2%	5%
10	ROW %	3%	2%	16%	28%	21%	2%	7%	7%	10%	5%	100%
	COL %	1%	2%	5%	8%	6%	1%	6%	6%	15%	10%	5%
Unknown	ROW %	12%	9%	10%	17%	12%	2%		2%		36%	100%
	COL %	3%	5%	2%	3%	2%	1%		1%		43%	3%
Totals	ROW %	12%	5%	17%	19%	19%	10%	6%	6%	4%	3%	100%
	COL%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

INCOME VS. TYPE OF PRACTICE

NET INCOME

TYPE OF PRACTICE—GREATEST AREA OF CONCENTRATION

		Under $15,000	$15,000-$19,999	$20,000-$29,999	$30,000-$39,999	$40,000-$59,999	$60,000-$79,999	$80,000-$99,999	$100,000-$150,000	More than $150,000	Unknown	Totals
Administrative Law	ROW %	9%	5%	10%	31%	20%	12%	5%	5%	2%	2%	100%
	COL %	2%	3%	2%	5%	3%	4%	3%	3%	2%	2%	3%
Admiralty/Marine	ROW %	7%		21%	28%	17%	14%	7%	3%		3%	100%
	COL%	1%		2%	2%	1%	2%	2%	1%		2%	2%
Antitrust	ROW %	11%			11%	22%	11%	11%	11%	22%		100%
	COL %					1%	1%	1%	1%	3%		1%
Appellate	ROW %			43%	29%		14%		14%			100%
	COL %			1%	1%		1%		1%			
Arts & Entertainment	ROW %						100%					100%
	COL%						1%					
Aviation	ROW %				14%	29%			29%	29%		100%
	COL %					1%			2%	3%		
Banking S & L	ROW %	7%		7%	22%	11%	26%	11%	11%		4%	100%
	COL %	1%		1%	2%	1%	4%	3%	3%		2%	1%
Bankruptcy	ROW %	19%	4%	21%	19%	27%	6%	2%			2%	100%
	COL %	4%	2%	3%	3%	4%	2%	1%			2%	3%
Business & Corporate	ROW %	7%	3%	7%	18%	22%	9%	14%	13%	6%	1%	100%
	COL%	5%	5%	4%	8%	10%	8%	19%	17%	15%	4%	9%
Commercial	ROW %	8%	3%	18%	19%	17%	10%	10%	9%	4%	2%	100%
	COL %	4%	3%	6%	6%	5%	6%	10%	8%	7%	4%	6%
Computer Law	ROW %	33%%		17%	33%			17%				100%
	COL %	1%			1%			1%				
Consumer Law	ROW %	11%		56%	22%	11%						100%
	COL %			2%	1%							1%
Criminal	ROW %	15%	12%	32%	17%	12%	7%	3%	1%		1%	100%
	COL %	9%	18%	14%	7%	5%	5%	3%	2%		2%	7%
Domestic Relations	ROW %	18%	11%	25%	17%	14%	8%	3%	3%	1%	1%	100%
	COL %	12%	17%	11%	7%	5%	6%	3%	3%	2%	4%	8%
General Practice	ROW %	17%	8%	20%	19%	17%	9%	4%	3%	1%	2%	100%
	COL %	14%	17%	11%	10%	9%	9%	6%	5%	2%	6%	10%
Government	ROW %	4%	2%	21%	28%	32%	11%	2%	2%			100%
	COL %	1%	1%	4%	4%	5%	3%	1%	1%			3%
Labor	ROW %	7%	2%	14%	19%	24%	10%	5%	10%	5%	5%	100%
	COL %	1%	1%	2%	2%	3%	2%	2%	3%	3%	4%	2%
Land Use Law	ROW %	5%			32%	37%		5%	11%	5%	5%	100%
	COL %				2%	2%		1%	2%	2%	2%	1%
Military	ROW %				50%	50%						100%
	COL %											
Mineral & Ntrl Rsrcs	ROW %			33%	22%	33%	11%					100%
	COL %			1%	1%	1%	1%					1%
Mun - Schl Dist	ROW %		3%	23%	29%	32%	10%	3%				100%
	COL %		1%	2%	3%	3%	2%	1%				2%
Negligence Plntff	ROW %	10%	4%	11%	15%	19%	14%	11%	7%	9%	1%	100%
	COL %	7%	6%	5%	6%	8%	11%	13%	8%	21%	2%	8%
Negligence Dfndnt	ROW %	4%	1%	15%	25%	12%	11%	10%	13%	8%	2%	100%
	COL %	2%	1%	6%	9%	4%	7%	10%	13%	15%	4%	7%
Negligence, Even	ROW %	5%	5%	20%	25%	20%	20%			5%		100%
	COL %		1%	1%	1%	1%	2%			2%		1%
Ptnt, Trdmrk & Cpyrt	ROW %	13%			13%	19%	13%	19%	13%	13%		100%
	COL %	1%			1%	1%	1%	3%	2%	3%		1%
Real Estate	ROW %	14%	7%	20%	18%	16%	12%	3%	5%	5%	1%	100%
	COL %	8%	9%	8%	7%	6%	8%	3%	6%	9%	2%	7%
Securities	ROW %	24%		14%	24%	24%	14%					100%
	COL %	2%		1%	1%	1%	2%					1%
Taxation	ROW %	8%	3%	17%	25%	25%	6%	14%	3%			100%
	COL %	1%	1%	2%	3%	2%	1%	4%	1%			2%
Utilities & Communic	ROW %			8%	17%	17%	8%	8%	17%	17%	8%	100%
	COL %				1%	1%	1%	1%	2%	3%	2%	1%
Wills, Trsts & Estates	ROW %	15%	3%	13%	12%	33%	5%	10%	3%	3%	2%	100%
	COL %	4%	2%	2%	2%	5%	2%	5%	2%	3%	2%	3%
Other	ROW %	13%	3%	17%	15%	24%	10%	4%	9%	3%	2%	100%
	COL %	8%	4%	7%	6%	9%	8%	5%	11%	6%	6%	7%
Unknown	ROW %	21%	7%	13%	8%	14%	6%	2%	7%	2%	22%	100%
	COL %	10%	7%	4%	3%	4%	3%	2%	6%	3%	47%	6%
Totals	ROW %	12%	5%	17%	19%	19%	10%	6%	6%	4%	3%	100%
	COL %	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

INCOME VS. AGE

NET INCOME

AGE		Under $15,000	$15,000-$19,999	$20,000-$29,999	$30,000-$39,999	$40,000-$59,999	$60,000-$79,999	$80,000-$99,999	$100,000-$150,000	More than $150,000	Unknown	Totals
25-29	ROW %	22%	11%	33%	28%	5%	1%				1%	100%
	COL %	19%	23%	20%	15%	2%	1%				4%	10%
30-34	ROW %	12%	8%	27%	22%	20%	5%	2%	1%	1%	1%	100%
	COL %	27%	43%	41%	31%	27%	13%	9%	3%	4%	12%	26%
35-39	ROW %	10%	4%	17%	21%	21%	12%	7%	5%	2%	2%	100%
	COL %	20%	20%	23%	27%	26%	30%	26%	19%	10%	18%	24%
40-44	ROW %	9%	2%	8%	15%	27%	14%	10%	10%	4%	1%	100%
	COL %	11%	5%	7%	12%	21%	22%	25%	24%	18%	6%	15%
45-49	ROW %	8%	1%	7%	16%	15%	13%	11%	16%	12%	1%	100%
	COL %	4%	1%	3%	6%	5%	8%	11%	17%	21%	2%	6%
50-54	ROW %	5%	2%	6%	6%	21%	20%	12%	16%	13%	1%	100%
	COL %	2%	2%	2%	2%	6%	11%	10%	13%	19%	2%	5%
55-59	ROW %	2%	1%	6%	12%	23%	16%	14%	16%	8%	1%	100%
	COL %	1%	1%	2%	3%	5%	7%	10%	12%	10%	2%	4%
60-64	ROW %	14%	2%	8%	12%	15%	17%	9%	12%	9%	2%	100%
	COL %	4%	1%	2%	2%	3%	6%	5%	7%	9%	2%	3%
65-69	ROW %	28%	5%	3%	5%	21%	5%	10%	13%	10%		100%
	COL %	5%	2%		1%	2%	1%	3%	4%	6%		2%
70 and over	ROW %	29%	2%	10%	19%	14%	10%	5%	5%	2%	5%	100%
	COL %	5%	1%	1%	2%	2%	2%	2%	2%	2%	4%	2%
Unknown	ROW %	7%	3%	3%	3%	7%				3%	74%	100%
	COL %	1%	1%			1%				2%	47%	2%
Totals	ROW %	12%	5%	17%	19%	19%	10%	6%	6%	4%	3%	100%
	COL %	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

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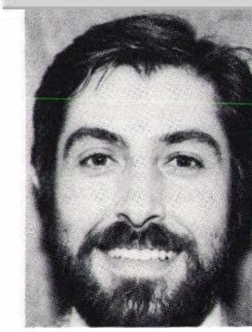

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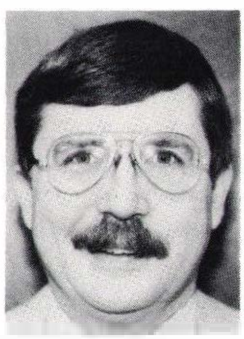
Marshall West



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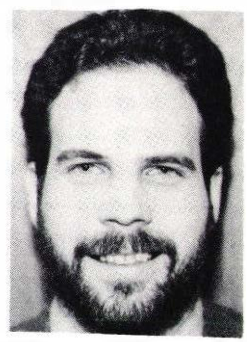
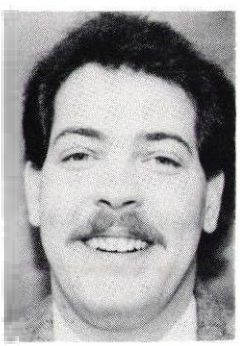


Steve Harrold



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Mid Year Season Approaching

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

Now is the time to start making plans for attending one or more of the Mid Year meetings planned by sections of the Washington State Bar Association.

The Trial Practice Section Mid Year will be held in beautiful Vancouver, B.C. at the Hotel Meridien Vancouver on Friday and Saturday, April 24 and 25. The theme for this year's event is "What the Trial Practice Attorney Needs to Know About Current Issues and Concerns." Program Chairperson **Jonathan B. Noll** (Foster, Pepper & Riviera, Seattle) has designed a program that will help meet the needs of practitioners whose concerns are centered on the preparation for, and successful accomplishment of, trial practice.

The Friday seminar sessions will focus on such topics as "RICO after *Sedima*"; the "Consumer Protection Act After *Hangman Ridge v. SAFECO*"; the "Tort Reform Act One Year Later"; "Lender Liability (New Theories and Big Verdicts As Borrowers Sue Banks)"; "Fast Track Litigation"; the "Lawyer's Responsibility to the Court"; and "Confessions of a Lawyer Sitting as a Jury Foreman."

The Saturday sessions will feature "After *Tank*: The Defense Attorney's Duty to an Insured Client," followed by a special panel presentation dealing with "Discovery Disputes and Hassles: What the Judge Would Say!"

Arrangements have also been made for a special luncheon on Friday featuring remarks concerning mandatory malpractice insurance for lawyers—presented by **Frank Hayes Johnson** (MacGillivray & Jones, P.S., Spokane), Fifth Congressional District Governor for the WSBA Board of Governors.

For further information about this program, please contact Karla Ellison at the Washington State Bar Association, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599 or telephone (206) 448-0433.

The 1987 Real Property, Probate & Trust Mid Year Section Meeting and Seminars will be held on Friday, Saturday and Sunday, May 1-3 at the Coeur d'Alene Resort in Idaho. Program Chairperson for this year's Mid Year is **John F. Sherwood** (Attorney at Law, Seattle). The Assistant Chairpersons are (Real Property) **Warren S. Olson** (Transamerica Title Insurance Services, Seattle) and (Probate and Trust) **James K. Treadwell** (Lasher & Johnson, Seattle).

Program topics to be presented at the Probate and Trust concurrent sessions include: "Creditors' Claims in Estate Administration;" "Annual Update/Washington Probate Code;" "Dispute Resolution Procedures;" "Tax Reform Act of 1986 Regarding: Subchapter J;" "The Estate and Gift Tax and the Generation Skipping Tax;" and "S Corporations in Estate Planning." Topics scheduled for presentation during the Real Property portion of the concurrent sessions are: "Indian Rights in Real Property;" "Excise Tax Regulations;" "Hazardous Waste and Super Liens;" and a "Real Property Update."

On Saturday, the joint session will feature presentations on "The Tax Reform Act of 1986: Accounting Aspects, Real Estate Aspects, and Commercial Aspects;" "Dare To Go Bare;" and "Arbitration and Mediation."

On Sunday the program will feature several workshop opportunities. Workshop titles will include, among others, the following options: "Arbitration, Mediation, and Dispute Resolution;" "The Tax Reform Act of 1986—Generally;" "The Tax Reform Act of 1986—S Corporations, Estate and Trust Taxation;" and "Creditors' Rights Regarding Estates." For further information about this program, please contact Karla Ellison at the Washington State Bar Association, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599 or telephone (206) 448-0433.

For your future reference, other Washington State Bar Association Section Mid Year Meetings with seminars scheduled for future presentation are: The Creditor Debtor Section Mid Year, to be held on May 15-17 at the Yakima Convention Center (featuring Professor **David G. Epstein** from Emory University Law School in Atlanta); the Environmental and Land Use Law Section Mid Year, to be held on May 28-30 at the Rosario Resort on Orcas Island; the Corporation, Business and Banking Mid Year, to be held on May 29-31 in Wenatchee at the Wenatchee Convention Center; and the Family Law Mid Year, to be held on June 12 & 13 in Yakima at the Yakima Convention Center.

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APR 15	Spokane (Cavanaugh's Inn at the Park)
APR 22	Bellingham (Holiday Inn)
APR 29	Seattle (Stouffer Madison Hotel)
MAY 6	Seattle (Stouffer Madison Hotel)

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4/4	8706	**BASIC ESTATE PLANNING** 9:00-5:00—6.5 CLE credits—$135
4/11	8707	**LIABILITY OF CORPORATE DIRECTORS AND OFFICERS** 9:00-12:00—3.0 CLE credits—$75
4/18	8708	**THE FIRST ANNUAL FAMILY LAW INSTITUTE** 9:00-5:00—6.5 CLE credits—$135
4/25	8710	**POWERS OF APPOINTMENT IN TRUSTS AND ESTATES** 9:00-12:00—3 CLE credits—$75
5/9	8711	**DEVELOPMENTS IN FARM FINANCING AND BANKRUPTCY** 9:00-5:00—6.5 CLE credits—$135
5/23	8712	**MAJOR ISSUES IN PRETRIAL CIVIL PROCEDURE** 9:00-5:00—6.5 CLE credits—$135

For information, or registration by phone, call (206) 543-0059.

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

Poulsbo CLE and Dinner

The Poulsbo Bar Association will sponsor its annual CLE and dinner on July 23, 1987. The three-hour morning session will feature two national experts on law office economics, J. Harris Morgan of Greenville, Texas, and Jay Foonberg of Beverly Hills, California. Bobby Lee Cook, an extraordinary trial lawyer from Summerville, Georgia, will reflect on being a trial lawyer during the three-hour afternoon session. Washington State Supreme Court Chief Justice Vernon Pearson will be the lunchtime speaker.

CLE accreditation is pending. For further information, call Jeffrey Tolman at (206) 779-5561, or write to P.O. Box 851, Poulsbo, Washington 98370.

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EAST KING COUNTY REPORT

by **DOUGLAS W. HARRIS**

At the first meeting of the Board of Trustees under the new administration several goals were set. The primary goal was that of membership recruiting. The membership roster at this point is hovering around 325 Eastside attorneys. The EKCBA is established to represent *all* Eastside attorneys, and I think it is pretty clear there are more than 325 of you out there. If you are reading this and are practicing east of the lake call **Ray Dunlap** at (206) 827-9311 and ask him for a membership form. Dues are $15 per year. The Eastside has come a long way in the last few years, and I think it is important that we have some voice as to issues that affect us.

Speaking of issues, the Board of Trustees is looking at several which could affect you in the upcoming year. The Board will be taking a formal position in the current malpractice insurance situation. There are strong feelings on both sides of this issue and the Board has, at least informally, decided to present the position of Eastside lawyers.

Other upcoming issues and events include the establishment of an Eastside court clerk and court commissioner, Law Day, and the attorney referral directory. On the social scene, there has been discussion of a spring dance, and **Chris Frost** has graciously offered to handle the golf tournament again this year.

GRANT COUNTY

Jim Whitaker of Ephrata has been selected to represent the City of Ephrata. Whitaker also is the attorney for the cities of Moses Lake and Royal City.

SAN JUAN COUNTY

Ronald D. Gordon has joined Donald Eaton's law office in Friday Harbor. Gordon and his wife, **Colleen Clancy**, who is also a lawyer, moved to the islands from Oakland, California, where Gordon had his own firm. Clancy is working as a special assistant to the county prosecutor.

SEATTLE-KING REPORT

by **JAMES L. VARNELL**

Office Moves. The following have become associates of Karr, Tuttle, Koch, Campbell, Mawer, Morrow & Sax: **Corinn J. Bohn, Diana K. Carey, Claire Cordon, Scott M. Ellerby, Mark B. Ganz, Catherine Hendricks, Julia E. Paden, Cathy L. Parker, Richard B. Shattuck.** Reaugh, Fischnaller & Oettinger announces that **Carol L. Hepburn** and **George E. Merker** have become principals, and **David O. Hamlin** is of counsel. **Katherine Hendricks** and **O. Yale Lewis, Jr.**, have formed Hendricks & Lewis, with offices at the First Interstate Center. **Hugh J. Davis** and **Michael R. Kenyon** have joined LeSourd & Patten as associates. **Laura M. Murphy** has become a shareholder in Carney, Stephenson, Badley, Smith, Mueller & Spellman, and **R. Glenn Philips, James E. Horne, Janet L. Stauffer** and **Christopher J. Kerley** have become associated with the firm.

Diane C. Davis, Michelle Buhler and **Tim Leyh** have joined Danielson, Harrigan, Smith & Tollefson as associates. **Michael P. Iaria** has opened his office at the Arctic Building. **Christopher W. Moore** has joined the Legal Department of Unigard Security Insurance Company. **John Chafer Huff, Thomas W. Hayton, Yvette Bengueral,** and **Steven R. Loitz** have joined Ferguson & Burdell. Former U.S. Senator **Slade Gorton** has joined Davis, Wright & Jones as a partner in the firm's Seattle office. **Patrick J. Donnelly** has relocated his office to the Columbia Center.

Honors. **Melvyn Jay Simburg** has been elected chairman of the 300-member International Law and Practice Section of the Washington State Bar Association. **Robert W. Winsor** has been re-elected Presiding Judge of the King County Superior Court. **Gerard M. Shellan** was also re-elected as Assistant Presiding Judge. The Judges' Executive Committee for 1987 will include: Judges **Norman Quinn, Anne Ellington, Frank Don Howard, Charles Johnson,** and **George Matt-**

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son, in addition to Judges Winsor and Shellan.

SKAGIT COUNTY REPORT
by **EARL F. ANGEVINE**

There is absolutely no truth to the rumor that lawyers from the Big City are getting "hometowned" in Skagit County Superior Court. For those of you who do not know the local territory, however, you may want to keep the following in mind when filing a case in Skagit County.

The Honorable **Harry A. Follman** has two nieces named **Susan** and **Sally.** Susan is married to Mount Vernon attorney **John Meyer.** Sally is married to Anacortes and East Sound attorney **Al Rode.** This may explain why attorneys Meyer and Rode sometimes experience a slip of the tongue and address the Bench as "Uncle Harry." Al Rode's daughter, **Suzanne,** is married to **Warren Gilbert,** an associate in the firm of Gilbert & Meyer. The partners in this firm are **Bud Gilbert** and **John Meyer.** (Bud Gilbert is really Warren Gilbert Jr., and the father of Warren, the associate, who is the third Warren Gilbert to practice law in Mount Vernon.) This makes Al Rode not only John Meyer's brother-in-law, but also Warren Gilbert's father-in-law (that is Warren Gilbert, III). No one has yet heard Warren the Third address the Bench as "Great Uncle Harry," but that day cannot be far off.

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STEVENS COUNTY REPORT
by **CHRIS A. MONTGOMERY**

Hello! . . . Hello! Stevens County calling the State of Washington. Yes, there is a bar association in Stevens County. Rumor has it that there is this group of approximately twenty lawyers in Northeast Washington who some lawyers on the west side refer to as "Hick Town." Well, don't you believe it! Stevens County is a Fourth Class County with a population of approximately 30,000.

Stevens County has become fairly active in the past several years in events relating to law-related education, CLE programs and community affairs. In April 1983 a six-hour CLE seminar was presented on "Judicial Tips on Successful Practice." This Saturday seminar featured the Honorable **Dale M. Green,** Judge, Division III, Court of Appeals; the Honorable **Willard J. Roe,** Chief Judge, Division III, Court of Appeals; **Michael F. Keyes,** Commissioner, Court of Appeals, Division III; **Frank V. Slak, Jr.,** Clerk/Staff Attorney (now Commissioner), Court of Appeals, Division III; and the Honorable **Sydney R. Buckley,** Judge, Stevens County Superior Court.

Other presentations at meetings of the Stevens County Bar Association bearing mention include:

"Structured Settlements" by **Hal Dunham** in January 1984; "Thermography" by **John T. Lloyd, Ph.D**, a psychologist and **Warren Adams, M.D.**, an orthopedic surgeon in March 1984; "The New Sentencing Standards Guidelines" by **Roxanne Park**, Executive Officer with the Sentencing Standards Commission in May 1985; "Attorney Specialization and Interest on Client Trust Accounts" by **Joseph P. Delay**, representative to the Board of Governors in November 1984; "The Domestic Violence Protection Act" by the Honorable **Rebecca M. Baker**, Judge, Ferry County District Court and other dignitaries in January 1985; "Bankruptcy Practice" by **Jake Miller**, Estate Administrator for the United States Bankruptcy Court for the Eastern District of Washington in March 1985; "Transfer of Assets As They Relate To Estate Planning" by **Larry Weiser**, Attorney at Law with Gonzaga School of Law in May 1985; and most recently, "Constitutional Law" by **James Vaché**, Dean of Gonzaga School of Law in October 1986.

. . . to be continued.

THURSTON COUNTY REPORT

by **ALAN SWANSON**

At our December luncheon, the Thurston County lawyers had a special visit by Santa **Frank Baker!** Exuding the appropriate amount of holiday cheer, Santa Baker let us know in his own unique way who had been naughty and who had been nice.

He delivered very special presents indeed to certain of our members who had especially qualified themselves for honor this past year . . . and who had been foolish enough to show up for the luncheon and receive them, since there were many other more deserving attorneys who knew they'd been naughty, and stayed away!

The Most Senior Member in attendance was **Ralph Swanson.** The Most Aggressive Attorney award went to **Buzz Walker**, the Best Negotiator turned out to be **Charles Williams**, and the winner for the Best Legal Briefs was none other than **Mary Gentry.**

Receiving a suitable award for the Most Notable Plaintiff's Attorney present was **Stu Shelton**, and the Honorary Judge Kip Stilz Joke award went to **Fred Gentry**, who for understandable reasons was certainly not permitted to tell any jokes in his acceptance speech.

And finally, the Best Procrastinator award went to **Ed Schaller.**

Sports Roundup: The QFL Fantasy Football League has wrapped up yet another season. The owners of the winning team were **John Jarrett, Allen Tom**, and **Bill Pope.** Fortunately for **Doug Wyckoff**, he was edged out for last place in the final game by a nonlawyer. He can live with that little victory until next season. It is to be noted that all teams were very, very pleased that **Steve Bean's** SOB Raiders finished a distant seventh place and ended up owing many, many dinners to the other franchise holders. **Bob Quillian**, although finishing in eighth place, is again to be congratulated for his outstanding performance as commissioner.

And, finally, the men's softball team, the Loopholes, had a rare "off-season" game—sort of a post-season bowl appearance—where despite the inspirational coaching efforts of **Rick "Cortez" Cordes**, the team suffered ignominious defeat at the hands of the Character's Corner Cretins.

WASHINGTON WOMEN LAWYERS

by **KATHLIN PERSINGER**

Washington Women Lawyers held its annual retreat for the Board of Directors in January. The Board reviewed the goals of the organization for 1986 and established new priorities for 1987. The Board of Directors for 1987 are Co-Presidents: **Patricia A. Smith** (Tacoma) **Katharine M. Witter** (Spokane); Vice Presidents: Membership **Elsa Cole** (Seattle); Funding **Patrice Vlaming** (Bremerton); Programs **Laura Inveen** (Seattle); Secretary: **Karen Elledge** (Seattle); Treasurer: **Kim Churchill** (Silverdale).

We congratulate WWL member, Seattle Municipal Court Judge **Barbara T. Yanick** for her recent elec-

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tion as President of the American Judges Association.

Plans are underway for our annual spring fundraiser which will be a dinner with a featured guest speaker. Details of the event will soon be publicized.

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Newly elected President of the Legal Foundation of Washington, Rita L. Bender, presents a resolution of appreciation to Jack R. Dean of Spokane, outgoing President of the Foundation.

Legal Foundation of Washington

The officers for 1987 for the Legal Foundation of Washington are: Attorney Rita L. Bender of Seattle, President; Court of Appeals Judge J. McInturff of Spokane, Vice President; attorney Michael J. Fox of Seattle, Secretary; and Father J. Alfred Carroll, Dean of Gonzaga University in Spokane, Treasurer.

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SEATTLE-KING COUNTY CHAPTER

The Seattle King County Chapter of Washington Women Lawyers elected its officers and the Board of Directors for 1987: **Judith Jeffers**, President; **Alexandra Cock**, Vice-President/Programs and CLE; **Eileen Concannon**, Vice-President/Membership; **Eileen Farley**, Vice-President/Employment; **Judy Proller**, Secretary; and **Pat Wagner**, Treasurer.

Serving on the Board of Directors are **Claire Cordon, Lynn Prunhuber, Linda Roubik**, and **Kristen Stred.**

WHATCOM COUNTY REPORT

by **MICK MOYNIHAN**

Out with the old and in with the new. Our new officers for 1987 are **Bill Johnston**, President and **Steve Hager**, Secretary. A spirited campaign resulted in **Bob Hughes** edging out **Jack Swanson** for the vice-presidency. It was a typical Whatcom County campaign with each candidate endorsing the other, and it would appear that Bob Hughes' first official act will be the formation of a new dress code for attorneys, particularly inasmuch as his only tie is now in style again.

After a period of time in which it seemed like there was very little movement, there was suddenly a flurry of activity as **Rob Jones, Fred Heydrich** and **Starck Follis** left the Public Defenders Office to form and staff a new and similar office in Skagit County. **Gene Moses** left the Prosecutor's Office to go with Hindman and Tasker and **Terry Lewis** is expected to leave the Prosecutor to go with Voris, Belcher, Swanson and Lackey.

Moving into the Public Defender's Office now will be **David Nelson** and **Doug Hyldahl.** And, at the other end of the spectrum, both **Les Voris** and **Dick Fleeson** have announced that they intend to retire in the very near future.

DISCIPLINE

Censured

Olympia attorney **William R. Ward** (admitted 1981) has been ordered censured pursuant to a stipulation for discipline, based upon his neglect of a legal matter; his failure to keep the client advised about the status of the matter; his failure to file his 1984 Declaration of Compliance with DR 9-102; and his failure to timely file an affidavit showing compliance with requirements of notice to clients and others of his suspension for failure to pay his 1985 bar dues.

Bellevue attorney **Jerome D. Carpenter** (admitted 1976) has been ordered censured pursuant to a stipulation for discipline. The discipline was based upon his conflict of interest in making a claim on behalf of a client at the same time his firm was acting as trustee under a pledge agreement on stock owned by the opposing party.

Reprimanded and Censured

Seattle attorney **Robert G. Maslan** (admitted 1966) has been ordered to receive a Reprimand and a Letter of Censure, pursuant to a stipulation to discipline approved by the Disciplinary Board on January 8, 1987. He will be censured for his neglect of a client's employment matter and his failure to communicate with his client regarding that matter. He will be reprimanded for failing to cooperate in the Bar Association's investigation of the client's complaint. Maslan will also be placed on probation for two years.

In Memoriam

Thomas W. Hillier of Olympia died November 30, 1986 at the age of 60. The Bellingham native received his undergraduate and law degrees from Gonzaga University. After a short period of private practice in Spokane, Hillier went to work as the chief reviewing officer of the Washington State Employment Security Department in 1954. He retired from this position in 1981.

Tacoma Municipal Court Judge **Erling Tollefson** died December 5, 1986 at the age of 73. Tollefson left a paint sales career at age 42 to become a lawyer. He served 26 years on the bench, including the last 15 as Municipal Court Judge.

Elias Ellis Dorsey of Seattle died January 19, 1987 at the age of 81. The Denver native was graduated from Stanford University and received law degrees from Denver University and the University of Washington. One of the first Seattle attorneys to practice primarily in labor relations, Dorsey practiced in Seattle from 1933 until retiring in 1973. During the 34 years he represented the Seattle Department Store Association, Seattle department stores struck only one day. Remembrances to the Epiphany Episcopal Church or Medic One.

Family Farmer Bankruptcy Act of 1986

The United States Bankruptcy Court for the Western District of

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Washington announces that effective November 26, 1986, Chapter 12—"Adjustment of Debts of a Family Farmer with Regular Annual Income" is a new chapter under the Bankruptcy Code. Forms and information about the chapter are available for copying at the clerk's office. For further information, please contact Jeane E. Lind, Estate Administrator at the court, or call (206) 442-7265.

Interim Suspension

Seattle attorney **Dominic T. Santiago** (admitted 1978) was suspended from the practice of law by order of the Supreme Court effective January 6, 1987, pending the outcome of disciplinary proceedings, as a result of Santiago's conviction of the felony of aiding and abetting the use of false statements to the United States Immigration and Naturalization Service. This suspension is pursuant to Rule 3.1(d) of the Rules for Lawyer Discipline.

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Board Of Governors Elections Due

Lawyers residing in the Third, Sixth and Eighth Congressional Districts, as well as in King County, please note:

Members of the Board of Governors of the State Bar to represent those Districts, for three-year terms ending in September 1990, are due to be elected this year. Expiring in September, 1987 are the current Board terms of the representative of the Third District, Edward M. Lane (Sixth District), Roy J. Moceri (Eighth District) and Harold F. Vhugen (King County at Large).

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

Nominating Petitions may be obtained from the Bar Office, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121. The Petitions must be filed with the Executive Director at the Bar Office by 5:00 p.m. on Thursday, April 30, 1987.

New Identification Procedures Required In the Snohomish County Clerk's Office

Identification Required - File Withdrawal Window:

Identification is now required for withdrawal of court files from the Snohomish County Clerk's Office records vault. A series of thefts and alterations of court materials over the past year have made this policy necessary.

File room personnel are required to request identification of anyone seeking a court file, who is not known to them personally. Acceptable forms of identification are:

- Washington State Driver's License
- Washington State Identification card
- Military Identification card
- Passport
- State Bar Association Membership Card
- Other picture identification

A Random 10% of You

. . . will be receiving a "stress" survey from the Bar's Lawyer Assistance Program some time in March. These anonymous returns will help us develop the best, most relevant program possible to help lawyers with various medical/behavioral problems that affect their practice of law. Our office is scheduled to open June first of this year. We look forward to hearing from you.

Distinguished Visitors at the UW Law School

The Honorable Wade McCree- March 3, 1987-220 Kane Hall-8 p.m. Professor McCree, former Solicitor General of the United States and member of the Sixth Circuit Court of Appeals (1966-77) will be the SAFECO Distinguished Lecturer in Law.

Professor Boris I. Bittker - April 9, 1987-110 Kane Hall - 8 p.m. Professor Bittker, Sterling Professor of Law at Yale University, will deliver a major address on tax law.

Presidents Robert O'Neil and Stephen Trachtenberg - April 20, 1987. President Robert O'Neil of the University of Virginia and President Stephen Trachtenberg of the University of Hartford will be at the UW Law School on April 20 to take part in a symposium on Law and Higher Education in conjunction with the University of Washington's 125th Anniversary celebration.

Professor Thomas Buergenthal - April 30, 1987-210 Kane Hall - 7 p.m. Professor Thomas Buergenthal of Emory University School of Law will be the Law School's Jurisprudential Lecturer and will speak about recent developments in international human rights.

NOTICES ADVERTISING

Professional: WSBA Members only. $40 per inch. Billed at publication. **Classified:** Members—$25 for 25 words, each add'l 25¢. Non members—$35 for 25 words, each add'l 75¢. Box number service—$6. *Advance payment required.*

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

Submit double-spaced typed copy on plain paper (no phone orders) to Classifieds, *Bar News*, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

PROFESSIONAL

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

Antonio Salazar
Attorney at Law
Salazar Law Offices
157 Yesler Way
Seattle, WA 98104
Telephone (206) 624-6414

Appeals
State and Federal

Gary N. Gosanko, formerly law clerk to Judge Herbert A. Swanson, Washington State Court of Appeals, announces his availability for consultation, association or referral on all phases of appellate litigation.

Gary N. Gosanko
Suite 900 Waterfront Place
1011 Western Avenue
Seattle, Washington 98104
(206) 467-9141

Professional announcements are available to firms and sole practitioners to publicize the establishment, relocation or emphasis of their practice, including additions or changes to professional staff. Typesetting is complimentary. Copy is due the 25th of the month for the second issue following. For further information on costs, contact the Bar News, *(206) 448-0441.*

Matt L. Alexander welcomes your Workers' Comp. referrals. Many years experience as practicing attorney and former hearing officer in this field.

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announces his availability for consultation or referral of all phases of appellate litigation in both State and Federal courts.

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Announces his availability for consultation, association or referral of substantial claims of legal malpractice.

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Office equipment - Word processor, Xerox 6020 memory typewriters, Minolta copier, Sanyo dictators, telephones, desks, tables, file cabinets, chairs, miscellaneous other.

For complete list and prices call or write. Jerold W. Heller, Box 388, Woodland, WA 98674. (206) 693-4100.

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

For sale - Lake Chelan timeshare condominium at Wapato Point. Sleeps nine. Available one week per quarter. This year—February, May, August & October. Owner willing to carry financing. Call Terri at (206) 852-6600.

Law books for sale: Current sets of C.J.S. and U.S.C.A. Annotated. In excellent condition. $1,850.00 each set. Please contact Michael R. Alfieri (206) 762-5065.

Randall & Danskin, P.S., Spokane, Washington, is updating office equipment and has for sale the following word processing and photocopying units: Xerox 4000 copier; IBM Series III Model 20 copier; 7 Lanier E-Z 1 work processors with dual disc drive, 250 pages per disc, screens, keyboards, and 192k processor; 3 Lanier letter-quality character printer 45 cps (1600LP); 2 Lanier dual-tray sheet feeders with envelope hopper; 1 Lanier dual-tray sheet feeder without envelope hopper; 1 Lanier business processor with disc drive and 256k memory; 1 Lanier printer with interface (1300L); 1 EWP software for word processing on business processor; Software with E-Z Spell (auto-loaded) for E-Z 1 work processors. Please contact Peter J. Grabicki or Grace Ott for further information (509) 747-2052.

SPACE AVAILABLE

New Bellevue office spaces available to share in 10-attorney space. Located in north Bellevue. Instant freeway access. Beautiful space includes: receptionist, library, conference rooms, telephone hardware, copier access, coffee service, kitchen facilities. Free Parking. Athletic facility and showers to be added. (206) 822-5580.

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POSITIONS WANTED

Motivated, stable second-year law student seeks summer clerkship focused on international trade or transportation law. Background includes business, computers, transportation, and Chinese language. Reply to Box 110, **WSBA**.

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association with this lawyer. An excellent opportunity if your firm, agency or company is not allergic to grey hair or new wrinkles. Detailed resumé upon request to Box 113, WSBA.

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

Seattle law firm has need for attorney with minimum of two years' trial experience. Exceptional opportunity. Please send resumé to Box 114, WSBA.

Davidson, Czeisler, Kilpatric & Garner, P.S. seek an experienced associate with one to three years' experience emphasizing real estate and civil litigation. P.O. Box 817, Kirkland, WA 98083.

Small Seattle maritime firm seeks admiralty lawyer with one year's experience in marine insurance, P&I clubs, cargo litigation and seamanship practice. Lawyer will generate maritime business, so established contacts within the maritime industry are essential. Lawyer will be responsible for litigation in Washington and Louisiana, and will serve in an advisory capacity on foreign matters on a regular basis. LL.M. in Admiralty required in addition to J.D. Starting at $15/hour for a 40-45 hour workweek, 9 am - 5 pm. Send resumé to State of Washington Employment Security Department, ES Division, Attn: AEC# 45849, Olympia, Washington 98504.

Major Seattle law firm seeks associate with one to three years' litigation experience. Interested applicants must have superior academic credentials. Send resumés to Box 115, WSBA. All replies confidential.

Full-service law firm with offices in Seattle and Wenatchee seeks attorney with three or more years of experience. Applicants who would be willing to practice in Wenatchee or initially practice in Wenatchee and later move into the Seattle area should submit a resumé to: Gary N. Jardine, Managing Partner, Jardine, Foreman & Appel, 701 North Chelan, Wenatchee, WA 98801.

Seattle Law firm with emphasis in medical malpractice and insurance defense, invites resumés from attorneys with one to three years' experience in litigation with an interest in medical practice defense. The firm also invites resumés from attorneys with engineering or technical degrees who have an interest in complex, technical litigation. Please respond to: Daniel F. Mullin, Bassett & Morrison, Suite 600, Market

NEW FOR WASHINGTON LAWYERS

TEGLAND'S LITIGATION TODAY

As one of the authors of *West's Washington Practice*, I am continuously writing new material for pocket part supplements. I currently write the pocket parts for Volumes 5 and 5A on evidence, and, with Lewis Orland, I write the pocket parts for Volumes 2A, 3, 4A, 14, and 15 on procedure.

My computer is overflowing with new rules, new statutes, and new case law that will eventually be included in the Washington Practice pocket parts. These pocket parts are fine for their intended purpose, and I will continue to write them. The pocket parts, however, are only published about once a year.

I am pleased to announce that, with my publisher's blessing, I am now able to rush new developments to you with my own newsletter. The newsletter, ***Tegland's Litigation Today***, collects for you all significant changes in the Washington law of evidence, civil procedure, and appellate procedure.

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Bend law firm seeking associate with two to four years' experience. Academic excellence required, general and business experience preferred. All replies will be kept confidential. Apply to Marceau, Karnopp, Petersen & Nash, 835 N.W. Bond, Bend, Oregon 97701. Attention: Dennis C. Karnopp.

Contract attorneys needed for North Seattle, East Side, SeaTac-Federal Way/cases: PI, DWI, divorce, bankruptcy, etc./compensation $50 - $60. Send resumé to Law Firm, P.O. Box 16254, Seattle, WA 98116.

Financial institution seeks, staff counsel with two to five years' experience in real estate law, commercial lending law and bankruptcy. Washington Bar membership required. Reply to Box 118, WSBA.

Gibson, Dunn & Crutcher would like to hire two associates with two to four years' experience in litigation for its Seattle office. Some corporate experience also desirable. Outstanding academic record (top 10%) and excellent recommendations required. These positions provide a unique opportunity for the highly motivated individual. All responses confidential. Reply to Gibson, Dunn & Crutcher, 701 Fifth Avenue, Suite 6600, Seattle, WA 98104.

Puget Sound Legal Assistance Foundation seeks attorney for family law unit. Permanent position. Minimum one year in practice, commitment to serve low-income clients. Family law and trial experience preferred. Resumé to 813 South "K" Street, Tacoma, WA 98405.

Three-member Seattle law firm seeks third-year law student or recent law school graduate as an associate. The firm specializes in civil litigation and commercial law, and is looking for an attorney interested in gaining considerable litigation experience. Please send resumé to: Neubauer & Hunsinger; 315 Second Avenue South, Seattle, Washington 98104.

Plaintiff's trial lawyer sought: The firm of Perey Langley is seeking to hire an aggressive young trial lawyer with one to two years of litigation experience, who has a sincere and earnest desire to represent plaintiffs in contingency fee cases. Only those who possess the samurai spirit, strive for personal excellence, and are dedicated to being an outstanding trial lawyer should apply. Applicants must possess high motivation, independence, self-confidence, high academic credentials, and proven analytical, writing, and oral advocacy skills. Salary and benefits will be commensurate with credentials and experience, and will escalate in proportion to performance. Letters of inquiry, together with resumés and writing samples should be mailed to Perey Langley at the following address: Broderick Building, Penthouse Suite, 615 Second Avenue, Seattle, Washington 98104-2203. No telephone inquiries please.

Wanted: Attorneys interested in subrogation referrals. Please reply to Box 121, WSBA.

Attorneys: Are you interested in working on a freelance, hourly-fee basis? We match attorneys with the requirements of law firms and other attorneys that have expressed a need for qualified, temporary assistance. All inquiries will be kept confidential. The Alexander & Thomas Group, Inc., Contract Attorney Placement Service, 5325 N.E. 190th St., Seattle, WA 98155. (206) 361-2707.

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A v rated sole practitioner, with business, commercial and bankruptcy practice, seeks to associate or merge with experienced attorneys practicing quality law in related fields with goals of mutual backup, cross-referrals, and other support. Reply to Box 119, WSBA.

WILL SEARCH

Wanted: Information on a will for Frederick William (Spanky) Allan who died in King County December 1986 of a heart attack while piloting a private plane. If anyone has a will for Mr. Allan, contact Paul R. Cressman, Sr., Short & Cressman, 3000 First Interstate Center, Seattle, WA 98104, (206) 682-3333.

Seeking last will of Norma Virginia Virgillo. Write Marc Johansson (heir); Box 1461, Renton WA 98057-1461.

If you have **information** regarding the existence of a last will of Mary Catherine Wilcox, of Kalispell, Montana, please contact Pamela McKee, Attorney, 10408 SE 27th, Bellevue, WA 98004. (206) 455-2232.

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