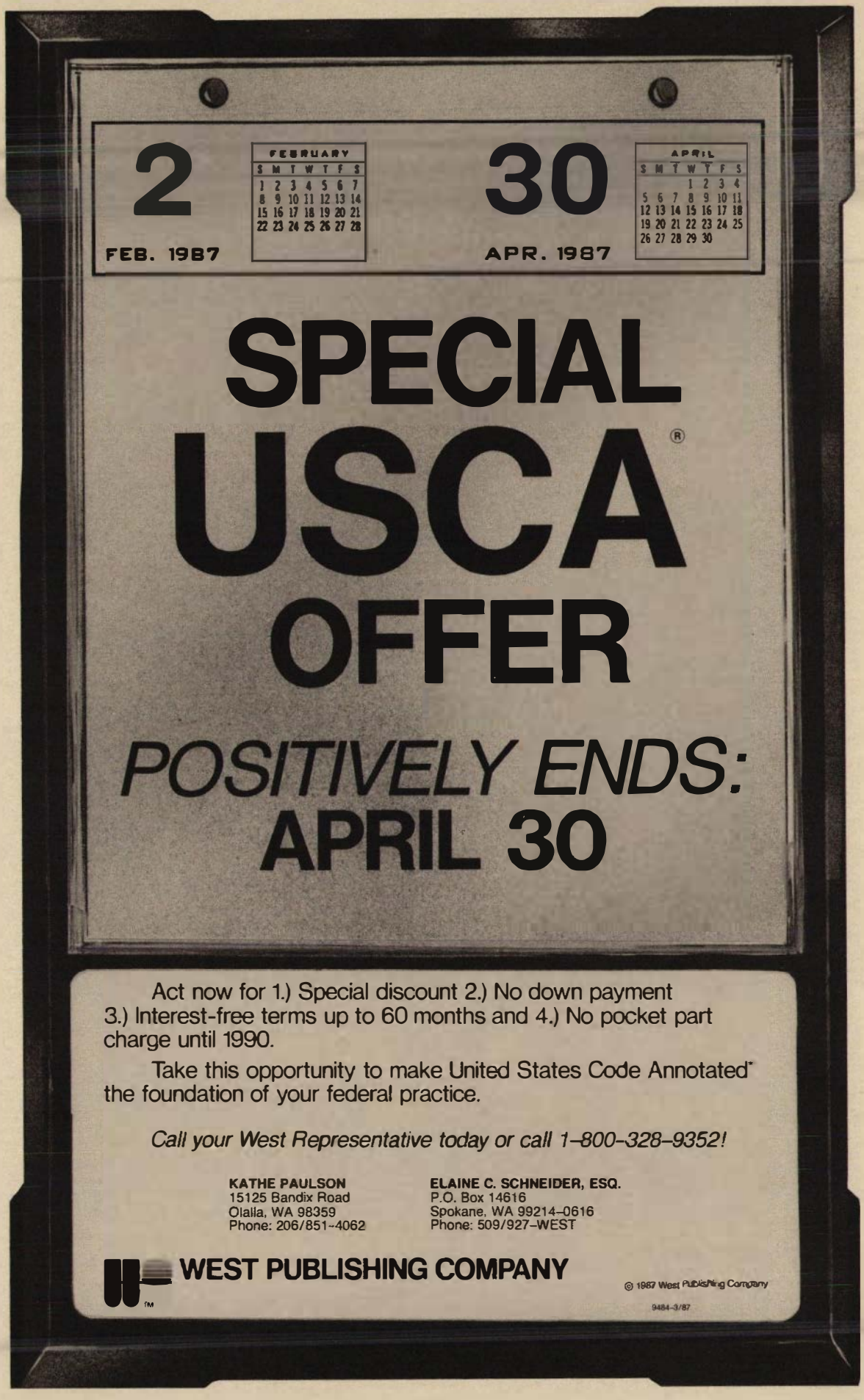
Washington State Bar News
Vol. 41, No. 4, April 1987

Inside: So Your Client Wants To Lie



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FEATURES

IN THE NEWS

DEPARTMENTS

ART CREDITS

WSBA Assistant CLE Director Steve Rosen took our cover photo of the Pacific Science Center in Seattle.

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LETTERS

If It Ain't Broke . . .

Editor:

The ethical standard advocated by Robert Wayne's guest editorial in the January 1987 *Bar News*, "Subpoenaing Your Opponent: The Adversarial System Out of Balance", is neither necessary nor desirable. He advocated adopting an ethical standard against prosecutors subpoenaing defense attorneys unless a court has entered an authorizing order after making findings of fact.

Wayne's distortion of the magnitude of the problem may be explained, perhaps, by his personal stake: he is the attorney who received the IRS subpoena he referred to.

Even if there were evidence of prosecutorial abuse of the subpoena process, a mechanism already exists for redress: the courts. Wayne's own lawsuit is now working its own way through the federal courts. If defense attorneys find that time-honored procedure too cumbersome, the solution is to amend the court rules governing the issuance of subpoenas, not to adopt a new ethical standard.

Attorneys are rarely, if ever, disqualified or compelled to act against their clients' best interests. Every court in the land has ruled that information on who paid the attorney's fee is not protected by the attorney-client privilege.

As a federal prosecutor, I can attest that only a handful of attorney subpoenas have been issued in the Western District of Washington in the last several years. In most of the cases, generally drug conspiracy cases, the client is already a government witness.

I know of no case in this district where an attorney has been subpoenaed to testify at trial. U.S. Department of Justice figures for March 1 - August 31, 1986, show that only two attorneys nationwide were subpoenaed to testify at the trial of current clients. Both instances involved production of corporate or financial documents.

Wayne's argument brings to mind the old adage: "If it ain't broke, don't fix it." Do we really want to subject prosecutors to sanctions ranging from Censure to Disbarment for failing to follow a complicated procedure susceptible of varied interpretations? If any change is needed, common sense dictates that it be by amending court rules governing the criminal process.

I urge my fellow members of the Bar to think critically before accepting Wayne's alarmist appeal.

WILLIAM H. REDKEY, JR.
Seattle

You Sure Don't Look Like a Lawyer

Editor:

An unusual opportunity has come about due to the Seattle-King County Bar Association's efforts to put out a new pictorial directory this year.

My proposal is simple. I suggest that the Washington State Bar Association put photos on all bar cards. I believe there must be more lawyers today in King County than there were in the entire state when I became a lawyer in 1965.

When I present my bar card at the jail to see a client, how can anyone be sure I am the lawyer whose name appears on the card? There should be a photo on the card. It is just a matter of logistics, of having a photo on file, and perhaps, of a replacement fee.

JAY NUXOLL
Bellevue

Is It Default of Da System?

Editor:

Filing a civil action in district court with the expectation of transferring the resulting judgment to superior court is a waste of time where a default judgment is anticipated. District court does provide you with an accelerated trial date, but are there any other advantages?

If you want a judgment lien, get your judgment in superior court. You can pay $70 and file your claim initially in superior court. Or you can pay $20 for the district court filing fee, $2 for a transcript, and $15 to the superior court clerk to refile the transcript.

Is the $33 savings worth it?

My client was entitled to a default judgment in Northeast District Court in Redmond on January 5, 1987. On January 6, I presented the appropriate documents to the court clerk and requested the judgment. Sixteen days later, as I write this, I am still waiting for the Northeast District Court to enter my default judgment.

The court clerk's office advises me that the defaults are pulled "once a week" and the files given to a judge, who signs them "as time permits." If my client had filed initially in superior court, on the 21st day the ex parte department would have entered the judgment. It costs $33 more that way and I'd be required to go to Seattle.

Henceforth I will be more discerning before filing a civil suit in district court.

CHARLES F. DIESEN
Redmond

Rubbing It In

Editor:

Congratulations on your recent issue (January 1987) "coordinated by the Executive Board of the WSBA Criminal Law Section." It was both representative and balanced. It was representative of the defense bar (and perspective) in that all three of the feature articles and both of the book reviews were by defense attorneys for defense attorneys. It was balanced in that it correctly reflected the place of prosecutors in the Criminal Law Section . . . which is almost no place at all.

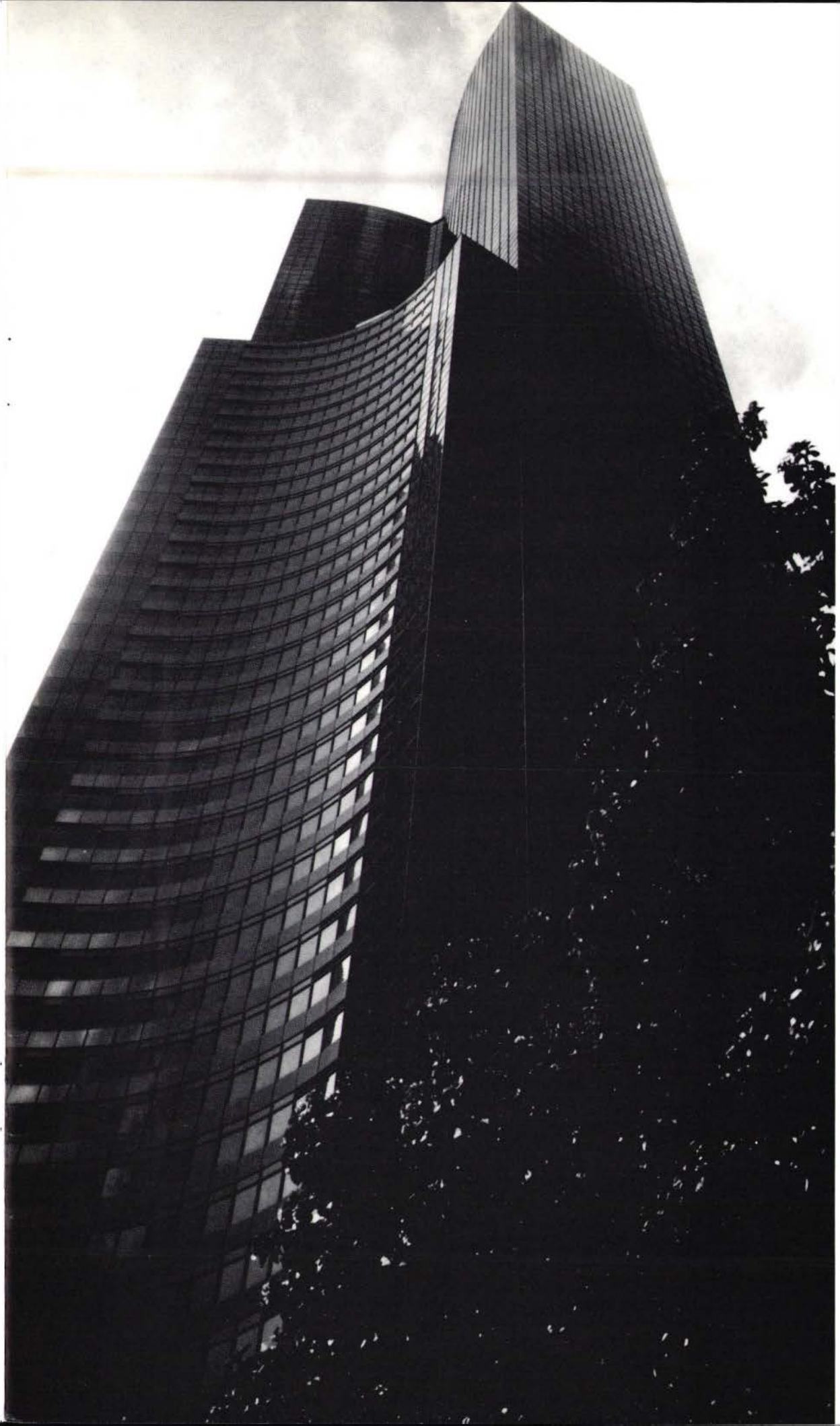
Because of their relative numbers, defense attorneys in the Criminal Law Section will always outvote prosecutors in electing the executive board, deciding issues on which to file *amicus* briefs and adopting resolutions to the Board of Governors. Did they have to rub it in on the pages of the *Bar News*?

STEPHEN E. MOORE
Bothell

Access to the Legal System

Editor:

The proposed sales tax on profes-



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sional services does not serve the public interest.

In my experience, most people requesting the services of an attorney do so out of absolute need. The services they request are non-luxury. The services are ones which as a practical matter they cannot realistically choose to forego or do themselves. It is already a substantial burden on most clients to meet the financial obligations involved. A sales tax would impose an added burden.

If any existing or proposed law offends you, you have not only the absolute right but the duty as a good member of our blessed free society to speak out. If you do otherwise, then you have no basis for complaint. If the proposal to tax professional services strikes you as badly as it does me, or if some other law disturbs you, let the folks in Olympia hear your voice loud and clear.

GARY L. CARPENTER
Clarkston

Adult Children of Alcoholics

Editor's Note:

On February 25, 1987, the first-ever ACOA meeting for lawyers was held in Seattle. The meeting was in response to a suggestion in the lead article in the December 1986 *Bar News*. Eleven lawyers from the Seattle-Tacoma area attended. The group decided to continue meeting.

Any lawyer interested in attending may write to "Adult Child", c/o *Bar News* Editor. You will be notified of the time and place by return mail. Confidentiality will be maintained.

Thanks to those present for making the first meeting a success.

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.

Professional Liability Fund—Post Mortem

The Professional Liability Fund idea is now dead—its overwhelming rejection in the referendum forecloses any consideration of this form of solution to the malpractice problem. I am sorry this happened. Had we put the Fund concept into place, I am certain that in 1997 we would have looked around at what was going on in the rest of the world and congratulated ourselves on being so farsighted.

Malpractice claims are a very serious long-term problem for the Bar. In work done in connection with setting up a new multi-state captive for lawyers, the actuaries observed that the cost of malpractice claims is going up at a rate of 20 per cent per year. A similar study in Florida put the figure at 25 per cent. If these trends continue, we are in for a very tough time.

The basic engine here is the increasing frequency and severity of claims. We need to bend every effort to get control of this monster. Working on this problem would be much easier if we had good data about the claims and costs in our state. We do not have these and never will so long as we are dependent on the commercial market for coverage. Two of the principal providers of malpractice coverage in this state have refused to provide data to the Bar. Only CNA and St. Paul have cooperated by furnishing information to the National Data Center established by the ABA.

What is more, there has never been any incentive for the commercial insurance market to engage in real claims prevention efforts. Claims prevention work requires a hard, detailed, long-term effort. To justify this effort, which is really an investment, you must be assured of some continuity of relationship to the group you are working with. Such continuity does not exist in the world of commercial insurance. Accordingly, so long as this Bar relies on the commercial insurance market, we cannot expect any meaningful assistance in doing the job necessary to get some control of the mounting number of claims.

This obviously leads to looking again at the formation of a regular but Bar-controlled insurance company to provide this coverage.

The key question is whether we could raise the $4 million or so we would need to capitalize such a company. North Carolina, Texas, California, Ohio, Oklahoma, Minnesota, Wisconsin and Missouri have all done it successfully. A new multi-state company organized to issue coverage to lawyers in Alaska, Delaware, West Virginia and seven other states, such as Montana and the Dakotas, will soon be in business. Michigan, Pennsylvania, Florida, Alabama and Kentucky are each in various stages of starting a company. The Maryland Lawyers Mutual Insurance Company, having created its capital by the imposition of a $150 tax on each lawyer, is about to commence issuing policies.

To be sure, the organizing of a company would fill the crucial need of putting us in control of our own loss and claims problem. It would not, as would the Professional Liability Fund, free us from the vagaries and dictates of the commercial reinsurance marketplace—at least not in the early stages. Of course, the stronger the company becomes the less dependent on reinsurance it would be and therefore the more able to set premiums and determine underwriting policies on the basis of its own experience.

One disturbing consequence of the seemingly endless escalation in premiums and the harsh underwriting policies being employed is the growing number of lawyers who are going without malpractice insurance. This problem would be dealt with in part if we had our own company—the number of lawyers uninsured because of arbitrary underwriting standards could be diminished. There is no assurance that our own company could issue policies so much cheaper than the commercial

market as to lure back all of those who opt out simply on the basis of price. On the other hand it may be that a coverage and premium structure could be designed by us, in the interest of the Bar generally, which would be attractive to those who have a limited amount of practice and generate smaller risks.

To me the frustration has always been that the profession has this large and growing problem of more and more claims against its members, more uninsured lawyers and escalating premiums without the possession of the tools needed to deal with it. Obviously, I have not been alone in this view. Very soon most lawyers in this country will have the option of obtaining their malpractice insurance from an insurer which they control. Lawyers in most other states, including those with the largest number of lawyers, have taken the initiative to get the Bar squarely in the work of providing its own coverage. As those lawyers who did it first in Texas, North Carolina and California will tell you, it is not easy but it is a very gratifying result.

I just hope that our inability to deal with this problem in the particular manner recommended by your Task Force and Board of Governors will not prevent us from continuing to work on it and to attempt other solutions.

William N. Gates

Uncivil Trials

"The lack of civility which often pervades the relationship between lawyers on opposite sides of lawsuits is a disgrace," wrote WSBA President Gates in the January 1987 *Bar News*.

What is not addressed as often as adversarial adversariness is adversariness *between* co-counsel. However much we wish things were different, we can, intellectually, accept the frustrations of dealing with opposing counsel.

How many of us have noticed that working with co-counsel can produce a bad taste that lingers beyond the life of the lawsuit?

Why? When we deal with opposing counsel, we are free (within ethical limits) to call the shots as we see fit. We are free to be ourselves. But dealing with co-counsel elicits a different set of protocols.

The three following incidents, not all from the Evergreen State, are illustrative.

He Who Laughs Last

I second-chair a murder trial. The testimony of one witness is laughable; indeed, he laughs throughout my cross-examination.

The lead attorney is furious with me: "Why did you keep questioning him?" he snaps. "Everyone knew he was lying. You only make him look sympathetic to the jury!"

I have a different interpretation of the exchange and feel that my cross-examination was effective. As I resume my seat, my satisfaction with the cross-examination is turned topsy-turvy by my colleague's hostile reaction. "You and I divided responsibilities in this case," I say evenly, "and I believe my questioning helped our case. If you didn't want me to question him, you should have told me so."

P.S. Our client is acquitted.

The Case Of The Wrongful Defendant

A partner at a firm where I work invites me to depose a witness in a wrongful death case involving two corporate defendants. The attorney tells me the line of questioning he would like me to follow. I, with far more (criminal) trial experience than he, consider his suggestions far wide of the mark. I also think that suing this defendant is just this side of frivolous. In fact, one of the partners (this one?) has already said that, at most, this defendant was 10 per cent negligent, but you know how deep pockets are . . .

I don't say anything about the partner's suggestions and wade through a day of ridiculously long, embarrassing depositions. Though I try to heed his instructions, it is painfully apparent to me that I succeed in pleasing no one—neither the defense attorney nor witnesses, neither my colleague nor, least of all, myself.

On the way back to the office, my colleague tells me that I did a "good" job. I don't believe a word of it. I don't think that he does, either.

P.S. When I no longer work for the firm, I learn that the defendant has gotten out of the lawsuit on a summary judgment. I feel pleased.

P.P.S. . . . and vindicated.

Fee, Fie, Foe, Hmm . . .

A colleague asks if I would be a guardian ad litem to determine the reasonableness of a proposed settlement for his minor client. I agree. I am appointed.

I do my homework: acquaint myself with the file, proposed settlement, applicable court rules, verdicts and settlements in similar cases; contact the defendant's attorney; talk twice with my ward by telephone.

Why twice? She is residing out of state. To fulfill my professional duties, I believe it's only proper to establish at least a minimal relationship with her—to understand where she's coming from and where she's going—before making any recommendation which could affect her future. I also want to be sure she understands her situation. I review with her the situation that gave rise to her claim, her damages, her rights and responsibilities, and the consequences of settlement.

My teenage ward feels that the settlement offer is reasonable. So does her attorney; so does opposing counsel; so do I.

I write my report. Recommend settlement. Enclose my bill. The colleague who had contacted me originally calls me into his office. Isn't the bill a bit high? he asks. I tell him that I'd already discounted it—had not charged for consultations with other colleagues. If it is high, I tell him, I'm sure the court will reduce it. The settlement is approved, and I receive the amount I had billed.

P.S. It is only one per cent of his fee.

Carole Grayson

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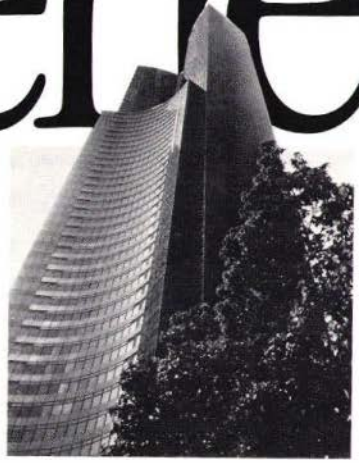

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A Bit About Some of the Side Benefits of State Bar Membership

by John J. Michalik
WSBA Executive Director

I think we may all at times overlook the fact that membership in the State Bar Association carries with it some side benefits which are available to individual members because of the collective size and strength of the organization. These include not only preferred rates which have been obtained because of the Association's overall purchasing power but also certain services which the Bar Office itself provides to individual members. The space limitations of this column prevent me from covering all of these sorts of items, but I do have the room to remind you of a few of these types of benefits.

One of these is the special State Bar Member rate recently negotiated with the **Westin Hotel** in Seattle. Rooms at the Westin are available to WSBA members at a $90 a night rate—well below the normal room rates for this world class facility. To obtain this special rate, WSBA members should call the hotel directly [(206) 728-1000] for reservations, identify yourself as a WSBA member and request the special $90 State Bar Association rate. When members arrive to check in, the Westin requires presentation of your WSBA membership card as final identification to authorize the $90 rate. The Westin is located at 1900 Fifth Avenue in Seattle, directly across the street from the State Bar Offices in the Westin Building. If you are a Bar member from outside the Seattle area, or if you are Seattle-based and looking for a weekend getaway, the Westin is a great place to stay in the heart of downtown.

Need to rent a car for business or pleasure? Just about everybody does from time to time, and the State Bar Association has discount programs available to all members through both **Avis** and **Hertz.** Current rates and discounts are regularly noted and advertised in the *State Bar News* for both programs. Both programs offer flat daily rates and/or substantial savings on standard time and mileage rates. Watch the *State Bar News* for updates on these programs, or call Katie Corrigan at the Bar Office and she'll be happy to see that you get further information, credit card discount number stickers, etc.

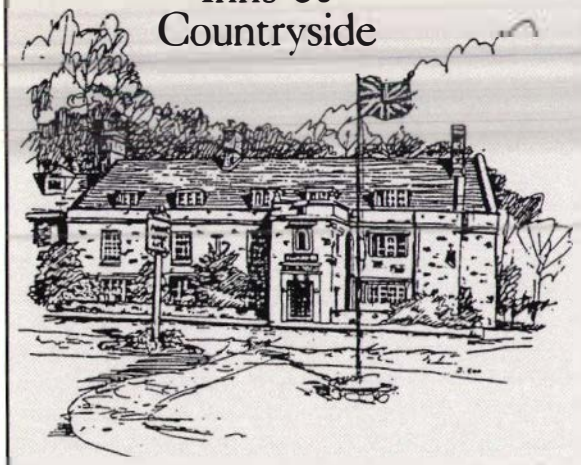
Rental cars lead to travel, and the State Bar has recently made a "discount" vacation program benefit available to all WSBA members, their families, invited guests, and law firm employees. This travel program is administered and implemented by **Travel Bug, Inc.** (TBI). While the Association does not actually itself sponsor the various programs which TBI makes available, it does cooperate with TBI in being sure that these opportunities are drawn to your attention. TBI advertises regularly in the *State Bar News* and is presently involved in mailing information on specific travel opportunities and programs to defined interest groups within the Association. You can also get direct information on these programs by calling the WSBA Department at TBI at (206) 441-5957.

We have had a **Washington State Bar Credit Union** for almost a decade now. This credit union, one of—if not the very first—established by a bar association, has membership open to all State Bar Association members and their employees. The Credit Union, which is a distinct and separate entity from the State Bar Association itself, is governed by its own Board of Directors, and members of the Credit Union also constitute the membership of such other important internal bodies as the Credit Union's Loan Committee. A great deal of information on the Credit Union is available through its office at 2030 Airport Way South, Seattle, WA 98134. Tel: (206) 623-5023.

In need of health, life or disability insurance? The **Washington State Bar Insurance Trust** may be able to provide you with assistance in these areas. Like the Credit Union, the Insurance Trust is a separate organization governed by its own Board of Trustees. It negotiates with major carriers in order to make various types of insurance programs available to State Bar Members. The State Bar Office serves as a conduit of information on the programs which are currently available through the Insurance Trust, and if you are interested in information in these areas call the Bar Office at (206) 448-0441.

Finally, and as the end of this column looms in sight, I would like to note the **Placement Assistance Service** which is maintained by the Public Affairs Department at the State Bar Office. Actually, two placement directories are maintained—one contains descriptions of professional opportunities available to attorneys and the other is a file of attorney resumés currently in hand. Interested persons may visit the Public Affairs Department at any time during business hours (Monday through Friday, 9 a.m. to 5 p.m.) to review these files. As an adjunct to this process, the *State Bar News* also carries classified advertising for positions wanted and offered.

British Inns & Countryside



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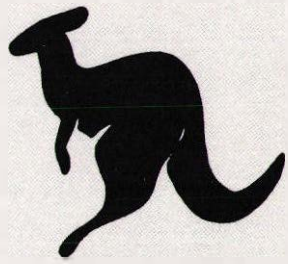

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WASHINGTON STATE BAR **NEWSLINE**

The Board's Work

by Carole Grayson

Tukwila Doubletree Plaza, March 20-21, 1987

Present: President Gates and all Governors except Moceri (absent 3/20 p.m.) and Vander Stoep (absent 3/21 p.m.)
Also present: Patrick Sutherland (Wa. Assn. of Prosecuting Attys.), Marshall Forrest (Superior Ct. Judges Assn.), Herbert Swanson (Ct. of App. Judges Assn.), Craig Campbell (SKCBA Trustees), Allen Miller (Govt. Lawyers), John Riley (WSBA Young Lawyers), Scott Smith (SKCBA Young Lawyers), John Michalik (WSBA exec. dir.), Donald Means (WSTLA), and Janet Gaunt (Wa. Women Lawyers).

A DEAN OF A PRESIDENT Jack R. Dean of Spokane was selected by acclamation to be the next president of the Washington State Bar Association. Dean, whose term begins September 1987, was nominated by friend and Spokane colleague, Frank Hayes Johnson. Dean was president of the Legal Foundation of Washington in 1986.

LAW RELATED EDUCATION The Governors rejected 3-6 a request for funding by Corydon Nelsen of Seattle, chair of the WSBA Law Related Education Committee, for the Bar to sponsor for three years an annual award for excellence in the field. Voting in favor of the request were Jay White of Seattle, Myron Carlson of Everett, and James Vander Stoep of Chehalis.

Those against the request were typified by Ed Shea of Pasco. He was "not persuaded an award will be an incentive" or "an inducement to quality education on the law."

Nelsen estimated the award would cost perhaps $1500 a year ($500 to the teacher, $500 for the school's library, and $500 for expenses).

WHEN A DEATH OCCURS The Governors voted 5-4 to appropriate $2000 toward reprinting of the consumer pamphlet, "What to do when a death occurs," of the Office of the Attorney General.

Twice in past years, the Governors have given $4000 toward the project. "Unfortunately, we often use history as our approval," said Harold Vhugen of Seattle, who voted against the allocation this time around. He was joined by Carlson, Johnson, and Edward Lane of Tacoma.

LEGAL SERVICES The Governors unanimously adopted a resolution supporting legal services for the poor. Inter alia, the resolution "strongly urges the Legal Services Corporation to seek substantially increased funding from the Congress so that LSC can provide adequate funding for local legal services programs."

The Governors also appointed to the Board of Directors of Evergreen Legal Services Kelby Fletcher, Paul Silver, and Gordon Wilcox, all of Seattle; Robert Luke of Lynnwood, and C. Kimi Kondo of the Asian Lawyers Association.

BYLAW CHANGE By a vote of 9-0 the Governors deleted Article 11 (which appears as Article X in the most recent, i.e. 1986, printed edition) of the Bar Bylaws. The now defunct bylaw dealt with malpractice insurance.

NO SMOKING (PART TWO) In February, the Governors united to ban smoking at WSBA CLEs. In March, the Governors again took up the subject of smoking...and unanimously voted to ban smoking at their own meetings.

BAR PURPOSES May the Bar speak on legislation which prohibits speeding? What if the legislation only bans speeding by red Porsches?

These were some of the questions the Governors tackled as they discussed what the purposes of the Bar are, or should be.

Governors Steven Reisler and Jay White of Seattle, who are investigating Bar purposes, gave a status report. Reisler would prefer that the Bar "rule-ify" its purposes rather than codify them. Some state bars describe Bar purposes with specificity (the laundry list approach); others in generalities. Reisler warned that a too specific approach might "cut off our legs in the future"; a too general approach would leave the Bar "mandate not clear."

Executive Director John Michalik offered a hypothetical: Are dues moneys being used for purposes outside the scope of the Bar if he talks with the Chamber of Commerce or the executive director of the Seattle-King County Bar?

WHEN DOES 3=75? The Governors authorized $1000 to help sponsor what would be the state's first regional conference on court congestion and delay. The conference, tentatively set for September 1987, will involve the three counties that account for 75 percent of the cases in the state: King, Snohomish, and Pierce.

TODAY'S CONSTITUTION The Governors voted 8-1 to allocate $20,000 of the WSBA contingency fund of $73,000 to the Today's Constitution and You program.

Dissenter Ed Lane complained, "We're not set up to be a charitable organization." He decried the "continued spending of lawyers' money in grey areas."

The $20,000 places the Governors' total allocation to the program at $90,000.

UPCOMING MEETINGS:
May 15-16, Wenatchee Thunderbird; June 19-20, Pasco Red Lion; July 17-18, Victoria Laurel Point Inn.

So Your Client Wants To Lie

by **John A. Strait**

SCENE: The counsel table in a courtroom during a recess after the close of the prosecution's case. Attorney (A.) and client (C.) sit together and talk.

A. That was some pretty rough testimony they put on at the end there; that last witness really sank us. I think we'd better ask the D.P.A. if that deal is still available.

C. I don't want any deal. I'm not gonna plead to nothin'.

A. Well, what do you suggest we do? The way they've got you charged, when you're convicted, you'll never get out.

C. I've got it figured out. I've changed my mind and I'm gonna testify in this case. I'm gonna take the witness stand.

A. But, you can't do that. You told me you were guilty.

C. Yeah, but that was in confidence. You told me it was in confidence yourself.

A. You mean you're going to get up on that witness stand and say you didn't do it?

C. That's exactly what I'm gonna say. I'm gonna tell 'em I was in Vashon all that week. They can't prove I wasn't there, and there was only two people identified me.

A. But that's perjury. You can't get up on the witness stand and swear you didn't do something when you did.

C. With all the trouble I'm in, do you think I'm gonna worry about a lousy perjury beef? Besides, you're the only one who would know. And you're my attorney. Even the judge said I had an absolute right to testify in my own behalf.

The situation set forth above presents one of the most difficult, mixed questions of constitutional law, legal ethics, evidence, privilege, and personal morality faced by criminal defense lawyers. Recent developments in the law of ethics under the new Rules of Professional Conduct[1] and a recent sixth amendment effective assistance of counsel decision of the United States Supreme Court in *Nix v. Whiteside*[2] have substantially changed the way in which criminal defense lawyers are advised to handle such a situation.

The Old Code Of Professional Responsibility Approach

Under the old Code of Professional Responsibility, one suggested[3]—but often criticized[4]—method of coping with the situation described would be (1) advise the defendant that he could not commit perjury and should not; (2) attempt to withdraw if the client refused the advice (but in the course of withdrawing, the lawyer could not inform the Court of the reasons for the withdrawal since this could be a violation of client confidentiality); (3) if withdrawal was not feasible (as it rarely would be in the middle of a trial), the attorney was advised to allow the defendant to take the stand and to testify but to avoid "assisting" the perjury in the following manner:

a. Identifying the defendant for the record and allow the defendant to tell his story to the trier of fact without assistance;

b. Making no effort to rehabilitate the defendant after cross examination attaching the perjurious statements;

c. Refusing to argue in closing argument any of the perjurious portions of the defendant's statements as worthy of credibility.

Many commentators believed that this was an unworkable approach which raised substantial constitutional questions of sixth amendment effective assistance of counsel and which served little purpose other than to compromise the adversarial representation of the defendant without any real gain to the truth function of the trial process.

In *Lowry v. Cardwell*[5] the 9th Circuit held that, in a trial *to the bench*, a defense counsel who followed the advice had, in effect, told the judge that the defense counsel believed the defendant was lying. This resulted in a due process denial of the lack of an impartial tribunal and caused the reversal of the conviction.

Whatever the constitutional or adversarial validity of the above scenario, it is clear that the historical position in Washington under the old Code of Professional Responsibility was an affirmative duty to disclose perjury under DR 7-101 and DR 7-102 whenever it occurred. The Washington Supreme Court rejected a proposed amendment to the old Code of Professional Responsibility

confidentiality provision which would have recognized a statement by a client that he was going to commit perjury in a criminal case as confidential.

The Approach Under The New Rules Of Professional Conduct

When the Washington Supreme Court adopted the new rules of Professional Conduct, the Court adopted a set of rules on disclosure of perjury versus confidentiality which require disclosure of client perjury *only* in the narrow situation set forth. RPC 1.6 (a) and (b) are the sections which set forth the confidentiality standards under the new Rules of Professional Conduct; RPC 3.3 (a) and (b) and (c) set forth the standards for candor toward the tribunal which include the duties to disclose perjury.

Under these rules, a lawyer is mandatorily forbidden from disclosing client confidences under rule 1.6 (a) except to the extent necessary under 1.6 (b) to prevent commission of a future crime. Since rule 3.3 (a) and (c) require disclosure of facts necessary to avoid assisting a criminal or fraudulent act by the client unless the disclosure is prohibited by rule 1.6, a lawyer may not disclose the fact that a client has testified falsely *if* the lawyer did not know in advance that the witness was going to testify falsely. In other words, a lawyer has a duty to disclose the intention of his client to commit perjury, but if the lawyer is unaware that the client intends to commit perjury, and the client then perjures himself at trial, the lawyer is under an obligation *not* to disclose that fact because it is mandatorily confidential under rule 1.6. Other sections of RPC 3.3 require that a lawyer not knowingly make a false statement of fact or law to a tribunal or knowingly offer evidence that the lawyer knows to be false. These duties are not cross-referenced to the confidentiality rule under 1.6, and so these duties continue, regardless.

Under the new Rules of Professional Conduct, a lawyer has an affirmative duty to prevent false testimony from being given and/or from offering such evidence when (s)he knows of it in advance, but may not disclose the fact of falsity if it is covered by client confidentiality when it happens unexpectedly and (s)he does not know in advance it is going to take place.

Under rule 3.3 (e) a lawyer *may* refuse to offer evidence that the lawyer *reasonably believes* is false. Under RPC 3.3 (d) the lawyer must make an effort to convince the client to agree to disclosure of the perjury, and if the client refuses to consent to disclosure the lawyer may seek to withdraw from representing the client under rule 1.15

Constitutional Issues and *Nix v. Whiteside*

The new Rules of Professional Conduct now give rise to certain constitutional dilemmas with respect to the fifth and sixth amendments. To the degree that a lawyer under RPC 3.3

(e) may refuse to offer evidence that the lawyer "reasonably believes is false," this raises a constitutional question under the recent holding of the U.S. Supreme Court in *Nix v. Whiteside*. *Nix*, for the first time, conclusively answers the fifth amendment question of whether a defendant has a corollary right to testify falsely which is constitutionally protected. The *Nix* majority rules that there is no constitutional right to testify falsely for a criminal defendant. The *Nix* majority also conclusively answers the question as to whether or not a lawyer must assist false testimony by saying that, since there is no right to give false testimony under the fifth amendment, there certainly is no sixth amendment right to be assisted in giving false testimony. What *Nix* does *not* resolve are several subsidiary problems of what to do when a lawyer believes that his client is going to testify falsely, *in part, not wholly*. In *Nix* the defendant took the stand and was allowed to testify truthfully with only the false portion of his testimony not being offered because the defense lawyer had convinced him that he would disclose the false portion if the defendant did state it. The only portions of the defendant's testimony which were not heard because of the defense lawyer's advice were the parts stipulated to be false. As the concurring opinions make clear, this does not address the problem where a defense lawyer refuses to put a defendant on stand at all although the defendant could testify truthfully, at least in part. This issue has not been resolved by Washington courts, but the concurring opinion suggests it would be a substantial violation of both the fifth amendment and the sixth amendment.

The opinion does not address to what degree of certainty a lawyer must know that the testimony is false in order to be allowed, without violating the sixth amendment, to prevent the defendant from making the false statements. For example, does the testimony have to be corroborated in order to be found that it is not false? Does the testimony have to be obviously false beyond a reasonable doubt? Or, as RPC 3.3 (e) states, does the lawyer have to simply "reasonably believe" the testimony is false?

Perhaps most importantly, *Nix* does not resolve the constitutional question of whether RPC 3.3 (e), because it allows a reasonable belief by the lawyer to prevent the defendant from testifying (at least to the portion believed by the lawyer to be false), is an invasion of the defendant's rights to assistance of counsel and/or his fifth amendment privilege to testify.

Conclusion

We now know that a defendant has no right to testify falsely under the fifth amendment. We also know that a lawyer owes no obligation under the sixth amendment to assist a defendant to testify falsely. Under the current Rules of Professional Conduct a lawyer cannot disclose (without client consent) the false testimony of a client or the false evidence produced by a client which was produced without the lawyer's knowing in advance that it would be produced or knowing in advance that it is false. This is a substantial change from prior Washington law.

Practical Advice: The line between subornation of perjury (a felony) and ethical misconduct by failing to prevent perjury, on the one hand, and ethical misconduct by improperly breaching client confidentiality without client consent under rule 1.6 or wrongly preventing a defendant from testifying, on the other hand, is a very fine line indeed. Lawyers faced with this dilemma should not attempt to self-lawyer but should seek advice as to the appropriate course of conduct from any of a number of sources:

1. The Washington State Bar Association has an informal advisory opinion service which can be used by calling the Bar Association General Counsel's office at (206) 448-0307, which will give an informal opinion over the phone based on a hypothetical set of facts as to the appropriate course of conduct which an attorney must follow under the Rules of Professional Conduct.

2. Similarly, the Rules of Professional Conduct Committee of the Washington State Bar Association, currently chaired by Associate Dean David Boerner of the University of Puget Sound, will render advisory opinions on questions submitted in writing to the committee through the Washington State Bar offices in Seattle.

3. Professors of legal ethics or teaching in the field of professional responsibility at any of the three law schools in Washington are often willing to provide opinions as well.

4. Members of the Criminal Law Section of the Washington State Bar Association and the Executive Committee of that section are also willing either to provide information as to where an opinion can be located and/or to give such advice.

Once outside advice has been received, making file memoranda of the advice and having it initialed by the client and dated offers an independent factual way of proving that advice was given in an ethically and constitutionally permissible manner should the issue arise at a later time. Seeking opinion letters from outside consultants may also accomplish the same purpose.

Because the problems of client perjury and the role of the attorney in assisting or preventing it compromise such a complicated and difficult question, no single short article can adequately do it justice, and practitioners confronted with this dilemma should not rely upon the abbreviated discussion here as a conclusive statement.□

[1] Promulgated by Washington Supreme Court effective September 1, 1985.

[2] *Nix v. Whiteside* 475 U.S., 89 L.Ed. 2d 123, 106 S.Ct—(1986).

[3] ABA Standards On Criminal Justice Prosecution Function - Defense Function, 7.7, and ABA FOX MR Opinion 150.

[4] The Three Hardest Questions, Monroe Freedman 64 Mich. L.R. 1469.

[5] 575 F2d 727 (9th Circ. 1978).

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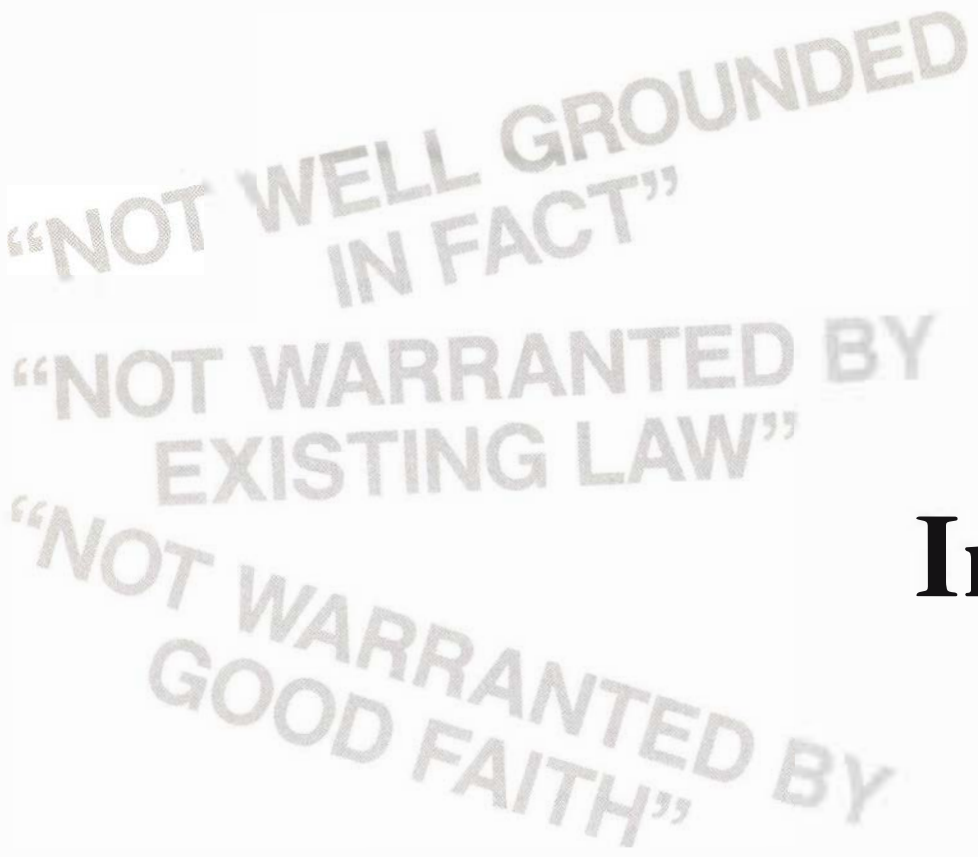

What Incentive Is There?

by **Orly J. Sorrel**

The editor's closing lament in the January *Bar News* provoked me into submitting a lingering lament of my own. She asked, "What incentive is there for lawyers not to abuse the power of the summons and complaint?" We have both a rule and statute aimed at deterring frivolous suits by the assessment of terms and attorney fees, but I have yet to see or hear of a judge in our state court system invoking either.

Under CR 11, the signature of an attorney, required on "every pleading, motion, and legal memorandum," certifies that he or she has read it and that to the "best of his [or her] knowledge, information and belief, formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law. . . ." The rule further states that if a "pleading, motion or legal memorandum is signed in violation of this rule, the court . . . shall [repeat, shall] impose . . ." upon the attorney, party or both "an appropriate sanction," which may include assessment of reasonable expenses and attorney fees incurred by reason thereof.

Like most all our civil rules, this rule devolved from the Federal Civil Rules, but it is interesting to note our rule imposes a much higher and more explicit standard than the corresponding FRCP 11. Moreover, FRCP 11 applies only to "pleadings" and requires a "willful violation" to trigger sanctions, whereas CR 11 applies to "every pleading, motion, and legal memorandum" and a mere "violation" triggers sanctions.

Under RCW 4.84.185, enacted in 1983, no doubt to help stem the flood of frivolous litigation, upon final judgment and written findings that a claim or defense was frivolous and advanced without reasonable cause entered upon "post-trial" motion, the court may assess reasonable expenses, including fees of attorneys. The inefficacy of this statute has been assured by *Fluke Capital & Management v. Richmond,* 106 Wn.2d 614, ____ P.2d ____ (1986), which imposed as the standard for review "a *clear* showing of abuse of discretion," 106 Wn.2d at 625 (emphasis by the court). Much worse, the court added that the statute does not authorize the award when an action is dismissed on summary judgment in a "pre-trial" motion, 106 Wn. 2d at 625 (or, presumably, on a "pre-trial" CR 12 motion for failure to state a claim) even though, we hope, most frivolous claims will be dismissed on such motions.

Surely the court must have known that from 1893 to this day, "trial" has always been expressly defined as ". . . the judicial examination of the issues between parties, whether they are issues of law or fact." *See* Laws of 1893, Ch. 127, Sec. 31, RCW 4.44.010, repealed by Laws of 1984, Ch. 76, Sec. 14, and superseded by CR 38 (____); *Hart Lumber Co. v. Rucker,* 17 Wash. 600, 50 P. 484 (1897) at P. 602; and *In Re Freye's Estate,* 198 Wash. 406, 88 P. 576 (1939), ". . . the . . . hearing on the demurrers, although wholly concerned with an issue of law, was a trial," 198 Wash. at 409. Consequently, one must assume our Supreme Court deliberately chose to emasculate this statute.

A welcome, courageous and giant step in the right direction is *Streater v. White,* 26 Wn.App. 430, 613 P. 2d

187, *review denied*, 94 Wn.2d 1014 (1980), wherein Division One, apparently "on its own initiative," imposed terms and compensatory damages for a frivolous appeal under RAP 18.9; it has not been matched with equally vigorous application of either CR 11 or RCW 4.84.185.

So the answer to the editor's question, then, at least until such time as our courts invigorate CR 11 and RCW 4.84.185, seems to be, as she suggests, "none." And the remedy? We hope not the English-Canadian system routinely awarding fees to the prevailing party. Perhaps something in between, with expenses and fees assessed in favor of the prevailing party absent a showing by the other that the claim or defense was both meritorious and debatable measured by some ascertainable and reasonably objective standard.

Orly J. Sorrel has been a member of the Bar since 1952 and is engaged in private practice in Seattle.

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Do you feel uncomfortable with handicapped people? Is it difficult to relate to them and therefore to defend them? For information on video tapes produced by the Pacific Institute and available to help solve these problems, contact Charlotte Means-Jones at (206) 322-8670.

Cruel and Unusual Punishment

by **Hon. Evan E. Sperline**

Having just sat, essentially motionless and without perceptible function, through yet another "L & I" jury trial, I have rediscovered that old resolve, so widely shared by my contemporaries, that "there's *gotta* be a better way." Rather than allowing the zeal of my present penchant for reform to dissipate in the parade of more taxing matters to come, as it always has in the past, I have decided to set down a few of those "better ways."

Each is offered as a striking improvement to the present system, more manageable by juries, more probative of the truth, more conservative of the people's resources, and more humane to judges. I make no recommendation among these options, all being enlightened advances by comparison to the status quo, hoping only that the Legislature will choose one of these before I am again called upon to bear the unbearable.

Trial by Wild Dog

In this system, perhaps most adaptable in urban venues, the jury observes through one-way glass while a wild dog is loosed upon trial counsel. Reaction of the lawyers when confronted by the beast, as noted by jurors, is the basis for their decision. Dismissal with prejudice would be granted *sua sponte* upon any attempt by plaintiff's counsel to present a business card to the wild dog. Defense counsel is subject to directed verdict only for romantic intimacies with the hound.

Trial by the Pound

Simplicity of administration and streamlined *voir dire* are the hallmarks here. After the jury is empanelled, it is weighed. The parties' proposed jury instructions are then weighed. The party whose instructions most nearly approach the jury's aggregate weight wins, unless each set of instructions exceeds the jury's weight, in which case, see Trial By Wild Dog.

Trial by Graduated Polysyllaballistics

This trial method, above all else, is entertaining, being similar in format to the old prime-time favorite, "Name That Tune." From the Board transcript, each lawyer selects words which are nowhere defined or explained and which, the lawyers "gamble," will be actually comprehended by no more than two jurors. The qualifying word with the fewest syllables wins, or "Stumps the Jury."

Plaintiff's counsel begins the bidding, using a term from medicine or science, or, if neither is involved, from psychology, containing at least twelve syllables. "I can stump that jury in twelve syllables," declares counsel. The opponent follows with a similar bid and the attorneys proceed in turn until one, certain that three jurors will actually understand the word, challenges, "Stump That Jury!" Obviously, this trial system lends itself to play in rounds, such as best-two-out-of-three. More energetic judges can even offer to obviate appeals by use of a "Lightning Round."

Trial by Fred

Suggested by the recent stroke of enlightenment which brought us the selection process for members of the new State Salary Commission, this unique approach employs all the thrills of the lottery. Simply stated, the names of all county residents who can read are placed in a drum.

One name is drawn and the lucky person is required to read the transcript. If the reader actually requires inpatient pyschiatric attention during the reading, the plaintiff wins. On the other hand, if a semblance of sanity can be maintained by the administration of medications until the transcript is completed, the defendant prevails.

I hope that readers support these proposals with their lobbying efforts. Communications in support are suggested to the Judiciary Committees of the legislative chambers. Legislators should respond favorably to the savings of time and money which would follow adoption of any of these trial methods, so that judges will have more resources to devote to the flood of civil harassment cases expected to follow the present session.

With 38 months on the Grant County Superior Court, Evan E. Sperline is an embattled veteran of some ten Labor and Industries trials.

Appealability: A Matter of Substance, Not Form RAP 2.2(a)(3)

by Karen G. Seinfeld
Court Commissioner
Division II

May a superior court decision which has the effect of determining your case or immediately jeopardizing your client's rights, but which is not a final judgment, be appealed? At common law the answer was no. Rule of Appellate Procedure (RAP) 2.2(a)(3) permits a positive response—in some instances. However, an incorrect conclusion as to the appealability of a decision will likely cause you and your clients additional expense and delay.

The purpose of this article is to assist those who only occasionally cross the appellate threshold in (1) evaluating whether such a trial court decision is appealable, and (2) deciding on the proper procedural steps when faced with a questionable decision.

The RAP provide for two methods of seeking review of trial court decisions: (1) an appeal as a matter of right, RAP 2.1(a)(1), and (2) discretionary review by permission of the reviewing court, RAP 2.1(a)(2). RAP 2.2 controls whether a decision is appealable. The common law rule that appeals could be taken only from a final judgment was based on the principle of avoiding piecemeal litigation and enhancing judicial economy. *Windt v. Banniza,* 2 Wash. 147 (1891). A final judgment was one which disposed of all of the issues as to all of the parties. However, RAP 2.2(a)(3)-(13) carve exceptions to the strict finality rule by identifying additional decisions which have a sufficiently fundamental impact on the parties to warrant immediate review. In particular, RAP 2.2(a)(3) acknowledges that a decision final *in effect,* if not in form, also merits review. It allows an appeal from:

> (3) *Decision Determining Action* Any written decision affecting a substantial right in a civil case which in effect determines the action and prevents a final judgment or discontinues the action.

"Written decision" precludes oral rulings but encompasses written rulings, orders, and judgments. RAP 2.1(a). An affected "substantial right" in a civil case could range from financial impacts to denial of constitutional rights. The courts generally adhere to a literal interpretation of the phrase "which *in effect*" rather than relying on the title or form of the trial court decision at issue. The final requirement—that the decision "determine the action . . ." has received various interpretations which will be discussed below.

Decisions on appealability turn on the facts. While cases are often difficult to reconcile, three general bases can be identified: (1) the order does (or does not) terminate the action (underlying claim); (2) the order permits dissipation of the subject matter of the action; and (3) there is prior case law which states that the particular generic type of order at issue is (or is not) appealable.

1. *Terminates Action.* The first approach, derived from the phrase in RAP 2.2(a)(3) ("discontinues the action") produces unpredictable results because the appellate courts sometimes consider whether the instant lawsuit is discontinued and at other times consider whether the claim itself is permanently extinguished.

For example, the Supreme Court recently found the dismissal of a counterclaim without prejudice not to be an appealable order because the statute of limitations had not run. *Munden v. Hazelrig,* 105 Wn.2d 39 (1985). Since *Munden* provides the most thorough discussion of RAP 2.2(a)(3), it is persuasive authority for the interpretation of "action" as referring to the underlying claim.

On the other hand, in *Lewis County Savings and Loan Association v. Black,* 60 Wn.2d 362 (1962) (not cited in *Munden*), interpreting the substantially identical former CAROA 14, the Supreme Court decided that a pretrial order dismissing a counterclaim without prejudice was appealable although it did not terminate the claim. After noting that normally a pretrial order is not appealable, the Supreme Court decided that this order of dismissal was a final order because it did terminate the case. The trial court had previously granted summary judgment to plaintiff, leaving only the counterclaim.

2. *Prevents "Meaningful" Judgment.* Elsewhere, the Supreme Court found an interlocutory order granting a surviving widow a family allowance to be appealable. *In re Schwarzwalter's Estate,* 47 Wn.2d 119 (1955) (again applying the former rule, CAROA 14). Rather than focus on whether the order terminated the action, it looked to the practical impact of delay on the estate—probable depletion. The court seems to require that the word "meaningful" be inserted before "final judgment."

3. *Label Determinative.* Difficulties arise where the litigation at issue involves distinct and determinative stages such as arbitration following a determination of insurance coverage. An order compelling arbitration was determined not to be appealable in *Teufel Construction v. American Arbitration,* 3 Wn. App. 24, (1970). Appellants argued that the order was final and that they would be precluded by statute from later challenging this decision. However, the court disagreed. It relied on an earlier Supreme Court decision which held

that an order compelling arbitration is not final and therefore not appealable. This exemplifies the third approach followed by the courts—focus on the prior decisional law as to whether that type of order is appealable.

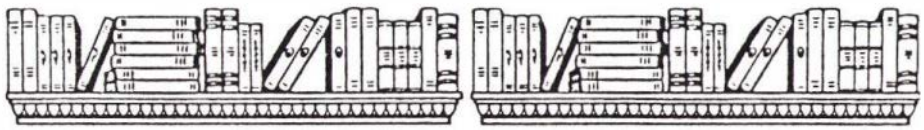
Even this straightforward rule can be circumvented. In *Brummet v. Grange Insurance Association*, 4 Wn. App. 114 (1971), Division III distinguished *Teufel* based on the title of the order at issue. In *Brummet*, the insurer countered plaintiff's request for an order compelling arbitration with a motion for declaratory judgment of no coverage. The trial court declared coverage existed and ordered arbitration. Since a declaratory judgment pursuant to statute has the effect of a final judgment, the court held it to be appealable.

In *Lewis County, see* (1) above, the Supreme Court refused to rely on labels. Although it noted that pretrial orders are not appealable, it went a step further and found the order appealable due to its effect of finality.

In summary, there is not consistent authority as to whether the trial court decision must merely discontinue the action at hand or whether it must prevent any action regarding the claim. Further, if denial of an immediate appeal might cause practical, irrevocable prejudice to party, the appellate court may not literally interpret the requirement that the challenged decision discontinue the action. Thus, the applicability of RAP 2.2(a)(3) can be determined only on a case-by-case basis and will generally depend on an order's effect rather than its title.

Finally, there are several possible approaches if you are uncertain whether your order is appealable. First, you may treat it as appealable and file a Notice of Appeal. If neither respondent nor the court challenges you, the appeal will proceed. However, you risk a later challenge. The court may decline to decide your case on the merits and instead affirm on the basis that the order is not appealable. Those who prefer more certainty can file an alternative Notice of Appeal/Notice of Discretionary Review and immediately note it for the Commissioner's motion calendar to determine appealability, or in the alternative, to grant discretionary review. If you mislabel your initial notice you will not be penalized. RAP 5.1(c). Of course, the risk in this procedure is that you may lose both motions and be out of the appellate court. However, this will occur before you have expended substantial resources or provided a full transcript and briefs.

On the other hand, if you are a respondent defending what you believe to be a non-appealable order, immediately move for dismissal on the ground of non-appealability. An argument merely placed in a brief may not be discovered until shortly before argument. Furthermore, in a close case, the court may be slightly less inclined to dismiss a case at the final stages of the appellate process than it would have been at the initial stages. Of course, be prepared to argue why discretionary review should not be accepted if you prevail on your theory that the decision was not appealable as of right.



". . . a piece of chalk and a blackboard"

A New Kind of Drug Test

A Port Angeles attorney (and new MENTOR partner) uses his undergraduate degree in pharmacy to demonstrate to high school students the scope of their own information/misinformation about controlled substances.

Craig Ritchie of Doherty, Doherty & Ritchie has worked with students long enough to conclude that "students are not particularly receptive to adults telling them what the facts are . . . not only because there is a teenage distrust of adults, but because often adults do not know as much about the subject [drugs] as teenagers do."

Ritchie writes:

One [drug] "test," the results of which will probably surprise you, only requires a piece of chalk and a blackboard.

I usually begin this test by walking up to the blackboard and drawing a long line nearly the entire length of the blackboard. At the left end is a cross mark and at the right end is a cross mark. Above the left cross mark I write 'water' and above the right cross mark I write some highly toxic chemical such as cyanide. I then ask the students to tell me where to place various controlled substances such as heroin, amphetamine, LSD, barbiturates, alcohol, marijuana, cigarettes, and cocaine. The criterion is 'dangerousness to health.' I do not interfere with the class's choices. There is usually a dispute over the relative locations of alcohol and marijuana. I strongly suggest that if you attempt this test, you *accept* the results of the test and *not* attempt to correct the students' faulty knowledge. You may find if you review the test results with a knowledgeable pharmacist that the students are vastly more accurate than you would have been using the same test with the same criterion.

Whether you proceed into a discussion of the legal aspects of drug possession and delivery or into a discussion of privacy rights involved with drug testing, the above method certainly is a way to get the attention of the students and to involve the students with the topic.

You might take the time to draw the line yourself, place the various drugs and then consult with an expert. You may be surprised.

Advising Washington Businesses; Creditor-Debtor Section Mid Year Features Dean David Epstein; Corporation, Business & Banking Mid Year

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

The second annual series of *Advising Washington Businesses* will be presented at three sites during the month of May. On May 6 the program will be presented in Yakima at the Yakima Convention Center; on May 13 the program will travel to Everett and the Everett Holiday Inn; on May 20 the program will be presented in the Southcenter area of Seattle at the Doubletree Plaza Hotel. Returning as program chairperson for the second year in a row is **Allen D. Israel** (Foster, Pepper & Riviera, Seattle). **Jonathan A. Eddy** (Bogle & Gates, Seattle) will address "Uses of Letters of Credit in the General Practice of Law." **G. Richard Hill** (Foster, Pepper & Riviera, Seattle) will comment upon "Business Liability Under Hazardous Waste Laws." **Edward A. Alkire** (Touche Ross International, Bellevue) will comment upon "Washington State Business Taxes." In the afternoon, **Larry V. Wagner** (Parker & Feek, Inc., Seattle) will provide some tips on "Business Insurance Considerations." **Pamela S. Cowan** (Cowan & Haley, Seattle) will focus on "Immigration Law for Employers." And **Harry H. Schneider, Jr.** (Perkins Coie, Seattle) will provide remarks on "Directors' and Officers' Liability" and regarding "Indemnity Insurance."

For further information regarding this program, please contact Colette Robertson, Washington State Bar Association, 500 Westin Bldg., 2001 Sixth Ave., Seattle, WA 98121-2599 or telephone (206) 448-0433.

The *Creditor-Debtor Section Mid Year* will be presented on May 15 and 16 in Yakima at the Yakima Convention Center. This year's Mid Year features Emory University School of Law Dean **David Epstein** as one of the special guest speakers for the 1987 program. Dean Epstein will address "Legislative and Judicial Developments in Bankruptcy" on Saturday, May 16. Other esteemed speakers on the faculty include **Philip L. Kunkel** (Hall, Byers, Hanson, Steil & Weinberger, St. Cloud, Minnesota) and **Lynn Hayes** (Farmers' Legal Action Group, Inc., St. Paul, Minnesota). Program chairpersons for this year's Mid Year are **Malcolm C. Lindquist** (McGavick, Graves, Beale & McNerthney, Tacoma) and **A. Stevens Quigley** (Attorney at Law, Seattle).

For further information about this program, please contact Debbie Kirchhauser, Washington State Bar Association, 500 Westin Bldg., 2001 Sixth Ave., Seattle, WA 98121-2599 or telephone (206) 448-0433.

The *Corporation, Business and Banking Section Mid Year* will be held on May 29-31 in Wenatchee at the Wenatchee Convention Center. This year's program chairperson is **Daniel B. Ritter** (Davis Wright & Jones, Seattle). The featured luncheon speaker on Saturday, May 30, is **Glenn Pascall** (Columbia Group, Seattle) who will provide remarks entitled "Washington State Taxes: Legislative Wrap-Up and Look-Ahead to '88." Other faculty members include: **Lynn J. Loacker** (Foster, Pepper & Riviera, Seattle); **Holly K. Towle** (Preston, Thorgrimson, Ellis & Holman, Seattle); **Andrew H. Zucotti** (Jones, Grey & Bayley, P.S., Seattle); **Robin Callan** (Price Waterhouse, Seattle); Professor **Roland L. Hjorth** (University of Washington Law School, Seattle); **C. James Judson** (Davis Wright & Jones, Seattle); **Philip J. Carstens, Jr.** (Lukins & Annis, P.S., Spokane); **Donald K. Querna** (Randall & Danskin, P.S., Spokane); **Michael L. Bayless** (Deloitte, Haskins & Sells, Bellevue); **Robert D. Kaplan** (Bogle & Gates, Seattle); **Richard L. Mull** (Perkins Coie, Seattle); **Dennis R. Williams** (Brett & Daugert, Bellingham); **Alfred M. Falk** (Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, Tacoma); **Paul P. Senio** (Security Properties, Seattle); **Charles J. Katz, Jr.** (Perkins Coie, Seattle); **Evelyn Sroufe** (Perkins Coie, Seattle); **Patrick F. Kennedy** (Foster, Pepper & Riviera, Seattle); **James H. Bush** (Kane, Vandeberg, Hartinger & Walker, Tacoma); **Professor Sheldon S. Frankel** (University of Puget Sound Law School, Tacoma); **Richard A. Hopp** (Jones, Grey & Bayley, P.S., Seattle); Stanley A. Carlson (Seattle-First National Bank, Seattle); **Andrew A.** Guy (Bogle & Gates, Seattle); **Frank L. Kurtz** (Schwab, Kurtz & Hurley, Yakima); **LaVerne L.** Dotson (Touche Ross & Co., Seattle); and **Terence V. O'Keefe** (Deloitte, Haskins & Sells, Seattle).

Please be advised that the Board of Governors of the Washington State Bar Association has approved a resolution by the CLE Committee *prohibiting smoking* at all WSBA sponsored CLE seminars. We thank you ahead of time for your cooperation with regard to this new policy.

APPROVED COURSES
Washington State Bar Association

Washington Real Property
1.50 credits

Apr. 1	Yakima (Towne Plaza)
Apr. 8	Tacoma (Sheraton Hotel)
Apr. 15	Spokane (Cavanaugh's Inn at the Park)
Apr. 22	Bellingham (Holiday Inn)
Apr. 29	Seattle (Stouffer Madison)
May 6	Seattle (Stouffer Madison)

Washington's Proposed Model Procurement Code
6.50 credits

Apr. 3	Seattle (Westin Hotel)
Apr. 10	Spokane (Cavanaugh's Inn at the Park)

Immigration Law
6.00 credits

Apr. 9	Seattle (Sheraton Hotel)

Trial Practice Section Mid Year
9.00 credits

Apr. 24-25	Vancouver, B.C. (Hotel Meridien)

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

International Law

Who: Washington, D.C. lawyers **Davis Robinson** (U.S. advocate in Intl. Court of Justice) and **Judith Appelbaum** (Nicaragua advocate in Intl. Court of Justice) will talk on the International Court and resolution of armed conflict. U.S. law professor **Joan Fitzpatrick** will talk on enforcing international rights in U.S. courts. Luncheon speaker **Whitney Harris** of St. Louis will reflect on the Nuremberg trials, where he served on the staff of Justice **Robert H. Jackson**, chief counsel.

What: The ICJ, Resolution of Armed Conflict: Nicaragua vs. the U.S.A.
Where: Plymouth Congregational Church, Seattle
When: May 29, 1987, 8 a.m. - 1:30 p.m.
Sponsor: WSBA World Peace Through Law Section
Cost: $55. 3.75 CLE credits.
Contact: Colette Robertson, WSBA, (206) 448-0443.

COPYRIGHT BASICS (WVLA)

TIME: Friday, April 24, 1987 1:30-4:45 p.m.
PLACE: Pacific Northwest Bell Auditorium 1600 7th Avenue Seattle, Washington
SUBJECT: Copyright; protecting your Art.

Copyright Basics has been designed to give artists of all persuations information on copyrght and concrete knowledge of how to protect their individual creative art. The seminar will explore what works are in need of protection, how to file a copyright and protect the work, how rights may be lost, and what the artist can do if an infringement does occur.

FEE: $20 for Artists
$45 for Attorneys (3 CLE credits approved)
Advance Registration Required.

Those encouraged to attend include visual artists, performers, graphic artists, musicians, writers and attorneys wishing to learn about Copyright Law. For more information, call (206) 223-0502.

SKCBA

Seattle King County Bar Association Family Law Section presents a seminar on May 8, 1987 from 9:00 a.m. to 4:30 p.m. at the First United Methodist Church in downtown Seattle. The seminar is entitled "The Lasting Decree." Topics include: special problems in calculating child support, Qualified Domestic Relations Orders, protection from bankruptcy, and problems of "shared parenting" provisions. Cost is $95 with lunch included. 6.0 CLE credits are expected.

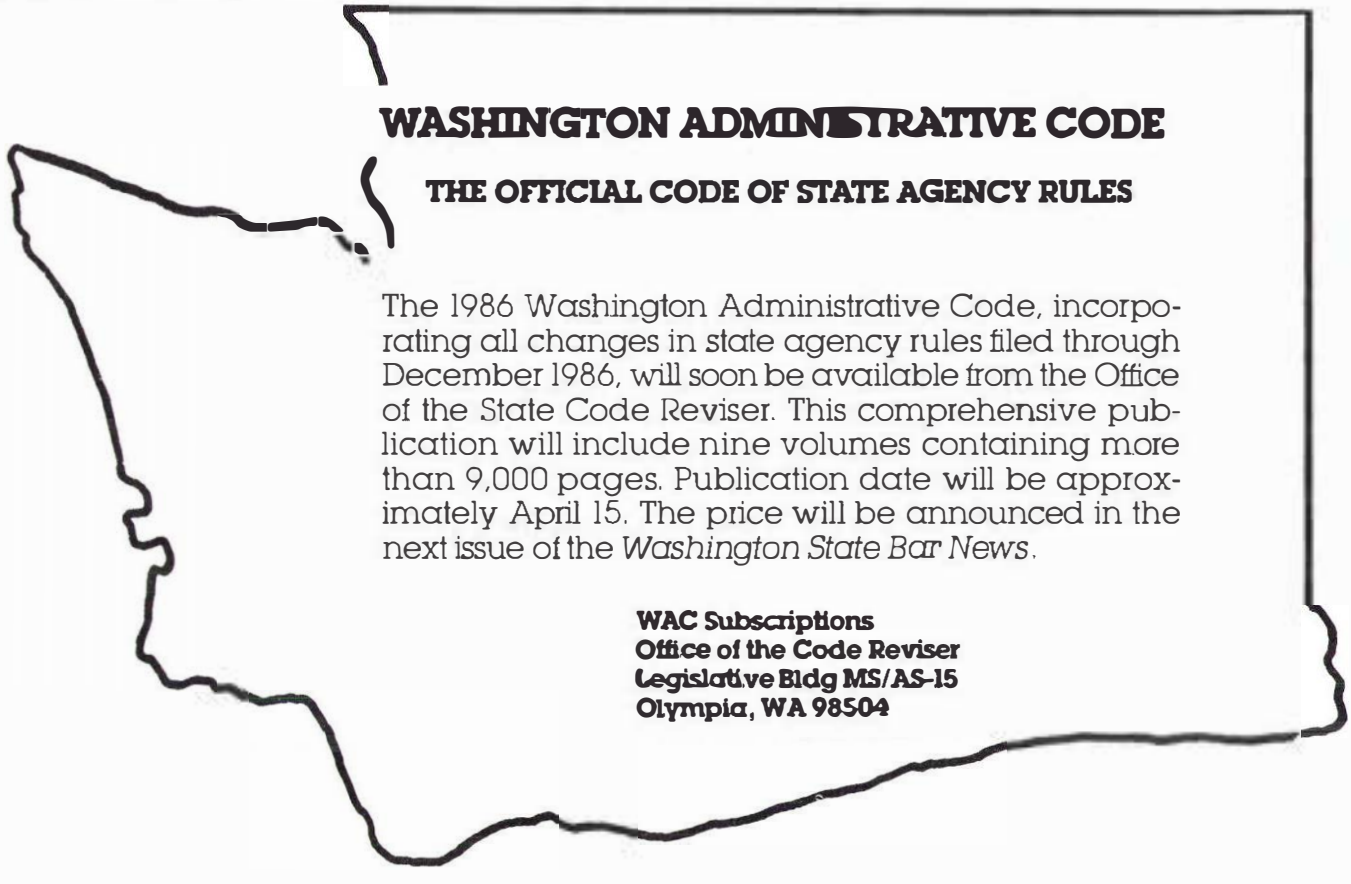
Spring Quarter Short Course

The Edmonds Community College Legal Assistant Program is presenting a special short course entitled: "Medical Malpractice—Mastering the Medical Records Maze." The course, to be taught by a legal assistant who is also an RN, will be offered on three Saturdays (April 25, May 2 and 9) from 9 am to 3 pm in Meadowdale Hall, room 212. Cost is $50.00. For additional information call (206) 771-1517.

This course is appropriate for attorneys, paralegals and legal assistant students.

Did You Know...?

A limited number of manuals remain from the fall 1986 major CLE program on administrative law. They provide an overview of administrative law and a discussion of the Washington state statutes and cases that are important in its practice. In addition, they contain how-to-do-it discussions on the hearing process, exceptions to orders, judicial review and the specific laws and procedures of a number of major agencies. The manuals, prepared for the joint Administrative Law Section/ Gonzaga Law School CLE program, are available from Gonzaga University School of Law, Attn: Prof. John Maurice, Spokane, WA 99220-3528. The cost, including handling and delivery, is $50.



WASHINGTON ADMINISTRATIVE CODE

THE OFFICIAL CODE OF STATE AGENCY RULES

The 1986 Washington Administrative Code, incorporating all changes in state agency rules filed through December 1986, will soon be available from the Office of the State Code Reviser. This comprehensive publication will include nine volumes containing more than 9,000 pages. Publication date will be approximately April 15. The price will be announced in the next issue of the *Washington State Bar News*.

WAC Subscriptions
Office of the Code Reviser
Legislative Bldg MS/AS-15
Olympia, WA 98504

Notes From the Academy

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

Administrative Law. *(Case 1.)* (a) Assistant attorney general, appointed as counsel for the environment pursuant to RCW 80.50.080, need only exercise proper discretion in representing public interest and is not required to exercise standard of care expected of a private attorney. (b) Private attorney general theory for recovery of attorney's fee is not applicable in Washington; ***Miotke v. City of Spokane***, 101 Wn.2d 307, 678 P.2d 803 (1984), rejected by majority. ***Blue Sky Advocates v. State***, 107 Wn.2d 112, 727 P.2d 644 (10/30/86).

(Case 2.) Public records disclosure law, RCW 42.17.250, *et seq.*, does not apply to court records. Under common law access requirement, court found unacceptable a one-day turnaround rule for access to court records and certain copying charges. ***Nast v. Michaels***, 107 Wn.2d 300 (12/4/86).

(Case 3.) In reviewing constitutional challenge to forfeiture hearing procedure of Uniform Controlled Substances Act, court rejected due process and appearance of fairness claims to combination of functions in chief law enforcement official of seizing agency. ***Smith v. Mount***, 45 Wn. App. 623, 726 P.2d 474 (7/30/86).

(Case 4.) RCW 43.21B.120, which *sub silentio* repealed prior statute granting hearing before termination of water rights and which also prohibited Department of Ecology's holding of hearings, denied permit holder due process. ***Sheep Mountain Cattle Co. v. Department of Ecology***, 45 Wn. App. 427, 726 P.2d 55 (9/23/86).

(Case 5.) Police officer, discharged without predetermination hearing, was denied due process. However, reinstatement is proper remedy only if such hearing would have, within reasonable probability, prevented discharge. ***Nickerson v. City of Anacortes***, 45 Wn. App. 432, 725 P.2d 1027 (9/29/86).

(Case 6.) Failure of city to follow its own procedures for discharge of police officer was not constitutional error, absent evidence of violation of minimal constitutional requirements or of arbitrary and capricious decision. Internal investigatory procedures conducted in case gave adequate pretermination procedural due process to officer, in that he was informed of charges and of evidence supporting them, as well as being given opportunity to explain his side of the story. ***Danielson v. City of Seattle***, 45 Wn. App. 235, 724 P.2d 371 (7/7/86).

—J. M. Vaché

Creditor-Debtor Law. Amendment of RCW 6.12.100, subjecting homesteads to debts for child support and spousal maintenance, does not apply to homestead perfected before effective date of amendment. ***In re Marriage of Lewis***, 45 Wn. App. 1, 723 P.2d 545 (8/18/86).

—M. D. Rombauer

Evidence. In prosecution for indecent liberties, 6-year-old victim should have been allowed to testify, and defendant's inability to cross-examine victim violated defendant's right to confrontation. Court held that trial court abused its discretion by finding child incompetent on basis of her lack of memory at time of trial and on basis of inconsistencies in her accusations, particularly when child had already given detailed testimony at pretrial hearing. Appellate court said trial court's finding seemed to be based upon doubts about child's credibility, but that credibility was for jury, not for judge. ***State v. Griffith***, 45 Wn. App. 728, 727 P.2d 247 (10/21/86).

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

Planning and Zoning. *(Case 1.)* Construction of Washington State Trade and Convention Center over Interstate 5 in Seattle challenged on

several grounds arising out of fact that city council exempted project from city's housing replacement requirements. Supreme Court upholds city council's action and affirms summary judgment dismissing complaint. ***Convention Center Coalition v. City of Seattle***, 107 Wn.2d 370, 730 P.2d 636 (12/11/86).

(Case 2.) County's denial of residential subdivision plat application for land located in residential zone was not "reasonable" or "rationally related to a legitimate purpose of government" (*i.e.*, denied substantive due process). County's motive was to force applicant to use land for agriculture, but zoning did not, at date plat application was filed, permit agricultural use; thus, owner was denied all practical use of land. ***Nagatani Brothers v. Skagit County Board of Comm'rs***, 46 Wn. App. 106, 728 P.2d 1104 (12/8/86).

—W. B. Stoebuck

Real Property. *(Case 1.)* RCW 84.64.460 provides that title purchased at tax sale is subject to existing "easements." *Held*, restrictive covenant is "easement" for purposes of that statute. Court refers to it as "negative easement." ***City of Olympia v. Palzer***, 107 Wn.2d 225, 728 P.2d 135 (11/13/86), *affirming* 42 Wn. App. 751, 713 P.2d 1125 (1986).

(Case 2.) Held: (a) When earnest money agreement calls for buyer to pay money and for seller to deliver title at closing, without specifying who had to perform first, duties were concurrent; neither one's performance was condition precedent to other's duty to perform. (b) When duties were concurrent and neither party tendered performance at closing, rescission by court was proper remedy. (c) In fashioning equitable remedy of rescission, court properly placed parties in their original positions, by requiring buyer to refund seller's down payment with interest and declaring all duties terminated. ***Willener v. Sweeting***, 107 Wn.2d 388, 730 P.2d 45 (11/11/86).

(Case 3.) Clause in commercial lease that allowed landlord to declare lease forfeited if tenant abandoned and thereafter to collect rent "for the balance of the term" was enforceable. When tenant abandoned and landlord re-entered "for his own account" (*i.e.*, forfeited lease), landlord was entitled to tenant's full rental payments, but only up to time landlord relet premises. ***Hargis v. Mel-Mad Corp.***, 46 Wn. App. 146, 730 P.2d 76 (12/9/86).

(Case4.) In 1908 plaintiff's predecessor conveyed land to city for street near lake shore. Deed contained covenant by city to allow predecessor, its successors and assigns, to build boathouse on nearby land and further contained forfeiture clause allowing grantor to enter and retake land conveyed for street if city breached covenant. In 1983 city refused plaintiff's demand to permit boathouse. *Held*, city's breach of covenant was eminent domain "taking," for which city owed plaintiff compensation. Court fails to dispose of issue, raised by plaintiff, of whether plaintiff might exercise right of entry. (*Note.* Case is replete with latent issues, such as whether predecessor's right of entry, generally classified as a form of reversionary estate, was transferable.—W.B.S.) ***Martin v. City of Seattle***, 46 Wn. App. 1, 728 P.2d 1091 (11/24/86).

—W. B. Stoebuck

Real Property Security. Pursuant to RCW 61.12.060, mortgagor is not entitled to have court set upset price in every foreclosure proceeding but only when court, in exercise of its discretion, finds that circumstances exist so that there will be no true competitive bidding. *Held:* (a) Court properly exercised its discretion to establish upset price when evidence showed that economic conditions, together with unique nature of property, indicated there would be no true competitive bidding. (b) Amount of upset price set by court was supported by evidence. (c) As alternative ground of decision, when mortgagee withdrew funds that mortgagee had

deposited in registry of court, amounting to the difference between upset price and mortgagee's judgment (*i.e.*, amount of deficiency if upset price represented value of land), mortgagee's appeal from setting of upset price was barred; mortgagee was thereby forced to accept court's upset price. ***American Fed. Sav. & Loan Ass'n v. McCaffrey***, 107 Wn.2d 181, 728 P.2d 155 (11/13/86).

—W. B. Stoebuck

Torts. *(Case 1.)* Limitation of ski-area operator's common law duty to skiers, provided for in RCW 70.117.020(7) when skier is "on other than improved trails or slopes within the area," has been defined to apply only to those portions of ski area that are neither "improved trails" nor "slopes." Thus, ski operator owes duty to discover and warn about dangers within the area, even on unimproved slopes. ***Codd v. Stevens Pass, Inc.***, 45 Wn. App. 393, 725 P.2d 1008 (9/22/86).

(Case 2.) Statutory definition of design defect in RCW 7.72.030 does not require plaintiff to prove availability of alternative safer design, although whether such design exists is relevant factor that may be considered by jury. ***Couch v. Mine Safety Appliances***, 107 Wn.2d 232, 728 P.2d 585 (11/20/86).

(Case 3.) "Product-line" exception to successor-corporation nonliability requires that successor continue producing same product line under similar name, not merely that successor continue to produce same general sort of products (*e.g.*, pharmaceuticals). Several clarifications of theory of market-share liability were provided, including that corporations not amenable to judgment and whose actual market share cannot be determined could not be impleaded to reduce liability of other manufacturers. ***George v. Parke-Davis***, 107 Wn.2d 584 (1/22/87).

(Case 4.) Products liability statute of repose, RCW 7.72.060, applies to claims against sellers or manufacturers of products incorporated into an improvement to real property, rather than RCW 4.16.310, which bars claims arising out of improvements to real property accruing over six years after substantial completion of project. ***Morse v. City of Toppenish***, 46 Wn. App. 60, 729 P.2d 638 (12/2/86).

—J. T. Richardson

STATE LAW LIBRARY
Recent Acquisitions

Listed are some new titles recently acquired by the State Law Library and available for loan by calling (206) 753-6525, or mailing your request to: Washington State Law Library, Temple of Justice, AV-02, Olympia, Washington 98504-0502. A bi-monthly *Selected Recent Acquisitions* list, generally containing 150-250 new titles, is also available. Copies may be obtained by sending your request to the Washington State Law Library.

AGRICULTURAL LAW

Harl, Neil E. *Agricultural law manual.* New York, NY: Matthew Bender, 1985- . 1 vol. (loose-leaf)

ATTORNEYS

Spangler, Eve. *Lawyers for hire: salaried professionals at work.* New Haven: Yale University Press, 1986. Pp. 248.

DAMAGES

Damages: how to prove & maximize them. WSTLA Legal Education Seminars. Seattle, WA: Washington State Trial Lawyers Association, 1986. V.p.

JUDICIAL REVIEW

Hall, Kermit L. *The Supreme Court and judicial review in American history.* Bicentennial Essays on the Constitution. Washington, D.C.: American Historical Association, 1985. Pp. 67.

LEGAL COMPOSITION

Katz, Lucy V. *Winning words: a guide to persuasive writing for lawyers.* New York: Law & Business, Inc., 1986. Pp. 226.

NEGOTIATION

Craver, Charles B. *Effective legal negotiation and settlement.* Charlottesville, VA: The Michie Company, 1986. Pp. 210.

REAL PROPERTY

Washington real property deskbook. 2d ed. Seattle, WA: Continuing Legal Education Committee, Washington State Bar Association, 1986. 3 vol. (loose-leaf)

TRIAL PRACTICE

Demonstration of a trial: profile of an auto accident case. WSTLA Legal Education Seminars. Seattle, WA: Washington State Trial Lawyers Association, 1986. V.p.

IOLTA GRANT$ 1987 AWARD$

$2,191,826 in interest earned on lawyers' trust accounts (IOLTA) in 1986 was awarded to 32 grantees by the Board of Trustees of the Legal Foundation of Washington at its November 20, 1986 meeting. The awarded funds are a $1 million increase over the amount granted in 1985 for 1986.

Grant awards were made in the following categories:

Free Civil Legal Services For The Poor
(80% of the total grant funds)

Organization	Purpose	Award
Evergreen Legal Services *Statewide*	Continue provision of free civil legal services to low income persons throughout the state, and to provide additional attorney representation in King, Yakima, Whatcom and Chelan counties.	$1,113,420
Fremont Public Association *Seattle*	Continue representation of low income persons in public entitlement hearings, publish a Welfare Rights newsletter, and provide six workshops on public entitlements.	$ 32,500
Law Students Civil Rights Research Council *Statewide*	Place six law students as summer legal interns with organizations that provide free civil legal assistance to poor people.	$ 10,200
Legal Action Center *Seattle*	Provide landlord/tenant advice and representation with increased attorney representation to outreach sites in Seattle and King County.	$ 30,000
Immigration Project of NW Chicano Radio Network *Granger*	Establish a program to provide free legal counsel and education on immigration issues to low income farm workers in Washington's Central Valley.	$ 35,000
Puget Sound Legal Assistance Foundation *Tacoma*	Continue provision of free legal services to low income residents of Pierce, Thurston and Mason Counties at current levels of service.	$ 249,480
Skokomish Indian Tribe *Skokomish Indian Reservation and Mason County*	Continue free legal representation of low income tribal members on the reservation and in surrounding Mason County.	$ 10,000
Spokane Legal Services *Spokane*	Continue free legal service to low income persons in Lincoln, Ferry, Stevens, and Pend Oreille counties, with additional outreach to Ferry and Stevens counties.	$ 177,100
Unemployment Law Project *Seattle*	Continue representation at unemployment hearings for claimants in Western Washington.	$ 50,000
WA State Special Education Coalition, Education Law Project *Statewide*	Continue legal education, advice and representation for low income children throughout the state who are significantly learning, behaviorally or emotionally handicapped and whose rights to receive special educational programming have been violated.	$ 50,000

Pro Bono Representation Of The Poor
(11% of the total grant funds)

Organization	Purpose	Award
Benton-Franklin County Bar Association *Kennewick*	Continue coordination of the Benton-Franklin County Bar Association's program providing free representation to low income individuals by volunteer members of the Bar Association.	$ 19,250
Joint Legal Task Force on Central American Refugees *Statewide*	Continue coordination of 150 pro bono attorneys who represent indigent Central Americans facing deportation. Provide workshops and direct service.	$ 52,000
Skagit County Legal Aid Program *Mount Vernon*	Fund a new program developed by the Skagit County Bar Association in concert with the Skagit County Community Action Agency to coordinate the provision of free civil legal services to the poor by volunteer members of the Bar Association.	$ 10,000
Seattle-King County Bar Association, Volunteer Legal Services Section *Seattle*	$15,000 to cover operating expenses for the pro bono Volunteer Legal Services program. $25,000 to establish a new Family Law Clinic to provide increased legal advice and consultation to low income people with family law problems.	$ 40,000

Seattle-King County Bar Association, Young Lawyers Section *Seattle*	Provide continued operation of the Neighborhood Legal Clinic program. In the nine clinics located throughout Seattle and King County, residents receive a free half hour consultation with an attorney.	$ 10,000
Snohomish County Legal Services *Everett*	Expand the pro bono program organized by the Snohomish County Bar Association. Add a Self-Help + program to assist low income people in obtaining an uncontested dissolution or custody.	$ 35,000
Spokane County Bar Association Pro Bono Program *Spokane*	Continue the coordination of free civil legal assistance by volunteer members of the Bar Association to low income residents of Spokane County.	$ 27,500
Whatcom County Bar Association Pro Bono Program *Bellingham*	The Whatcom County Bar Association in partnership with the Whatcom County Opportunity Council and Evergreen Legal Services will coordinate and provide free legal assistance to the poor in Whatcom County with volunteer attorneys from the Bar Association.	$ 15,000
Whitman Regional Planning & Resource Council *Colfax*	Support the administration of an on-going program of free legal assistance to the poor by members of the local bar association.	$ 3,000
YWCA-Yakima Bar Pro Bono Program *Yakima*	The YWCA will continue to provide assistance to low income persons seeking a protection order from domestic violence or in obtaining a dissolution. Bar Association members provide free consultation and advice on all dissolutions and are referred more difficult contested custody cases.	$ 25,000

Law-Related Education
(7% of the total grant funds)

Organization	Purpose	Award
Community Service Center for the Deaf and Hard of Hearing *Seattle*	Enlarge the Legal Advocacy Project they began with IOLTA funds in 1985. The project removes barriers to communication and provides access to the legal system to the deaf and deaf/blind through education and advocacy.	$ 30,000
International Rescue Committee *Statewide*	Integrate the pro bono service previously offered by the Rescue Committee with Volunteer Legal Services in Seattle, place a copy of IRC's library on cultural and legal needs of refugees with the Volunteer Legal Service program, develop and print a multilingual brochure on the availability of legal resources, and develop multilingual video tapes on consumer and family law.	$ 23,000
Northwest Women's Law Center *Seattle*	Provide family law information and referral to low income people, and revise, print and distribute a pamphlet on domestic violence and family law.	$ 12,800
Seattle Tenant's Union *Statewide*	Provide a statewide toll-free telephone line to assist tenants throughout the state with information on their rights and responsibilities. Develop resource and referral lists for Yakima, Olympia, Tacoma, Vancouver, Everett, Bellingham, and Spokane.	$ 7,400
Seattle-King County Bar Association, Domestic Violence Committee *Seattle*	Cover costs of a Protection Assistance Coordinator position in King County. 50% of the coordinator's time will be spent assisting victims in obtaining protection orders. 50% of the coordinator's time will be spent developing a court clerks' training handbook on assisting victims of domestic violence. The handbook will be available to court clerks throughout Washington.	$ 26,000
Seattle-King County Bar Association, Youth and the Law Committee *Seattle and Statewide*	Print a 20-page booklet for young people explaining basic legal rights and how the justice system works. Printing will be done at a reduced cost by the State Office of Public Instruction. A copy will be distributed to every high school senior in the state.	$ 5,600
Skagit Community Action Agency *Mount Vernon*	Provide legal self-help information and classes to low income persons.	$ 8,000
Seattle Translation Center *Seattle*	Translate and print a legal glossary to assist non-certified interpreters for court proceedings.	$ 5,000

Today's Constitution and You *Seattle*	Expand the training of high school and elementary school teachers in a curriculum developed for the bicentennial, expand the statewide Mock Trial program for high school students debating constitutional issues, and establish pairings of teachers and attorneys to enhance law-related education in the classroom.	$ 40,000

Alternative Dispute Resolution
(2% of the grant funds)

Organization	Purpose	Award
Church Council of Greater Seattle *Statewide*	The Council is a fiscal agent for several non-profit community organizations involved in the siting of special populations in local neighborhoods. IOLTA funds will be used to develop a communication and mediation model to be used to avoid litigation which often results when neighborhoods fight special housing. The model will be made available to communities around the state.	$ 28,000
Community Boards of Spokane *Spokane*	Support the development of this new neighborhood organization to train mediators in conciliation and mediation of neighborhood disputes. Community Boards will offer mediation in low income neighborhoods in Spokane.	$ 9,076
Mediation Consortium of Washington State *Statewide*	Produce and distribute 5,000 copies of a directory of mediators and alternative dispute resolution organizations throughout the state. The directory will also contain consumer information about mediation.	$ 2,500

The Legal Foundation of Washington has an annual grant cycle. Interested applicants should write the Foundation at 600 Central Building, 810 Third Avenue, Seattle, WA 98104 or call (206) 624-2536 for further information.□

CLARK COUNTY REPORT
by **JOHN F. NICHOLS**

I have become increasingly concerned that some of the other county reports are not taking their obligations as seriously as Clark County. While these other counties routinely report the comings and goings of various attorneys, they fail to delve into those areas that form the backbone of a legal community. Here in Clark County we report all the news that is needed to fill this space and not a word less. In response to recent accusations that some of this "news" is not factual or is somehow "made-up," I unequivocally state, "Huh-uh." In some way or another, these things really happen here.

Around the courthouse, things are simply "mauvelous," as in a purple, violet or lilac color. The color scheme permeates everything from halls and walls to the toilet water. Judge **John Skimas** finally put his foot down on the mauve & lace stationery. Also new at the courthouse is Judge **Barbara Johnson,** officially installed as the new Superior Court Dept. 6 judge.

Now for the obligatory transfers: **Rick Potter** is going to Horenstein & Horenstein. **Zac Stoumbos,** who has given up his project of colorization of old radio shows, is moving to Landerholm-Memovich. **Mike Simons** is once again leaving the prosecutor's office for Blair-Schaeffer. **Barb Peterson** is manning the local branch of Williams, Kastner and Gibbs. **Vern Schreiber** was selected as District Court Magistrate.

Now for the obligatory new members: **John L. Meader,** yes, he is a J.D., announced his new partner — **Vic Devlaeminch, J.D., C.P.A.,** under the official name, "The Alphabet Law Clinic." The clinic will "specialize" in UCC, SEC, NRA, PI, and general BS.

Finally, **Craig Schaurmann** was appointed as V.P. of the Clark County Bar Ass'n., replacing **Barbara Johnson.** Craig is now just a heartbeat away from President **Jerry** (just breathing) **King.**

PIERCE COUNTY REPORT
by **ROBERT W. MARSDEN**

Henry Haas is the new president of the Tacoma-Pierce County Bar Association, succeeding **Monte Hester.** Haas, a partner with McGavick, Graves, Beale and McNerthney, has served as vice president of the Association for the past year.

The new vice president of the local Bar is Deputy Pierce County Prosecuting Attorney **Keith Black.** Elected secretary-treasurer of the Association for a two-year term was **Sandra Kindig,** a partner with the firm of Kindig and Jahns. Newly elected members of the Board of Trustees are **Karen Strombom, Robert Backstein** and **Joseph Quinn.**

Congratulations to Pierce County's three new judicial officers. **Bruce Cohoe,** a partner with Cohoe, Counsell, Murphy and Bottiger, and **Karen Seinfeld,** a court commissioner with Division II, Court of Appeals, have been appointed by Governor **Booth Gardner** to fill two newly created Superior Court judgeships. **Craig Adams,** a partner with the firm of Campbell, Dille, Barnett, McCarthy and Adams, was recently appointed to the newly created position of Family Court Commissioner for the Pierce County Superior Court.

The firm of Burgess, Kennedy, Fitzer and Strombom has relocated its downtown Tacoma offices to the new Carlton Center. In addition, the firm has announced that **Sally Leighton** and **William Phillips** have been named partners, and that **LeAnn McDonald** has joined the firm as an associate.

James Feutz has joined the firm of Davies Pearson as an associate.

Former Deputy Pierce County Prosecutor **Dave Marshall,** who is with the Seattle firm of Prince, Kelley and Newsham, has opened an office in Tacoma, and, in addition, is teaching trial advocacy as an adjunct professor at the UPS Law School.

SEATTLE-KING REPORT
by **JAMES L. VARNELL**

Office Moves. **Eve M. Fitzsimmons** and **Terrence E. Burns** have joined the Bellevue office of Davis

Wright & Jones. **Jeffrey R. Johnson, Richard M. Slagle** and **John A. Rosendahl** have become partners in Williams, Kastner & Gibbs. **Joseph A. Just, David E. Powell, David H. Smith, C. David Taylor, Barbara A. Peterson, Cindy L. Burdue** and **Patrick C. Sheldon** have become associates of the firm. **Stephen L. Day** returns from serving as Acting Regional Director of the Interstate Commerce Commission to resume his duties as senior trial attorney. **Jean M. Leonard** has joined Julin, Fosso, Sage, McBride & Mason as an associate. **Richard R. Hack** has been named a partner in Lasher & Johnson; **Mark A. Levin, Grant E. Courtney** and **John P. Duggan** have become associates. **William H. Chapman** has joined Preston, Thorgrimson, Ellis & Holman as an associate. **Joseph T. Plesha** has joined Reed McClure Moceri Thonn & Moriarty. **Christopher M. Carletti** has been named managing shareholder of Weinrich, Gilmore & Adolph. **William J. Morris** has joined Casey, Pruzan & Kovarik. **Lynn Lincoln Sarko** and **Leonard B. Barson** have joined Keller Rohrback.

Bogle & Gates announces that **Richard J. Wallis, Richard D. Vogt, Andrew A. Guy, Bryce L. Holland, Jr., Jeffrey R. Masi, Bruce A. King** and **Robert G. Hayes** have become partners in the firm; **Jonathan A. Eddy, Jan Samuel Ostrovsky** and **Joel R. Junker** have become of counsel. Associates joining Bogle & Gates include **Richard A. Kottke, Curtis D.W. Hom, Craig H. Shrontz, Cathryn L. Dammel, Sandra L. Perkins, Paula M. Hunt, Marcia D. Babcock, Norman J. Bruns, Diana L. Dietrich, Judith Kay Bellamy, Blythe W. Marston, Randolph B. Harris, Rex E. Armstrong, Debra A. Olson, Lynn M. Skordal, Robert H. Blais, Linda A. McCorkle, Michael P. Mirande, Lynn B. Squires, Keith E. Moxon, Robert L. Hines, Jr., Timothy M. Cary, Curt R. Hineline, Benjamin F. Stephens, Margaret R. Adams, Felicia L. Smith, Jerome P. Larkin** and **James C. Brown.**

Jaclyn R. Sinclair has opened her office at 1601 Second Avenue. **Larry A. Jackson** and **H. Albert Richardson, Jr.**, have formed Jackson & Richardson in Bellevue. **James M. Beaulaurier** has joined **R. Corbin Houchins**, P.S., as an associate. **Ellen Schreier Alexander** and **Robert J. Thomas** have formed The Alexander & Thomas Group, Inc., which provides freelance attorneys to law firms needing short-term attorney assistance. **Rosemary J. Irvin** has returned to Seattle (after acquiring a fashion design degree in New York City) to preside over the Puyallup Tribal Court and has opened an office in Pioneer Square. **Alan Wenokur** has become an associate with Erickson & Groshong. **Joseph Chalveres, L. Warren Bur-**

sick and **Martin Lawrence** have joined the Law Offices of **Lee A. Holley.**

Leslie A. Wagner, known around the Enumclaw Golf Club as South King County's answer to Jan Stephenson, has opened her office in Kent. **James M. Kristof** and **Robert D. Jones** have relocated their respective offices to the AGC Building in Seattle. **Michael G. Fulbright** and **Kim D. Stephens** have become partners in Tousley, Brain, Reinhardsen & Block. **Sherrie Kaiser Goff** and **Rebecca A. McIntyre** have associated with the firm. **James Rogers** has opened his office in the Hoge Building with **Andrea A. Darvas** as an associate. **Anthony D. Vivenzio** has joined the staff of the Seattle-King County Bar Association as director of the Family Law Clinic.

One departure from a Seattle office deserves special note: **Frank J. Chmelik,** one attorney who can differentiate smoke from fire and whose letters and pleadings are marked by an absence of "legalese," has moved his office to Bellingham.

Special Recognition. The first annual Judicial Appreciation Dinner, sponsored by the Seattle-King County Bar Association together with the East King County and South King County Bar Associations, was held at Union Station. Keynote speaker **Bill Dwyer** described some of the changes which he sees as forthcoming in the litigation process: increased use of arbitration and mediation, limitations on discovery, but not back to the days of "trial by ambush" (of which Bill spoke so longingly), and awards of attorney fees to prevailing parties, in addition to present awards as authorized by statute, contract or court rule. Honored guests included all members of the local judiciary: municipal, district and superior courts; United States Bankruptcy Court; state and federal courts of appeals; and the Washington Supreme Court.

One table at the dinner, referred to as the "Southern Contingent," included Ninth Circuit Court of Appeals Judge **Jerome Farris** (formerly of Alabama), **Mark Cavanagh** (Virginia), **Shelby Scates** of the *Seattle Post-Intelligencer* (Mississippi), this correspondent (Tennessee), and **Chris Moore,** who is living proof that North Carolina, in spite of **Keith** "Mr. Tarheel" **McClelland,** can be proud of some of its native sons. **Kathryn M. Battuello** (New Mexico, but Duke University Law School) and **Ruth Nielsen** (Utah) were welcomed as interlopers.

SNOHOMISH COUNTY REPORT

by **LEE B. TINNEY**

My having been appointed to make a report just before the filing deadline, this report will be limited.

New officers of the Snohomish County Bar Association have been elected as follows: President, **James H. Allendoerfer;** Vice President, **James E. Deno;** Secretary, **H. Scott Holte;** Treasurer, **Charles S. French.**

The three past Snohomish County Bar Association Presidents, **Doug Marsh, Ruth Ellen Wagner,** and **Bruce Jones** will be serving as a Judicial Liaison Committee with the Snohomish County Superior Court Bench. The Snohomish County Bar Association is also planning to sponsor a CLE on Family Practice in Snohomish County, including sections on local rules and the use of mediation.

WASHINGTON WOMEN LAWYERS

by **KATHLIN J. PERSINGER**

Washington Women Lawyers is continuing to work with major CLE sponsors this year in an effort to increase the number of women speakers giving presentations in CLE seminars. This effort follows a study conducted by WWL last year which showed that a notably low percentage of women attorneys

were guest speakers at CLE presentations. Another commitment this year is to assist the ABA section study on the treatment of women by the judicial system in their professional roles and as litigants.

September is the target date for a change in the dues structure of the organization. WWL is adopting the annual renewal date of September for all members in lieu of renewals determined by the individual member anniversary dates. Implementation of this membership renewal system will take into account dues paid on a pro rata basis.

STEVENS COUNTY REPORT

by **CHRIS A. MONTGOMERY**

. . . *continuing from page 38 of the March 1987* Bar News:

The fall of 1984 was the scene of a clean, but hard-fought, race for Superior Court Judge Position No. 1. Incumbent **Sydney R. Buckley** was challenged by seasoned attorney **Fred L. Stewart** of McNally, Stewart & Montgomery. Buckley has now retired, and Stewart assumed his position on the Superior Court bench in January 1985. Superior Court Judge Position No. 2 is held by **Larry M. Kristianson.** District Court is the situs of Judge **David E. McGrane. Delores Susemiehl** is Chief District Court Clerk. Commissioner **Robert D. Skidmore** turned over his office to **Andrew C. Braff** in 1986. **John G. "Jerry" Wetle** remains unchallenged as Prosecuting Attorney with Deputies **Dan B. Johnson** and **Pamela F. Payne. Steven Elijah** is in charge of Support Enforcement.

Dawn Cortez and **Kenneth Isserlis** of Spokane Legal Services Center presented the new Private Attorney Involvement Panel Plan for Stevens, Ferry and Pend Oreille counties at the January meeting of the Bar Association.

In March 1987, **J. Donald Curran,** chair of the Disciplinary Board of the Washington State Bar Association, presented a one-hour CLE on the "Ten Commandments of Avoiding and Dealing with Complaints against Lawyers."

Law Week activities for 1986 included a mock DWI trial and mock civil trial presented by local members of the Bar Association with the cooperation and assistance of the court clerks and local judges. Over eighty area high school students participated in this program. **John A. Troberg** and **Chris A. Montgomery** bravely consented to appear on a local radio talk show, "Ask a Lawyer." Both survived the ordeal. Local community college courses made available by Montgomery include Business Law, Landlord and Tenant Rights and Your Legal Rights.

New Bar Association officers were elected for this year. **Chris A. Montgomery** has been elected President. **John A. Troberg** is the Recordskeeper and **Phillip P. Skok,** being absent from the meeting and unable to object to his appointment, remains Treasurer.

YAKIMA COUNTY REPORT

by **JONATHAN H. MARTIN**

I must confirm your worst fears:

Contrary to impressions resulting from a lack of reports in this journal, the Yakima County Bar still exists, having survived the winter blahs and the Christmas Party. Now that spring is here, all are looking forward to trials held on the golf courses and tennis courts rather than on the ski slopes. (Rumor has it that at least one Superior Court judge might not object to moving court to the ski area.)

With formation of a new defense firm, **Dennis Fluegge, Wally Meyer,** and **Bob Tenney** will probably be able to provide continued aid to the miserable, poor, and downtrodden insurance companies. This writer waits with bated breath for *their* ads in the yellow pages.

About advertisements: Abeyta and Nelson have continued their always amusing and tasteful ads for personal injury. Cemeteries apparently are in vogue. Actually, most of us suspect that advertising is becoming a necessity.

Our new District Court Judge is **George Colby,** formerly the Yakima Indian Prosecutor. Congratulations, Your Honor.

Those who are visiting our fair town on any given Friday—except during the summer—are cordially invited to join us at our weekly bar meetings at the **Jade Tree.**

Our meetings always feature relevant speeches and presentations of interest to all lawyers, such as new developments in lithotripsy, together with delectable fare. If you're lucky, you'll also get to hear some of the more experienced brethren, such as **John Gavin, George Martin,** and **Fred Velikanje,** exchange war stories and pleasant banter. The amazing thing is most of their tales are true.

The federal courthouse project is nearing completion; it really does look like an excellent building. When it is dedicated, consecrated, or whatever they do to open a courthouse, I'll report back to you.

THE TIME HAS COME

Join in the founding of the Washington Association of Criminal Defense Lawyers, a vital new organization dedicated to providing meaningful assistance to everyone who practices criminal law.

WACDL will offer:

—the best seminars and speakers
—a comprehensive brief bank
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—lobbying in Olympia
—social functions

and above all, the camaraderie and support necessary to survive and succeed in the practice of criminal law.

Plan to attend the first annual meeting and exceptional CLE program May 29 in Seattle featuring "Racehorse" Haynes, U.S. District Court Judge John C. Coughenour, nationally known speaker Judy Clarke, plus prominent Washington criminal lawyers.

THE TIME HAS COME—JOIN TODAY!

WACDL
WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

MEMBERSHIP APPLICATION

Please print or type

Application of _____

Please letter my certificate as follows: _____

Firm/Public Defender Office Affiliation: _____

Address: _____
Street/P.O. Box City State Zip

Admission to Bar: _____ Phone (_____) _____
State Year

Primary area of practice: _____ State; _____ Federal; _____ felony; _____ misdemeanor; _____ appellate.

Please find my payment for:

_____ Founding Membership (Voluntary)—$500 (one-time contribution) and $100/year thereafter
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(206) 624-9661

BRIEFLY NOTED

DISCIPLINE

Censured

Bellevue attorney **J. Richard Quirk** (admitted 1969) has been ordered censured following a disciplinary hearing. The discipline was based upon Quirk's conduct in delivering a child support check to his client despite the fact that the check was tendered to him by opposing counsel on conditions, and those conditions had not been satisfied at the time of delivery.

UPS Law School Grads, Take Note

Save April 24 for a day of alumni activities in Tacoma. The Alumni Society will sponsor a half-day CLE, followed in the evening by cocktails, dinner, and the Annual Meeting. The Distinguished Graduate Award is presented that night. Watch your mail for details.

Chinese Law in English

The Institute of Chinese Law (Publishers) Ltd., Hong Kong; the University of East Asia, Macao; and the China Law Society, Beijing have cooperated to bring readers the Statutes and Regulations of the People's Republic of China. The 1300-page work comes in two looseleaf binders. There is also a 320-page hardback index.

The publication features a table of 410 major statutes in chronological order, an alphabetical index of all major legislation, English translation of statutes in chronological order, updating service with text of new legislation, and annual update of index and table.

The 1987 publication covers statutes and laws pertaining to trading, investment, tax, customs, foreign exchange and joint ventures and regulations for the Special Economic Zones. The Constitution and significant criminal laws are also included. Future volumes will focus on domestic economic legislation, major administration, civil law, public health regulation, and public security.

The price for the complete 1987 set is U.S. $600 (plus $50 postage and handling). Check, bank draft or American Express is acceptable: Institute of Chinese Law (Publishers) Ltd., 1302 Office Tower, Shun Tak Centre, 200 Connaught Road, Central, Hong Kong. Tel. 5-8599387. Telex: 72708 RIWHK.

Symposium on Law and Higher Education

The University of Washington, in conjunction with its 125th Anniversary, presents a symposium on "Law and Higher Education—The Last 25 Years" at the Hub Auditorium, University of Washington campus, 1:30 - 5 p.m., Monday, April 20, 1987. Speakers: Robert M. O'Neil, George M. Kaufman Professor of Law, and President, University of Virginia on "The University, Equal Opportunity, and the Law"; Stephen Joel Trachtenberg, Professor of Law and Public Administration, and President, University of Hartford, "University Governance in a High Tech World." Commentators: Professors Arval A. Morris and William R. Andersen, University of Washington Law School; Dr. Donald R. Fowler, General Counsel, California Institute of Technology.

Admission is complimentary.

Interim Suspension

Seattle attorney **James A. Henry** (admitted 1962) was suspended from the practice of law pending the outcome of Bar proceedings, by order of the Supreme Court entered January 29, 1987 and effective immediately.

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.

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Attorney at Law
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JOINED THE FIRM AS AN ASSOCIATE IN OCTOBER 1986

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APPEALS PRACTICE

In State And Federal Courts

Bill Bishin
621-1823

BISHIN, WILLIAM R., b. 1939; J.D. Harvard University, Magna Cum Laude 1963; Harvard Law Review 1961-1963; Member, Washington, California and New York bars, United States Supreme Court; Professor of Law, 1963-1980 (including Appellate Practice and Procedure courses); author, contributor to law reviews, nationally syndicated newspaper columnist on legal issues; instructor and organizer of seminars on state and federal appellate issues for Supreme Court justices, Court of Appeals judges and attorneys. *Successful appeals* include *Marvin* v. *Marvin*, *Short* v. *Demopolis* and *Seven Gables* v. *MGM/UA Enterprises.*

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For sale: 10 IBM transcribers & dictaphones, $350. Call Joan at (206) 632-4888.

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Long-established association has office space for one attorney to replace retiring associate. All amenities, including updated equipment. Extensive library, newly decorated suite. Reasonable overhead. Suite 1144, Bank of California Center, 900 Fourth Avenue, Seattle, WA 98164. Contact Robert Larson (206) 622-1244.

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Best chance in state for young attorney: 40 years in Soap Lake, and I'm tired. $120,000 value for $80,000. Immediate income. Go right to work. Give me a call. K. Edison Gimple, P.O. Box 938, Soap Lake, WA 98851. (509) 246-1841.

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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.

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 Street, Seattle, WA 98155. (206) 361-2707.

Referral attorneys: probate, emphasizing automation and fees commensurate with time. Send resumé to David Scull, 8401 Connecticut Ave., Chevy Chase, MD 20815.

Well-established fifteen-lawyer Seattle firm seeks associate with two to three years' banking law experience (preferably with TILA, REG. Z, REG. E). Strong academic credentials and ability to work with clients essential. All inquiries will be treated confidentially. Resumés to Box 122, WSBA.

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.

Inslee, Best, Chapin, Doezie & Ryder is interested in adding experienced Washington lawyers in the fields of estate planning, real estate, general business and health care.

Replies will be treated with full confidentiality. Please contact Evan Inslee, P.O. Box C-90016, Bellevue, WA 98009-9016, or phone (206) 455-1234.

Walla Walla firm seeks associate for diverse litigation-oriented practice. Send confidential resumé to Box 124, WSBA.

Small Yakima law firm engaged in insurance defense practice, seeks attorney with one to three years' experience. All inquiries confidential. Reply to Box 125, WSBA.

Seattle law firm seeking associate with one to three years' experience representing creditors. Bankruptcy experience is desirable. Salary negotiable, DOE. Please reply to Box 127, WSBA.

Corporate attorney: New and growing corporation seeks to expand its legal staff. Opening exists for an attorney with experience in corporate, business law and utility rate regulation. Experience in the telecommunications industry desired. Send resumé to Personnel Director, P.O. Box 1238, Everett, Washington 98206.

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Seattle law firm emphasizing insurance defense invites resumés from attorneys with one to three years' experience. Strong academic record required. Please respond to: Daniel F. Mullin, Bassett & Morrison, 2001 Western Avenue, Suite 600, Seattle, WA 98121.

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