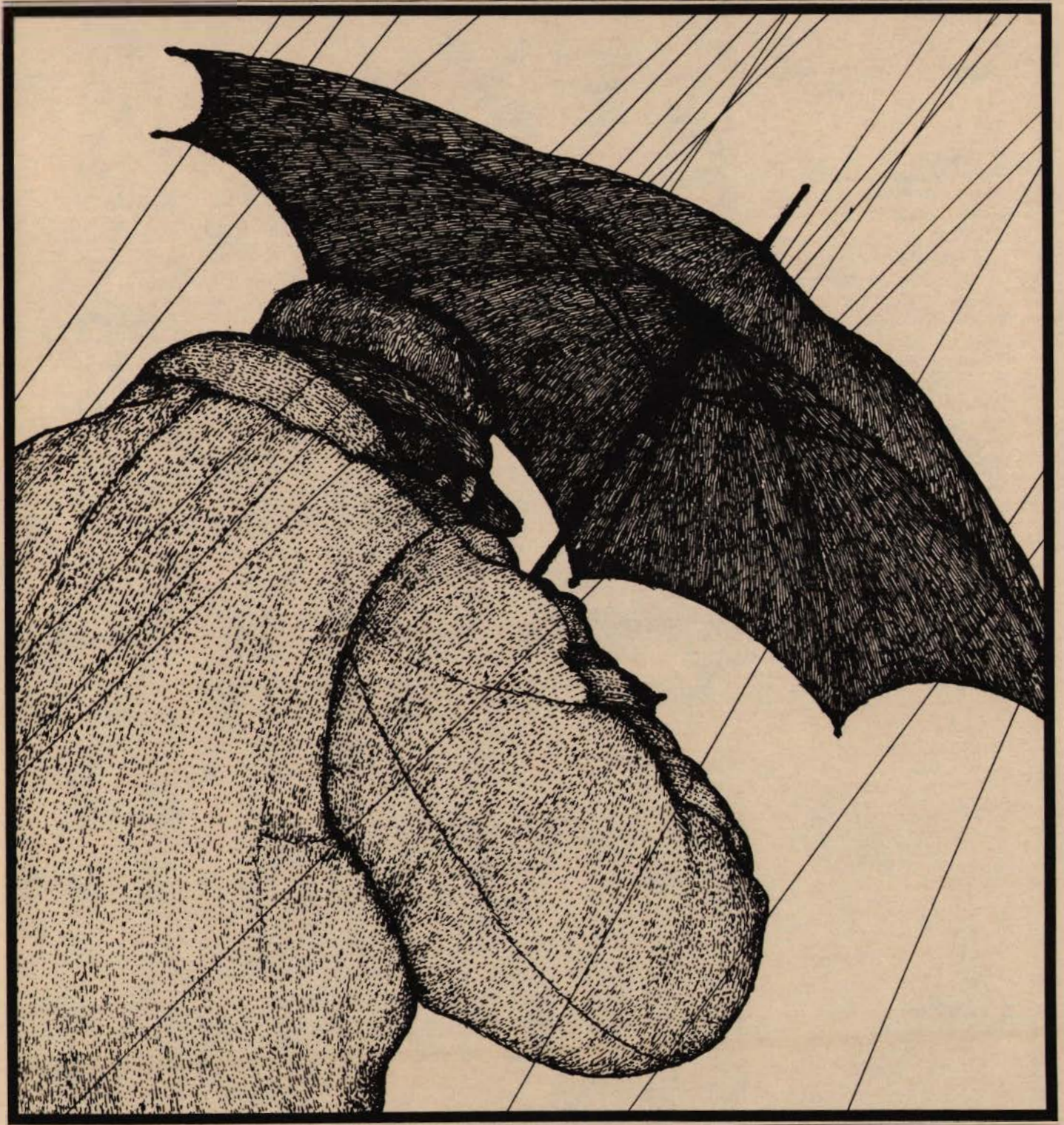


Washington State **Bar**
News Vol. 42, No. 2, February 1988



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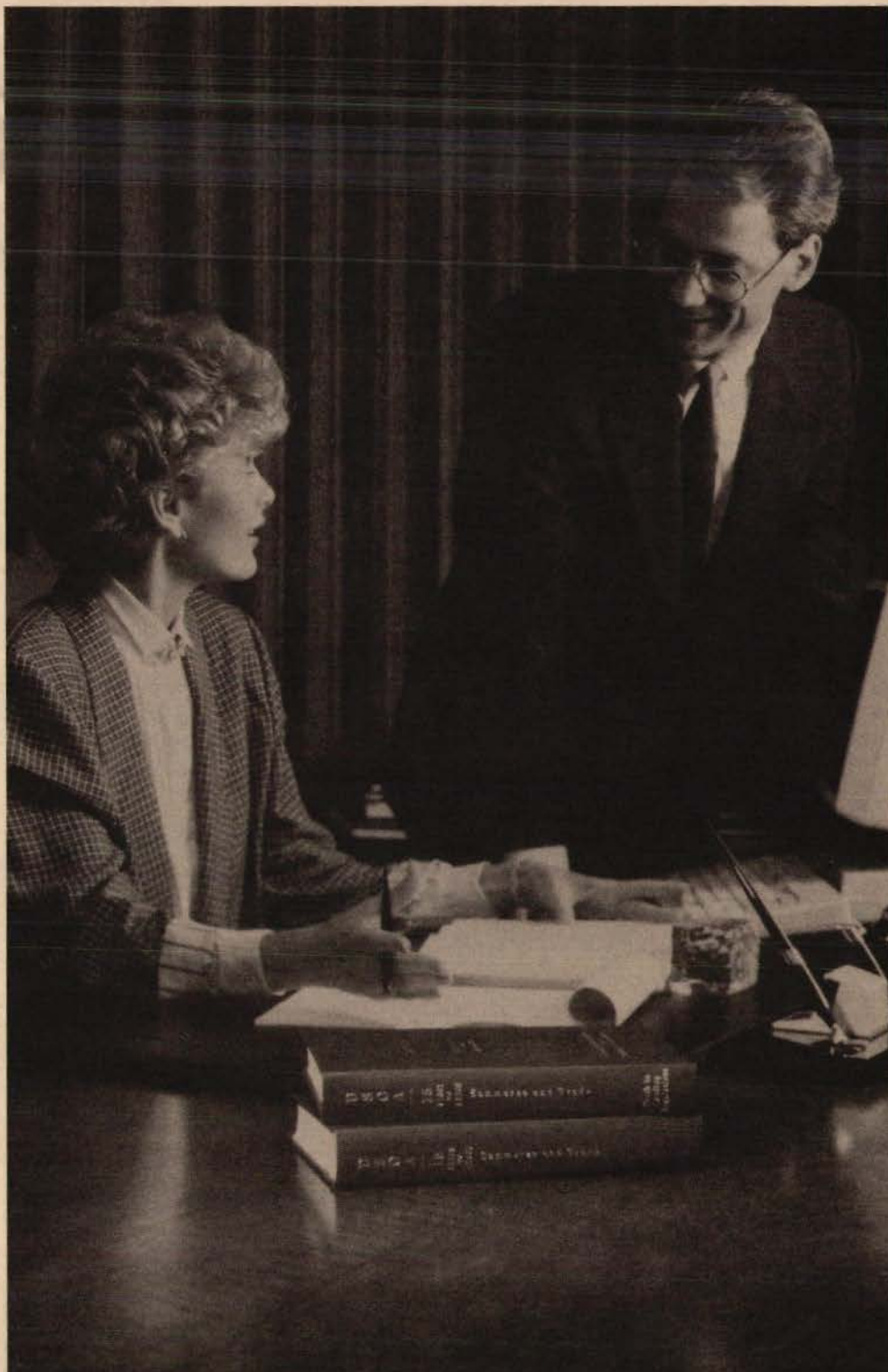
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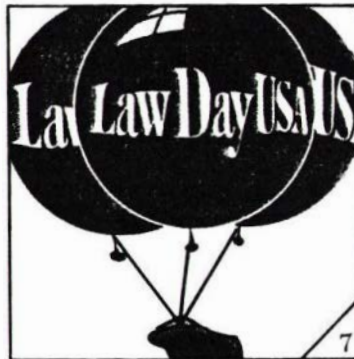
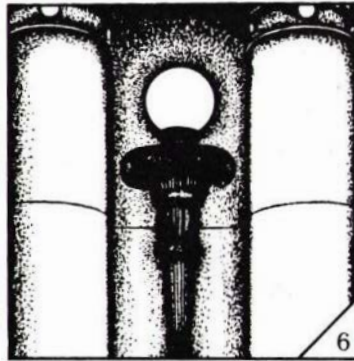
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"The Opportunities are There"

At their December meeting in Seattle, the Governors approved by a 6-3-1 vote a proposal by Governor Jay White of Ballard for up to \$4,500 so the Governors can send annual letters to their constituents. "By no means is this offered as a solution," said White, "but it's better than nothing." White hoped that this annual letter "would personalize the Governors and make our diversity more apparent."

As it turns out, the Governors, who serve as volunteers, already make great efforts to let their constituents know what's happening—and to learn from their constituents as well. Most of the Governors already recap the WSBA meetings in monthly newsletters to local bar leaders. And many of the Governors send the monthly agenda to local bar leaders to alert them in advance.

The Governors also attend local bar meetings . . . which may be of limited value in keeping them posted. For example, as Governor Bill Bergsten of Tacoma wondered in December, why do the monthly Pierce County Bar luncheons attract 30 of 1,000 lawyers, while its neighbor, the much less-lawyered Kitsap County Bar, attracts a half or more of its few hundred members?

"It's a function of population," answered Governor Steve Reisler of Seattle, who found "no collegiality" in downtown Seattle lawyers except in buildings. And even though the four King County-Seattle area Governors attend Seattle-King County Bar meetings, the sparse turnout by SKCBA members makes them "no forum," in the words of Governor Julie Weston of Seattle.

At their December meeting, the Governors added up all the personal responses they received about the dues freeze referendum. Weston led the pack with two letters from constituents. Among the ten Governors, they received twelve phone calls.

So the Governors feel frustrated. This from Bergsten: "We desperately need to communicate. The opportunities are there. The *Bar News* is

there. But it's not enough." And from Weston: "I can see where we look distant, but I don't see how to overcome it."

Reisler wondered, "Is it possible to consolidate special mailings in a quick and dirty publication?" He was referring to the Executive Report, which is sent to bar leaders, past and present, and the soon-to-be-hot-off-the-press first issue of a WSBA legislative newsletter. WSBA executive director John Michalik thought that a direct letter from Governor to constituent would get more response than a supplemental mailing.

Back to White's proposal: Governors Steve DeForest of Seattle, Ed Shea of Pasco, and Frank Hayes Johnson voted against White's proposal; Governor Paul Stritmatter of Hoquiam abstained. "One letter to my 7,111 constituents isn't worth the cost," said DeForest. Added Shea, "Our constituents don't want us in their daily lives . . . (We) make a helluva effort and the constituents must be pleased; if they weren't, they would contact the Governors."

So What's It Mean?

After nigh three years as editor of the *Bar News*, the only news/substantive publication sent to all Washington lawyers, I know exactly where I stand on the issue of communication: inalterably, unquestionably, undoubtedly. . . in the middle.

Lest you think that I am copping out of this fray, here's some background. When I became editor, my predecessor let me know that, though I would pour out heart and soul and incur bloodied knuckles for this magazine, my efforts would receive, quite often. . . no response.

Yes, this is the reality of being editor (indeed, this is the reality of much of our work as lawyers): There is no direct correlation between effort expended and response received. These words have guided me as I wonder how many of my 15,000 colleagues read this magazine. I've learned to accept the din of silence not as apathy—or worse—but as a sign that other issues may matter more in the lives of my readers.

But there are many rewards. Often

I've been introduced to lawyers, who say, "Gee, your name is familiar." When I identify myself, they say, "Oh, I read the magazine, well, actually the death notices, the discipline notices, and your column, and you've made it a much better magazine." Then I realize that there are hundreds, no—thousands, of lawyers who read the magazine . . . but who don't take the time to let this be known.

This is fine with me, for I too try to make a living by practicing law. And so I find myself agreeing with Pasco's Shea that we "don't want the Governors in (our) daily lives."

Yet we do want to feel that there is ongoing communication between governed and Governors. I've been embroiled in a number of issues as editor, one of the biggest being how Bar Association news is disseminated. There have been times, Governor Reisler said in December, when the Governors didn't think their activities were being sufficiently reported. And there have been times when the governed have awakened from their slumber to growl, "Who's been sleeping in my bed? And why didn't the Governors tell us what they were up to?"

Every so often, John Riley, the WSBA Young Lawyers Division chair, told me in December, a young lawyer, upset at some action of the Governors, will storm into his office, let off steam, and leave. On dozens of occasions, I too have been approached by fuming colleagues. They grumble, "Those Governors! Up to it again! Spending our money without our knowledge/our input/our consent. Trying to change the way we practice law without our knowledge/our input/our consent. How can they do this?!!"

To this I say, "Have you ever considered telephoning your Governor to communicate your view?" (I used to suggest writing a note, but it's easier to pick up the phone.) The typical response is, "Who is my Governor?"

My typical response is: The Governors are listed in every *Bar News*. I also add, the Board's Work tells what the Governors did at their monthly meeting. I now add, if you want to

know what's coming up at the next meeting of the Governors, give your Governor a call and ask to receive the agenda. It comes out the week before the meeting.

Which raises another question. On weighty questions, it would be reasonable for the Governors not to reach decisions until local and special-interest bars have had the opportunity to discuss these matters. A few years ago, Governor Johnson suggested that no amendments of Bar bylaws be made at the meeting where an amendment is first proposed, but that it be held over to provide time for input. It was a sound idea then, and it is sound today.

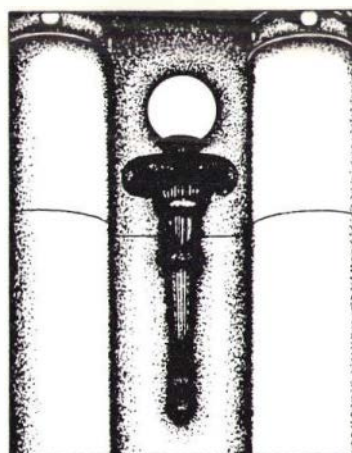
Unless time were absolutely of the essence, the Governors would feel more appreciated if they did not give the appearance of jumping to act on matters before constituents had had an opportunity for input. It may well be that of 15,000 lawyers, only a dozen will choose to provide input. But that is a dozen whom I would not want to be responsible for cutting out of a necessary part of the process.

All of us, Governors or governed, are either part of the problem or part of the solution. If we feel that the Governors are not responsive to our concerns, we have every right—and every duty—to let them know. And the same is true when we feel that they are doing a good job.

Although the governed in a democratic society have every right to grumble about their governors, the governed also have the responsibility to keep their elected governors apprised of their views. "There's no sound in a vacuum," I penned in my January 1988 editorial. Well, there ain't no government neither.

Carole Grayson

Western Legal History: The Journal of the Ninth Judicial Circuit Historical Society, is a new semiannual, illustrated periodical. It will explore the role of law in the federal courts and the history of Alaska, Arizona, California, Idaho, Montana, Nevada,



Ninth Circuit Historical Society

The Ninth Judicial Circuit Historical Society, which in 1987 began collecting, publishing, and exhibiting the legal history of the Ninth Circuit and the American West, has published its first book, produced its first exhibit, and instituted a circuit-wide oral history project to gather the memoirs of Western judges and lawyers. The book, *Authorized by No Law*, published in partnership with the U.S. District Court for the Northern District of California Historical Society, portrays the early years of the West's first federal judges and their confrontation with the 1856 San Francisco Committee of Vigilance. Members receive the book as a membership benefit; the book is available to all others for \$6.

The exhibit, titled *The Constitution and the Courts*, is a traveling display utilizing photographs, reproductions of documents, and labels and quotations to describe the evolution of the nation's courts and Ninth Circuit. During 1988 and 1989, the exhibit will visit every federal courthouse in the Circuit.

Oregon, Washington, and Hawaii and the American Territorial Pacific. Upcoming articles will address Western mining law, civil rights decisions involving the Chinese, the architectural history of the Court of Appeals and the Post Office Building, Alaska's Territorial Courts, an oral history of one lawyer's life in the law, and other topics within the purposes of the Society.

The Society has established an oral history program. Volunteer interviewers in seven states, who include a former Idaho governor and a past Montana State Bar president, are collecting the spoken memoirs of these circuits and many judges and lawyers. The Society is also creating an inventory of legal history materials held by historical agencies, universities and law schools, court systems and libraries in the Ninth Circuit.

Membership is open to all persons interested in preserving the history of law in the American West. Washington lawyers on the board of directors include Albert Malanca of Tacoma, Smithmoore Myers of Spokane, and John Rupp of Seattle. John Gavin of Yakima is a board member emeritus. For more information, contact the Society at P.O. Box 2558, Pasadena, CA 91102-2558, or call (818) 405-7059.



1988 Law Day Features “Legal Literacy” Theme

by Cheri Brennan
Asst. Public Affairs Director

Plans are well under way for Law Day 1988. The purpose of Law Day U.S.A., celebrated annually on May 1, is to commemorate our legal heritage. It is also a day to reflect on the role of law in our society and the rights all citizens enjoy under our Constitution.

The 1988 theme, “Legal Literacy,” suggests many programs and events to promote increased knowledge and understanding of the law.

Law Day is a great opportunity to do lively, fun events, many of which can be extended over a longer time period. It's also an occasion to involve the whole community. Broad participation and extended time frames can produce enduring partnerships—as well as active, continuous support for law-related education.

While Law Day events are usually sponsored by bar associations, many

groups cooperate with schools, courts, churches, libraries and law enforcement agencies in offering programs. (In Washington, the State Bar does not sponsor a particular event, but its Public Affairs Department may be able to provide resources or assistance to local bars and others who plan programs.) Judges, court administrators, bar auxiliaries, legal secretaries and the legal departments of major corporations are among many who have joined in past events.

National organizations also join in the observance. To name a few: the National Association of Legal Secretaries, National Governors' Association, the United States Conference of Mayors, National Education Association, Rotary, Kiwanis, Lions, Optimist International and the Boy Scouts and Girl Scouts of America.

Together, these organizations have presented numerous and varied activities. In recent years, for example, Law Day events have included mock trials, debates, court ceremonies, poster, essay and speech competitions, legal clinics in shopping malls, and radio call-in programs.

Recent innovative programs have included tie-ins with campaigns against drunk driving, outreach programs to senior citizens, and community participation in dispute resolution programs.

The American Bar Association is the national coordinator of Law Day U.S.A. It makes available many promotional and educational/informational materials, ranging from buttons and balloons to leaflets, brochures, booklets, speech texts and mock trial scripts.

In addition to materials, the ABA prepares a detailed planning guide to assist groups in conducting Law Day programs. This soon-to-be-published booklet, which will be provided to all local bar presidents in our state, contains numerous tips and ideas for planning Law Day programs. For those just getting started, suggestions include:

1. Appoint a Law Day chairperson or coordinator and forward the name to the ABA (750 North Lake Shore Drive, Chicago, IL 60611, (312) 988-6134).

2. Target your audience—identify which population group you want to reach (*e.g.*, the elderly, students at a certain grade level, the unemployed).

3. Set measurable objectives for your program.

4. Decide on your methods or strategy (*e.g.*, personal visits by volunteers to area schools, involvement of others as co-sponsors).

Law Day events can be fun and enriching. As noted by the ABA: “That Law Day U.S.A. occupies only a single calendar day is merely symbolic. It is a reminder that while the principles embodied in the observance are constant, their vitality cannot be taken for granted, but must be nurtured and sustained by every citizen, every day of the year.”



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

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The Best Gift You Can Give

At any one time, there are approximately 600 individuals in the Northwest waiting for organ and tissue transplants that can save or greatly improve their lives. The need for kidneys, corneas, hearts, livers and other vital organs and tissues continues to increase, while donated organs continue to be in short supply. Recent surveys have shown that as many as 89% of Americans approve of the concept of organ donation, yet only 17% have actually signed organ donor cards.

State and federal "required request" legislation is attempting to close the donor gap by requiring acute care hospitals to identify potential organ donors and seek consent for a donation wherever appropriate. This legislation means that more of us than ever before will be asked to make that decision on behalf of a family member sometime in our lifetime. As attorneys we are in a position to help educate our community, so that all who need organ and tissue transplants can be given a second chance for life and sight.

Organ donation requires each of us to make a very personal decision. Like making a will, it is something best planned in advance, but too often avoided until a time of crisis and loss. Take the time to consider the following story, and ask yourself what you would do if you, or a member of your family, was found in need of a living gift.

Thomas C. Evans never thought he would need someone else's eyes. Throughout his student career at Whitman College and during his three-year tenure at the University of Washington Law School, he never thought of having any other career except that of a lawyer. But while pursuing his studies at the UW, Evans began to lose his sight to a progressive eye disease known as keratoconus, where the shape of the cornea begins to change from gently curving to sharply pointed. And, if he had not been fortunate enough to receive the gift of two transplanted corneas, he would not be practicing law today.

In the late 1970s, as Evans's career (and the disease) progressed, it became increasingly difficult to keep contact lenses in his eyes. "During meetings with clients and even in the courtroom, I would blink and a lens would just pop out. I learned that the only way to avoid this was to keep smiling, no matter what the judge said. I began to get a reputation as a very accepting person!" says Evans.

This condition was affecting his work in several ways. Besides not being able to read as well as he needed, Evans found people becoming increasingly aware that something was wrong with his right eye. He became concerned that some people found it too distracting, and he questioned his ability to be as effective as he wanted to be under those circumstances. But his physician told him that there was no way of knowing how fast his condition would deteriorate. He would just have to wait until it was no longer correctable.

Suddenly, though, there came a crisis.

"I had one day that was so full I ended up working 23 hours straight, wearing my contact lenses the entire time. The next day, my right cornea was destroyed—scarred permanently by the lens. Now, I really had no choice but to come to grips with my condition and the fact that my whole life could be radically changed by this. I realized I had no options left.

"At this point I changed physicians and began seeing Dr. Walt Rotkis, who helped me learn about the possibility of a corneal transplant. His enlightened attitude toward this treatment made me understand that with a transplant, I could have better vision than I had enjoyed for many years. Without the operation, I faced losing my career. I had a very uncertain future with at least partial blindness. So, I decided I would have the transplant."

Evans was on "the list" for several months before the call finally came from the surgeon that a cornea donor had been found for



him. During those months, he was forced to cut back his workload and just wait for the gift from an unknown donor.

"I used to stand in front of the mirror and wonder what it would be like to have a part of someone else's body in mine. What would it mean to see through someone else's eyes? I thought a lot about the donor whom I would never know. Did he or she realize what a precious thing they had decided to give to someone they never knew?"

"After the transplant, I was amazed at how well I could see. I had 20/20 vision right away. My body accepted the new cornea and, staring in the mirror, even I couldn't tell that the new cornea wasn't originally part of me. It opened up a whole new world for me, including the fact that I no longer was forced to smile all the time to keep my contacts in place!"

Only a few days after the transplant, Evans was back in his Seattle office. He now maintains a full-time practice, concentrating on municipal law and working as City Attorney for both Brier and Lake Forest Park. He also does some trial and personal injury work as his schedule allows.

Now that Evans has benefited from two corneal transplants (his left cornea was replaced last year), he wants to help heighten awareness of the benefits of the transplantation. Even though he had heard of the organ donation program prior to his personal experience, he had little understanding

about how many "ordinary people" can be helped in this way.

"You tend to think it's something that doesn't happen to very many people, or you think it's still experimental. But there are thousands every year that need this kind of help, and to become an organ donor is the greatest thing you can do for another person. It's an unbelievably rare opportunity: to have the ability

to give something of so much value to another human being."

The opportunity exists not only to improve, but to save, lives. In addition to corneal transplants like Evans's, there is an urgent need for hearts, kidneys, livers, and other vital organs. Until this shortage can be eliminated, many will die for lack of a donor organ.

Promoting the benefits of organ do-

nation helps us all. It is a public service that we as lawyers can provide that is unlike any other.



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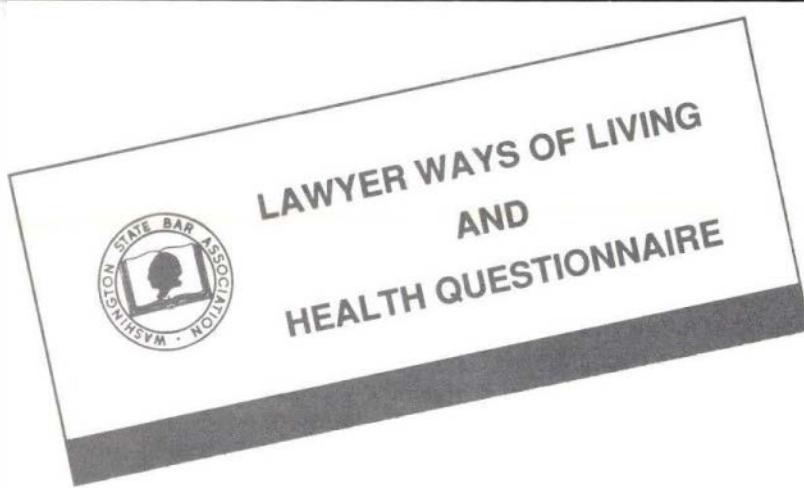
Board of Governors Elections Due

Lawyers residing in the First and Fifth 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 1991, are due to be elected this year. Expiring in September 1988 are the current Board terms of Jay V. White (First District), Frank Hayes Johnson (Fifth District) and Steven A. Reisler (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 98121-2599. The petition must be filed with the Executive Director at the Bar office by 5 p. m. on Monday, May 2, 1988.



by WSBA Lawyers' Assistance Program Staff

The Lawyers' Assistance Program (LAP) is pleased to respond to the widespread interest of Washington lawyers in the results of the *Lawyer Ways of Living and Health Questionnaire* ("questionnaire"). Publishing the results will help Washington lawyers accept the presence of distress in the legal profession. For those who wish to treat that distress, end their isolation, and begin their recovery, the results may provide the impetus to turn to LAP for assistance in identifying their options.

This article addresses:

- How many lawyers are distressed?
- What types of distress exist among Washington lawyers?
- How do distressed lawyers compare with other lawyers?

Methodology

Samples

From 12,403 actively practicing lawyers within Washington, a random sample of 1,300 subjects, stratified by years of practice, was selected. Death, incorrect addresses, moves out of state, and vacation left reduced the sample to 1,186 possible subjects—approximately a 10% random sample of the Bar. During April 1987, 802 lawyers returned the questionnaire—a 68% response rate.

The sample was stratified into five groups:

- 1) lawyers in practice two years or less;
- 2) lawyers in practice more than two years but less than five years;
- 3) lawyers in practice more than five years but less than ten years;
- 4) lawyers in practice more than 10 years but less than 20 years;
- 5) lawyers in practice 20 years or more.

This stratification provided control

for differences in length of practice.

Tests given and symptoms derived

More than 250 questions comprise the questionnaire. Social scientists have previously documented the validity and reliability of each section of the questionnaire and have also obtained normal population scores. (For each section, a reference is footnoted for those readers who would like to review the earlier literature.)

One section of the questionnaire includes 53 questions which require lawyers to "select... how much discomfort that problem has caused you during the past month..." These 53 questions constitute the Brief Symptom Inventory (BSI).¹ Here are three examples from this section:

- "Having to avoid certain things, places, or activities because they frighten you"
- "Feeling blocked in getting things done"
- "Suddenly scared for no reason"

These 53 items were reduced by the BSI's inventor to nine symptoms. Here is a brief description of the nine symptoms:²

Somatization refers to vague physical symptoms not explained by any existing physical disorder.

Obsessive-compulsive behavior involves thoughts and actions that recur in an unavoidable or ritualistic manner.

Interpersonal sensitivity refers to intrapersonal feelings of inadequacy and inferiority that arise as the subject maladaptively responds to interpersonal relationships.

Depression refers to a prolonged, sad state triggered by an overreaction to stressful events.

Anxiety comprises a set of symptoms involving psychomotor tension, autonomic hyperactivity, apprehensive expectation, and

Are Lawyers Distressed? ... And How?!

● Washington State Bar Association

hypertentiveness.

Hostility refers to opposition in feeling, thought, or action to aversive stimuli, with frustration and unexpressed aggression forming the underlying dynamic.

Phobic-anxiety focuses, unlike anxiety, on symptoms related to an intense but unrealistic threat from a specific object or situation.

Paranoid ideation refers to a "mode of thinking" typified by projection, hostility, suspiciousness, centrality, and fear of loss of autonomy.

Psychoticism (hereafter "social alienation and isolation") reflects social alienation and isolation. Extreme ratings possibly signify loss of contact with reality, hallucinations, or delusions.

Statistically significant elevations of BSI symptoms are strongly related to clinical impairment and suggest the need for specific treatment.

Another section of the questionnaire (six questions) elicits information on tobacco use—its frequency and quantity.

A third section of the questionnaire—53 questions in all—includes the Michigan Alcoholism Screening Test-Revised (MAST)³ and the Drug Abuse Screening Test (DAST).⁴ These tests classify subjects according to the degree of drug and alcohol misuse. Some MAST and DAST questions which appear in the questionnaire are:

- "Do your friends or relatives think you are a normal drinker?"
- "Have you ever neglected your obligations, your family, or your work for two or more days in a row because you were drinking?"
- "Are you always able to stop using drugs when you want to?"

Scores which exceed recognized levels indicate that the subject is in need of treatment for abuse of, or de-

pendency on, alcohol or drugs.

The last section of the questionnaire contains the Positive Feelings Questionnaire (PFQ).⁵ This 18-question section assesses attitudes towards a spouse or partner (not to be confused with a law office partner). It is designed to provide information about the prevalence of marital (or partner) dissatisfaction among lawyers. Lawyers were asked to indicate

"how you actually feel, not how you think you should feel or would like to feel." Some examples from this section are:

- "My partner's physical appearance makes me feel..."
- "How do you feel about the future of your relationship?"
- "How do you feel about the degree to which your partner understands you?"

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Accuracy of the Survey Data

More than two-thirds of the lawyers who received the questionnaire completed and returned it. This high response rate makes it unlikely that the results are skewed or biased.

The L scale from the *Minnesota Multiphasic Personality Inventory*⁶ is contained in a 15-question section that allows LAP to determine the truthfulness of the responses. As LAP reported in the August 1987 *Washington State Bar News*, two percent of the Washington subjects attempted to present themselves in a favorable light. The result is typical of any normal population and suggests that lawyers responded truthfully. Some examples of the L scale are:

- "If I could get into a movie without paying and be sure I was not seen, I would probably do it."
- "My table manners are not quite as good at home as when I am out in company."
- "I do not like everyone I know."

Finally, LAP believes that the Washington results generalize to other lawyer populations. LAP addressed this issue directly by comparing similar data collected from another population, that of Arizona lawyers.⁷

Discussion of Results

Idiosyncratic Sample?

LAP compared psychological symptom levels of Arizona and Washington lawyers with only two years of practice. Both groups were measured with the same test (BSI with similar survey procedures).

Approximately two-thirds of the Washington and Arizona lawyers in the studies were male. Washington female and male lawyers were older than their Arizona counterparts by a few years.

How did LAP compare Washington and Arizona lawyers? For each BSI symptom, LAP computed how many lawyers in each group had a mean score greater than the 98.8 percentile of the normal population (*i.e.*, those not under psychotherapeutic care).⁸ This is a commonly-accepted measure of statistical significance among social scientists. Another way to describe this is to compute how many

lawyers reported mean scores two standard deviations beyond that of the normal population for these symptoms.⁹

No significant differences in elevated psychological symptom levels were found to exist between Washington and Arizona lawyers. Therefore, LAP concluded that young Washington lawyers did not differ from young Arizona lawyers in responding to the demands of the profession and life.

Prevalence of Distress Symptoms

LAP determined the statistically significant elevations of ten symptoms of distress tested in the questionnaire. To yield a "symptom", e.g., somatization, various behaviors were first measured on a scale of intensity and then averaged. The population in general (98.8%) exhibits a combined male-female mean score for somatization of .36. This .36 score is significantly below the questionnaire results for that symptom. A statistically significant number of answers to the LAP questionnaire fall above the population norm. They exceed the adjusted score (two standard deviations above the population norm of .36, which equals 1.08). Three percent of Washington lawyers have somatic behavior scores (i.e., scores above 1.08), as opposed to the "normal" population expectation of 1.2%. Such a comparison becomes especially meaningful for symptoms such as anxiety: the Washington lawyer population tested at 25%.

The following percentages for Washington lawyers should be read with the population norm of 1.2% in mind. For example, 1.2% of the "normal" or overall population would report anxiety scores as high as 25% of the Washington lawyer sample:

somatization	3%
obsessive-compulsive behavior	19%
interpersonal sensitivity	29%
depression	19%
anxiety	25%
hostility	8%
phobic anxiety	6%
paranoid ideation	12%
social alienation and isolation	23%
marital dissatisfaction	10%

Three distress symptoms—smoking tobacco; alcohol and drug abuse and/or dependency—could not be compared by using the above method. However, these symptoms can be compared with statistics relating to U.S. adults. The American Cancer Society has documented that 30% of U.S. adults smoke.¹⁰ Alcohol and drug abuse and/or dependency prevalence rates for adults in the United States are estimated to be approximately 10%.¹¹ The questionnaire revealed the following prevalence rates for Washington lawyers:

smoking tobacco	19%
alcohol abuse and/or dependency	18%
drug abuse and/or dependency	3%

As can be seen, Washington lawyers reported much less smoking of tobacco, and drug abuse and/or dependency than is expected from U.S. adults.

Multiple Symptoms of Elevated Distress

To learn what sort of evaluation or treatment is required, it is necessary to determine whether, for example, lawyers who have elevated psychological distress symptoms and high levels of marital dissatisfaction also have substance (alcohol and/or drug) problems. Why? In such a case, where substance abuse and/or dependency is involved, treatment will focus first on the addiction.

Approximately one-third of Washington lawyers who participated in the survey and who tested as significantly distressed exhibited *both* elevated psychological symptoms and substance abuse and/or dependency problems *or* marital dissatisfaction and substance abuse and/or dependency. For this reason, LAP has developed a comprehensive program to work with all types of distress.

Gender and Length of Practice

To whom should LAP direct its services? LAP was unsure whether variables such as gender and length of practice would affect the expression of distress. As to gender, LAP found both female and male lawyers equally susceptible of acquiring distress symptoms. No statistically significant

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differences arose between the genders for psychological distress symptoms, smoking tobacco, drug abuse/dependency or marital dissatisfaction.¹² Only one notable exception occurred: women are statistically much less likely to develop alcohol abuse and/or dependency, as shown in Table 1. However, this finding must be placed in context.

Only during the last decade have women become lawyers in large numbers. Our data showed older lawyers to be more likely to develop alcohol problems. Because alcoholism is a progressive disease and because most women in our study are not older lawyers, they have had little opportunity to develop alcohol problems.

Length of practice also was considered in determining to whom LAP should direct its services. No statistically significant differences arose except in the case of smoking tobacco; these findings surprised LAP. LAP had expected many differences among lawyers of varying length of practice. Table 2 shows the percentages of lawyers that smoke or report alcohol abuse and/or dependency by length of practice. Alcohol abuse and dependency are included to show the tendency of the disease to develop over time.

Two competing hypotheses may explain these findings. One suggests that the most distressed lawyers develop elevated distress symptoms during law school and that these symptoms never return to those of normal population levels.¹³ The other suggests that lawyers, regardless of length of practice, develop elevated distress symptoms off and on throughout their careers. Distress develops because of a myriad of factors and their combined effects.

As shown earlier, young Washington and Arizona lawyers did not differ in expressing elevated levels of psychological symptoms. Nor did young Washington lawyers differ from older Washington lawyers. Such similarities in distress, regardless of a lawyer's home state and length of practice, strongly suggest that these results may hold true for lawyers nationally.

TABLE 1
Lawyers Who Developed Alcohol Abuse and/or Dependency by Gender

Alcohol Abuse and/or dependent	Females	Males	Row Total
No	169 (90.4%)	484 (79.3%)	653 (81.9%)
Yes	18 (9.6%)	126 (20.7%)	144 (18.1%)
Column Total	187	610	797*

Chi square (with one degree of freedom) = 11.03. Probability equals .0009.

*Missing data account for the five other responses.

TABLE 2
Lawyers Smoking Tobacco and Practicing Alcohol Abuse and/or Dependency by years of Practice

Distress Symptoms	Practiced <2 Yrs	Practiced 2-5 Yrs	Practiced 5-10 Yrs	Practiced 10-19 Yrs	Practiced 20+ Yrs	Row Total
Smoking Tobacco*	28 (15%)	18 (15%)	26 (15%)	43 (23%)	40 (28%)	155 (14%)
Alcohol Abuse and/or Dependency**	23 (12%)	19 (16%)	31 (18%)	36 (19%)	36 (25%)	145 (18%)

* Chi square (with four degrees of freedom) = 14.19. Probability equals .0067.

**Chi square (with four degrees of freedom) = 9.6. Probability equals .0476.

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Lawyers Compared with the Nonlawyer Populations

No one would argue that distress symptoms can lead to impaired practice. Data from Arizona, California, and Oregon indicate that 50-75% of disciplined lawyers commit ethical infractions because, in part, of some underlying impairment.

What are the other effects of distress?

The smoking of tobacco is decreasing nationally, yet 30% of U.S. adults still smoke. The American Cancer society estimates that this addiction causes 30% of all cancer deaths, is a major cause of heart disease, and costs the economy \$65 billion in treatment of smoking-related disease and lost productivity.¹⁴ Only 19% of Washington lawyers still smoke.

The effects of alcohol are even greater.¹⁵ Approximately 10% of all employed persons abuse or are dependent on alcohol. The direct cost of alcohol abuse in the workplace is \$66 billion annually. Four to five other people are strongly influenced by each person with alcoholism.¹⁶ As we have seen, 18% of Washington lawyers suffer from abuse of or are dependent on alcohol.

On the basis of epidemiological data, only three to nine percent of the individuals in industrial nations suffer from depression.¹⁷ However, 19% of WSBA lawyers appear to be clinically depressed.

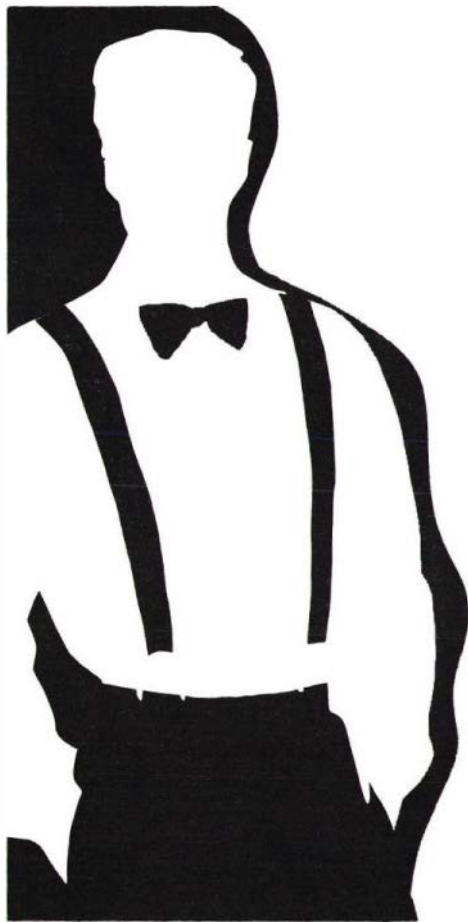
Elevated distress symptoms impair one's law practice. Yet:

There is little doubt that the legal profession is both ubiquitous and extremely influential in the life of America's polity. . . More pervasive and potentially more important is the public impact of the bar and its generally private role as a counselor and advocate of private interest.¹⁸

Because of lawyers' influence on public and private decision-making, lawyers who are distressed need to seek assistance as soon as possible, not just for the sake of their clients, but also for themselves, their families and their friends.

Lawyers' Assistance Program

Twelve years ago, the Washington State Bar Association (WSBA) was among the few state bar associations with local fitness committees to aid lawyers recovering from alcoholism. In the intervening years, hundreds of lawyers have benefited by the work of these committees. The WSBA Board of Governors, at the urging of Bar members and after a year-long study by a Special Task Force of the Board, expanded the program to be both staffed professionally and volunteer-intensive. Expansion was intended to create a comprehensive program to treat a wide variety of problems which can impair lawyers, *i.e.*, senility, depression, gambling abuse, substance abuse, procrastination, domestic difficulties, and physical illness.



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This expanded program is now the Lawyers' Assistance Program (LAP). It is a confidential resource for lawyers with problems that interfere with their professional and personal lives. LAP provides prevention training, crisis intervention, pretreatment evaluation and counseling, peer counseling and professional counseling or referral, and post-treatment follow-up. LAP staff and the lawyer work together to decide how to meet the needs of the lawyer. Most LAP services are free. In addition to mental health professionals, the LAP "staff" includes Peer Counselors.

Peer Counselors include recovering lawyers and other lawyers whose personal lives and professional experiences motivate them to assist impaired lawyers. Peer Counselors, who are trained and supervised by the professional staff, provide support and counseling to lawyers who need assistance.

Peer Counselors and former clients have identified those professionals, institutions, and 12-step meetings (e.g., AA, ACOA, NA) which have

most benefited them.

How does the Program Work?

A request for help by phone, in person, or through a third party starts with a confidential discussion between the lawyer and the LAP counselor. No one else need know about the request. Where it is appropriate, the counselor may encourage the lawyer to include family members or business associates in the interview and/or treatment.

The LAP clinician and the lawyer decide which type of treatment will be helpful to the lawyer. LAP refers our clients to compatible Peer Counselors, professionals or treatment facilities throughout the state.

From August through November 1987, 50 lawyers—reporting a wide range of distress symptoms—have sought LAP's assistance. They have reduced, and are reducing, their distress. One study found that lawyers who used a similar California State Bar program not only eased their levels of distress, but after treatment registered marked salary gains!¹⁹

What is the good news?

Far fewer Washington lawyers smoke tobacco and abuse drugs than does the normal population. This means that educational messages about these two forms of self-destruction are convincing to lawyers. One of LAP's goals is to determine how to provide meaningful education and prevent the destructive effects of all distress symptoms. Clearly the messages about smoking tobacco and abusing drugs are clear; as a result, lawyers have responded even better than has the normal population.

With your help, prevention of lawyer distress can be realized. LAP can enable lawyers to understand the risks inherent in, and perhaps exacerbated by, the legal profession. For lawyers who wish to treat their distress, end their isolation, and begin their recovery, LAP provides effective, confidential services.

Footnotes

¹L. R. Derogatis and N. Melisaratos, "The Brief Symptom Inventory: An In-

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troductory Report," *Psychological Medicine*, Vol. 13 (1983), 595-605.

²The BSI, a short form of the SCL-90 (The Hopkins Symptom Checklist) has been shown to be as valid and as reliable as the full SCL-90 when compared with clinical scales, content scales, and cluster scores of the Minnesota Multiphasic Personality Inventory (MMPI). Thus statistically significant elevations of BSI symptoms validly indicate clinical impairment, *Id.*, See also, L. R. Derogatis, K. Rickels and A. F. Rock, "The SCL-90 and the MMPI: A step in the validation of a new self-report scale," *British Journal of Psychiatry*, Vol. 128 (1976), 280-289.

³G. R. Jacobson, *The Alcoholisms: Detection, Assessment and Diagnosis*, New York: Human Sciences Press (1978); H. A. Skinner, "A multivariate evaluation of the MAST," *Journal of Studies in Alcohol*,

Vol. 40 (1979), 831-844.

⁴H. A. Skinner, "The drug abuse screening test," *Addictive Behaviors*, Vol. 7 (1982), 363-371

⁵K. D. O'Leary, F. Fincham, and H. Turkewitz, "Assessment of positive feelings towards spouse," *Journal of Consulting and Clinical Psychology*, Vol. 51 (1983), 949-951.

⁶J. R. Graham, *The MMPI: A Practical Guide* (New York Oxford: University Press, 1977), p. 18.

⁷G. A. H. Benjamin, A. Kaszniak, B. Sales and S. B. Shanfield, "The role of legal education in producing psychological distress among law students and lawyers," *American Bar Foundation Research Journal*, (1986) 225-252; G. A. H. Benjamin, "Psychological distress in law students and new lawyers," *Washington State Bar News*, Vol. 39 (1985), 13-16.

⁸All data from each subject was machine-read and stored. All computations and statistics were produced by using the Statistical Package for Social Sciences. M. J. Norusis, *SPSS/PC + for the IBM PC/XT/AT* (Chicago: SPSS Inc. 1986). For example, the SPSS software computed the mean scores for each symptom as the sum of scores divided by the number of scores.

⁹Readers without developed statistical skills will find clear, detailed explanations about the statistical procedures used in this article in: A. R. Feinstein, *Clinical Biostatistics* (St. Louis: C. V. Mosby Co., 1977).

¹⁰American Cancer Society, *Cancer Facts & Figures—1987* (New York: American Cancer Society, Inc., 1987), p. 20.

¹¹J. E. Keller, "Drinking, drunkenness and alcoholism: A definition," *The Bar Examiner* (August 1987), 5-10.

¹²For each distress variable, the actual distributions obtained by the study were compared to the distributions expected by chance. This chi square statistical test determines whether differences between the observed and expected distributions are due to random error or to an actual association between the two or more variables of each distribution. An association will be considered statistically significant if the probability of the distributions arising by chance is less than 0.01 (*i.e.* less than 1 in 100). For more explanation about chi square see Feinstein, *op. cit.*, note 9.

¹³Earlier research has shown that lawyers do not self-select into the profession because they are prone to being distressed: Benjamin, *op. cit.*, note 7.

¹⁴American Cancer Society, *op. cit.* note 10.

¹⁵Keller, *op. cit.* note 11.

¹⁶An Adult Child, "Adult Children of Alcoholics," *Washington State Bar News*, Vol. 40 (December 1986), p. 14; T. Pearce, G. K. Severson, "Relationships at Risk: Chemical Dependency and the Family," *Washington State Bar News*, Vol. 41 (December 1987), 7-10; L. Dwinell, "Co-dependency and Lawyers," *Washington State Bar News*, Vol. 41 (December 1987), 13-17.

¹⁷J. H. Boyd & M. M. Weisman, "Epidemiology of affective disorders," *Archives of General Psychiatry*, Vol. 38 (1981), 1039-1044.

¹⁸F. K. Zemens & V. G. Rosenblum, *The Making of a Public Profession*, 1, Chicago: American Bar Foundation (1981).

¹⁹R. Frances, G. Aleroponlos, V. Yandow, "Lawyers' alcoholism," *Advances in Alcohol and Substance Abuse*, Vol. 5 (1984), 59-66. □



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The Board's Work



by Carole Grayson

JANUARY 15-16, 1988: OLYMPIA
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PRESENT: President Dean and all Governors. (Reisler and Carlson absent 1/16). **ALSO PRESENT:** C. C. Bridgewater (Wa. Assn. of Prosecuting Attys.), Kay Frank (SKCBA Young Lawyers), Ed Reed (Ct. of Appeals Judges Assn.), Bob Doran (Superior Ct. Judges Assn.), Geoff Revelle (SKCBA Trustees), John Riley (WSBA Young Lawyers), Mary Prevost (Gov. Lawyers), John Michalik (WSBA Exec. Dir.).

COMMITTEE APPOINTMENTS: Should committee appointments be on a one-lawyer, one-vote formula or according to congressional district?

A proposal that "the Board of Governors shall endeavor to maintain regional representation on committees in proportion to the distribution of lawyers throughout the state's congressional district" was tabled by an 8-2 vote. Governors Steve Reisler of Seattle and Paul Stritmatter of Hoquiam voted no and indicated their preference that the matter be deferred to a specific date.

Reisler, who drafted the proposal, described "regional" as a "squishy word." Inquired Governor Ed Shea of Pasco: "Can you overregulate a process that is basically regulated by grace?" He said the proposal would create a "hotbed...and an unfriendly environment...Is this body a Senate or a House?"

In keeping with the Governors' interest in consistent turnover on committees, the Governors voted to amend Article VIII, Section 1(d)(i) to limit committee service to three consecutive one-year terms on any one committee "subject to individual exceptions for cause as approved by vote of the Board of Governors from

year to year."

Governor Jay White of Seattle described the proposal as "an attempt to codify what has been policy...[It contains] not anything inconsistent with the Bar's historical pattern" of committee appointment.

APA REFORM: The item discussed "A FLOWING RIVER"? the longest was not on the agenda. The Administrative Procedures Act, WSBA lobbyist John Fattorini said, has been through some 15 revisions since the Governors voted in October 1985 to approve in concept a revision proposed by the WSBA Task Force. The subject has been, said Fattorini, "a thorny issue since way back when."

Governor Stritmatter disputed Fattorini's representation that "90% to 95%" of what the Governors approved in 1985 in the original concept still exists in the latest revision pending in the Legislature. Said Stritmatter, "The changes are significant enough ...that it is fair and appropriate that the Governors reconsider the present content." Frank Edmondson of Olympia, President of the Government Lawyers Bar Association, agreed. He asked that the matter be referred back to the Administrative Law Section and/or the Legislative Committee for evaluation of the changes, which he termed "substantial." The lobbying efforts on the bill, he said, have been "so intense that legislators ...refer interchangeably to the 'Bar bill' and the 'Task Force bill'."

"We'd be in a real strange position," responded Fattorini, "if we pulled the rug out from under the Task Force." Added Don Ericsson of Spokane, chair of the WSBA Legislative Committee, "What we have here is something like a flowing river."

A motion by Stritmatter for the

present Task Force bill and House Judiciary Committee bills to be referred to the Legislative Committee for evaluation and subsequent report to the Governors, during which time no authority would be removed from Fattorini to continue to instruct the Task Force to negotiate on disputed provisions, failed 2-6. Julie Weston of Seattle joined Stritmatter in voting for the motion.

"Let's just let our people know that negotiation should continue in good faith," said Shea of Pasco.

PROFESSIONAL INSURANCE COORDINATOR?

After hearing a proposal by Geoff Revelle

of Bellevue of the Attorney Professional Insurance Committee for a WSBA malpractice insurance coordinator for a one-year salary of \$35,000, the Governors approved the recommendation of the Budget Committee that the proposal be resubmitted to the Governors as part of the Bar's annual budgetary process. Budget Committee chair Frank Hayes Johnson of Spokane noted that the proposal would "virtually deplete" the Bar's contingency fund. "How widespread is the need?" he asked, and specifically sought input from Bar members.

To what extent could the text be done by the Committee or by Bar staff? asked Governor White.

Governor Julie Weston of Seattle noted a dearth of information on the professional insurance market. She wondered whether a Supreme Court-mandated survey would produce information. WSBA Executive Director Michalik noted that such a mandated survey was authorized in Arizona, but despite the fact that sanctions were included for non-compliance, 28% of Arizona lawyers failed to respond.

LEGISLATION

o The Governors voted 8-0 to oppose a bill which would allow the testing of urine to determine the existence of

drugs as well as alcohol. The WSBA Criminal Law Section had unanimously opposed the bill, as had the WSBA Legislative Committee, in a split vote. The Washington Association of Prosecuting Attorneys had no position.

o The Governors voted 7-1 (Shea nay) to take no position on House Bill 1038, which would prohibit the imposition of a death sentence on persons who are under the age of 18 at the time of the offense. The Governors then voted 5-3 to instruct the WSBA Criminal Law Section to take no position on the bill. Governors Bill Bergsten of Tacoma, Steve DeForest of Seattle and Jim Turner of Bellevue dissented. Said DeForest, "We don't have the knowledge. Let's not handcuff the section."

BAR NEWS EDITOR APPROVED The Governors unanimously approved the recommendation of the Editorial Advisory Board and named Lindsay Thompson of Vancouver, Washington as the ninth editor of the Washington State Bar News. Thompson replaces Carole Grayson of Seattle, whose three-year term expires March 1, 1988.

IN OTHER WORK:

o Monty Gray of Seattle was appointed chair of the Pro Bono Task Force.

o Kelly Corr of Seattle was appointed chair of the AIDS Task Force.

o Doug Tuffley, formerly of Spokane and now of Seattle, was appointed to replace Bill Gissberg of Olympia on the Judicial Council.

o WSBA Executive Director John Michalik reported that a record number of attorneys admitted in other jurisdictions--196--have applied to take the winter 1988 Bar exam, to be held in March.

CENTENNIAL: The Governors unanimously authorized President Jack Dean of Spokane to appoint a five-person committee to investigate to what extent the WSBA should become involved in Washington state's Centen-

Contingent Fee Agreements In Cases Where The Court Sets a Reasonable Attorney's Fee

I. Issue

A lawyer has asked whether, in a case where the court may award attorneys' fees pursuant to statute, he can propose and enforce a contingent fee agreement that may result in the client's obligation to pay a larger fee than the court awards as a reasonable attorneys' fee. For example, if a lawyer is asked to bring a suit under the Consumer Protection Act, must the lawyer provide in a contingent fee agreement that in no case will the client be obligated to pay the lawyer more than the court awards the plaintiffs for attorneys' fees? If the fee agreement contains no such limitation, is it unethical for the lawyer to attempt to collect a fee pursuant to the terms of a contingent fee agreement that is in excess of the amount awarded by the court for attorneys' fees?

II. Conclusion

Although often not clearly articulated by courts, the amount of a fee award to a successful party pursuant to a statute such as the Consumer Protection Act is within the court's discretion and usually is determined using different factors from those relevant in determining what a reasonable fee is for the successful client to pay his or her lawyer. Thus, it is not per se unethical for the lawyer to propose or enforce a contingent fee agreement that sets the fee as a percentage of the client's total recovery, regardless of the court fee award.

III. Discussion

A court award of reasonable attorneys' fees could be found to preempt the amount of fee otherwise payable under a contingent-fee agreement on two bases. First a court could find that the statutory provision for an award of reasonable attorneys' fees was intended, under the statutory scheme, to make the successful party whole, including abatement of further liability for attorneys' fees to the successful attorney. Whether a statute is intended to have this result is a legal question.

The second possible basis for concluding that a client's liability to the attorney is limited to the amount the court has awarded as a reasonable attorney's fee is to find that the court's

determination of a reasonable fee for a particular case, calculated using factors similar to those in RP 1.5(a), is a factual determination that applies not only to the parties in the lawsuit but also, for purposes of RP 1.5(a), to the fee the successful party owes the lawyer, and that for the successful lawyer to collect more would be unethical behavior.

For the lawyer, either basis presents an ethical problem. The lawyer cannot seek to collect a fee that is inconsistent with the statutory scheme, and cannot collect a fee in excess of a reasonable fee.

The first approach was followed in *Cooper v. Singer*, 719 F.2d 1496 (10th Cir. 1983), where the court held that when the plaintiff recovers a reasonable attorney's fee under the Civil Rights Act, the plaintiff's lawyer cannot collect from the client a larger fee than the amount awarded; the plaintiff's fee obligation to his or her lawyer is limited to the amount awarded by the court regardless of the terms of the contingent fee agreement. The court reasoned in reaching this conclusion:

"We believe that under the Bar's own regulations, lawyers must take into consideration the availability of statutory fee award provisions in determining their fee arrangements with clients. In Federal Civil Rights actions Congress has provided that a prevailing party shall receive a reasonable attorney's fee, as determined by the courts. A lawyer should recognize that Congress apparently intended section 1988 fee awards to fully satisfy the client's fee obligations, and that a percentage contingent fee arrangement will differ in amount from a court award of reasonable fees. The lawyer's fee arrangements should reflect these factors. In the case of the client who was unable to pay under an hourly arrangement, a lawyer can contract to receive the amount that will be awarded by the court to the client under section 1988. Under this form of contingent agreement, he will thus be assured of a reasonable

fee, supplemented by an appropriate contingency bonus, if his client prevails. If the client's action includes claims that are not subject to this section 1988 fee award provision, the attorney can structure the fee agreement to provide alternate sources of payment for those claims. In any case the lawyer can and should construct the agreements that harmonize with fee award provisions of Congress." 719 F.2d at 1506.

Accord: *Wheatley v. Ford*, 679 F.2d 1037 (2d Cir. 1982). Other circuits disagree: *Johnson v. Georgia Highway Express*, 488 F.2d 714 (5th Cir. 1974); *Pharr v. Housing Authority*, 704 F.2d 1216 (11th Cir. 1983) (if contingent fee is greater than court awarded fee, defendant must pay the difference); and *Hamner v. Rios*, 769 F.2d 1404 (9th Cir. 1985) (if contingent fee exceeds court-awarded fee, plaintiff must pay the difference).

Cooper's interpretation of congressional intent was subsequently brought into question by *Sears et al. v. Atchison, Topeka & Santa Fe Railway Company*, 779 F.2d 1450 (10th Cir. 1985), where the court described *Cooper* as a "statement of future operating procedure within this circuit." Moreover, lawyers in Washington state, in view of the 9th Circuit decision in *Hamner*, need not follow *Cooper* in dealing with attorney fee questions in § 1988 cases.

Absent a clear declaration in a statute or a binding court ruling that a statutory award of reasonable attorneys' fees limits the successful party's liability to his or her lawyer for attorney fees, a lawyer must still resolve whether the lawyer can collect more than the court awards as a reasonable attorney's fee without running afoul of RPC 1.5. Under Washington law, guidance must come from *Bowers v. Transamerica Title Insurance Company*, 100 Wn.2d 581, 675 P2d 193 (1983), a case involving an award of "reasonable attorneys' fees" under RCW 19.86.090, the Consumer Protection Act. In setting a reasonable fee, the court in *Bowers* directed that the trial court should consider the number of hours reasonably ex-

pendent in light of the type of work performed; experience and expertise of the attorneys who performed the work; the time spent on unsuccessful claims, duplicated effort, and otherwise unproductive time; and the reasonable hourly rate determined in light of the attorneys' usual and customary rates; the level of skill required; time limitations imposed by the litigation; the amount of the potential recovery; the attorneys' reputations; and the undesirability of the case. After using these factors to determine the reasonable rate and reasonable number of hours, the court should consider adjusting the award if the attorneys were employed under a contingent fee agreement, and based upon the quality of the work performed.

This list of considerations is similar, although not identical, to the factors listed in RPC 1.5(a) for determining the reasonableness of a fee. While 1.5 requires consideration of the results obtained, it does not require, as does *Bowers*, that the time spent on unsuccessful claims be discounted. *Bowers* does not expressly mention consideration of the novelty and difficulty of the legal questions, nor does it mention consideration of whether it was apparent to the client that it was likely that acceptance of the representation would preclude acceptance of other work, the time limitations imposed by the client, or the nature and length of the professional relationship with the client. Neither Rule 1.5(a), which does not purport to be an exhaustive list, nor *Bowers*, which deals with the fees to be assessed against the losing party, suggests consideration of other factors in the successful party's relationship to his or her attorney that may have affected the amount of time expended or what a reasonable rate would be. For example, the fee agreement may cover services that the court does not consider in setting a fee under *Bowers*; the client may have changed attorneys in mid-course, resulting in duplication; the client may have insisted the lawyer assert the unsuccessful claims; the client may have directed the attorney to do more to prepare for trial than the attorney would reasonably have otherwise done; or, the client may have been unreasonably difficult.

A comparison of the *Bowers* factors, the considerations included in Rule 1.5(a), and the unique factors in a particular attorney-client relationship, make it clear that the reasonable attorneys' fees determined by the court as prescribed in *Bowers*, are reasonable for an ideal case—one that is completely successful—for the ideal client. The court following the *Bowers* approach must disregard or discount many factors that under Rule 1.5(a) are appropriate to consider in settling the fee that the client owes. Thus, while the court, following *Bowers*, makes a finding of fact as to reasonable attorneys' fees for a particular case, it is highly probable that were the court to set the reasonable fee the successful client should pay his or her attorney, a very different amount would be set because of the presence of important considerations the court would not look at in setting the *Bowers* fee.

IV. Summary

In entering into a contingent-fee agreement in a case where the lawsuit may result in an award of reasonable attorneys' fees pursuant to statute, in the absence of a binding court decision as in *Cooper* or statutory language to the same effect, there are several options that may be consistent with the Rules of Professional Conduct. The attorney and client can agree that (1) the court award will be, or will set a limit on, the client's fee obligation; (2) the client's fee obligation will be a percentage of the damages awarded or, of the total recovery awarded plaintiff (for damages and for reasonable attorneys' fees), regardless of the amount awarded by the court as reasonable fees; or (3) the client's fee obligation will be the greater of the court awarded amount or a specified percentage of what the court awards. If either the second or third alternative is agreed to, later misunderstandings may be avoided if the fee agreement expressly acknowledges that the client's fee obligation is likely to vary from what the court awards, and that this may be appropriate because of factors unique to the attorney-client relationship that the court will not consider in setting reasonable attorneys' fees to be assessed against the unsuccessful party.

The fact that the attorney and client agree to a contingent fee does not mean that the resulting fee will necessarily be reasonable. Both in agreeing to a percentage, and deciding at the conclusion whether a reduction is warranted, the attorney must consider the unique facts of the particular case. Under Rule 1.5, "reasonable" is to be determined in view of the particular case; a reasonable percentage in one case may be unreasonable in another. The court in *Bowers* alluded to this when it discounted the testimony of an attorney whose practice was 95% contingent-fee work and who testified he had to obtain double the usual hourly rate for cases in which he prevails. "... [T]he appropriate incremental factors should be determined, not by the percentage of contingent fee work performed by the attorney, but by references to the chances of success in the litigation." 100 Wn.2d at 601.

To minimize attorney-client conflict over fees, the court should be clear as to what it is or is not doing when it awards reasonable attorneys' fees. For example, under RCW 19.86.090, the court may award the successful party a reasonable attorney's fee. The award is to the party, not to the party's lawyer. Nevertheless, the court in *Bowers* suggested it was an award to the attorneys when it stated: "The documentation supplied by the attorneys in support of their claim for fees was sufficient to allow the computation of the hours expended in the litigation." This confusion about what the court is doing in awarding reasonable attorneys' fees unnecessarily complicates the attorney-client problem relating to fees. Courts in awarding reasonable attorneys' fees pursuant to statute should state that it is an award to the successful party as a part of its damages, and that the amount awarded may, for quite valid reasons, be a different amount from a reasonable fee owed by the successful party to his or her attorney.

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

Dues Referendum Ballot Count Noted

In November 1987 a Referendum was submitted to the active membership of the State Bar Association calling for the schedule of State Bar Association dues effective for 1987 to continue in force, without increase, for a period of two years. This Referendum was in response to action of the Board of Governors in implementing a dues increase effective with the dues payable for 1988. As the active membership has previously been advised, the Referendum in question failed. Under the Association Bylaws participation in such a Referendum by not less than fifty percent (50%) of the active membership of the Association is required in order for the Referendum to validate. As of the voting deadline for this Referendum less than 50% of the active membership had voted. Accordingly, the Referendum failed and the increase in dues as approved by the Board of Governors became final.

Although the Referendum did not validate, the President of the State Bar Association directed that *all* ballots, whether submitted before or after the voting deadline, be counted and, though such would have no effect on the result of the Referendum, the totals published in the *Bar News*. That count, involving 6,997 total votes cast, has been completed. The totals on that count are:

Ballots cast <i>In Favor</i> of the Referendum Resolution:	4,507
Ballots cast <i>Opposed</i> to the Referendum Resolution:	2,490

The 4,507 ballots cast in favor of the Referendum Resolution and, thus, against the dues increase approved by the Board of Governors, represent approximately 31% of the active membership of the State Bar Association.



Public Hearings

"Is there a gender bias in the Washington court system?" The Washington Task Force on Gender and Justice is interested in your court-related experiences in which gender played a significant role or affected a fair administration of justice. Hearings, all scheduled to run from 7 to 10 p.m., will be held: Tuesday, 3/1/88 in *Seattle* at 402 King County Courthouse. *Spokane* on Monday, 3/7/88 at the County Health District, W. 1101 College Avenue. *Pasco* on Tuesday, 3/8/88 in the HUB-Senate Room of the Columbia Basin College, 2600 North 20th Avenue. *Bellingham* on Monday, 3/14/88 in Building G-Conference Room of the Bellingham Voc-Tech Institute, 3028 Lindberg. *Wenatchee* on Tuesday, 3/15/88 in the Lyceum at Wenatchee Valley College, 1300 Fifth Street. *Longview* on Wednesday, 3/16/88 in the Main Building-Founder Room of Lower Columbia College, 1600 Maple Street.

For more information, call Gloria Hemmen at the Office of the Administrator for the Courts at (206) 753-3365.

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Law Office Management and Admiralty Law Institute Headline March & April

by John M. Redenbaugh
Associate Director of CLE

Law Office Management: Personnel Problems and Problem Personnel in the Law Office is a seminar addressing issues faced by the lawyer/employer and features videotape presentations from the 1987 WSBA annual meeting CLE programs on law office management and employer/employee rights. The program will be presented at five sites: On March 4 in Vancouver, Washington at the Inn at the Quay; on March 11 in Everett at the Holiday Inn; on March 18 in Yakima at the Thunderbird; on March 25 in Tacoma at the Executive Inn at Fife; and on March 31 in Seattle at the Stouffer Madison Hotel.

Leading the discussion at each seminar site will be a member of the Law Office Economics and Management Section executive committee. Topics to be covered include; "Pre-Employment Screening/Discrimination;" "Lawyers as Employers: Policies on Performance, Discipline, Discharge, Drugs and Alcohol;" "Lawyers as Defendants: the Hazards of Workplace Litigation—Sex, Smoking, Wrongful Discharge;" and a panel discussion on "Employment Aspects of Law Office Management."

Videotape appearances will be made by **Carolyn Cairns** (Cairns & McKinnon, Seattle), **Judith A. Lonquist** (Law Office of Judith A. Lonquist, Seattle), **Frederick T. Rasmussen** (Riddell, Williams, Bullitt & Walkinshaw, Seattle), and **Elliott W. Johnson** (Law Office of Elliott W. Johnson, Mount Vernon).

Discussion leaders at the various sites are **Stephen W. Horenstein** (Horenstein & Horenstein, Vancouver) in Vancouver; **Elliott W. Johnson** in Everett; **Dale E. Sherrow** (Sherrow & McDonell, P.S., Seattle) in Yakima and Seattle; and **Lawrence B. McNerthney** (McGavick, Graves, Beale & McNerthney, Tacoma) in Tacoma.

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

The Pacific Northwest Admiralty Law Institute will present a major international conference on fisheries law in Seattle on April 14 and 15 at the Four Seasons Olympic Hotel. Presentations will be made on law and insurance topics related to the fishing industry by attorneys practicing in the areas of admiralty, fisheries, maritime personal injury and marine insurance matters. During the past eight years, the Institute has presented significant programs in Seattle, Portland and Vancouver, B.C. The 1983 Seattle program was attended by 300 lawyers, marine insurance personnel and shipping industry leaders. The program is produced by the CLE Department of the WSBA, in cooperation with the Oregon State Bar and the CLE Society of British Columbia.

Some of the many program topics to be covered include: "Joint Venture/Foreign Fishing;" "Fishing Treaties;" "Federal/State/Indian Regulation;" "Insurance Issues;" "Personal Injury Matters;" "Collision/Net/Area/Route;" "Case Law and Legislative Development;" and "Environmental Pollution."

The planning committee of the Institute is chaired by **Thomas J. McKey** (Bogle & Gates, Seattle). Tuition for this seminar is \$295 (U.S. funds), which includes admission to the program both days, coffee service and luncheons on both days, plus one copy of all course materials.

For further information about this conference, please contact Debbie Kirchner at the WSBA (telephone (206) 448-0433).

APPROVED COURSES Washington State Bar Association

Introducing the Washington Motor Vehicle Accident Deskbook
6.50 credits

FEB 4	Tacoma (Sheraton Hotel)
FEB 11	Spokane (Cavanaugh's Inn at the Park)
FEB 18	Portland (Red Lion/Jantzen Beach)
FEB 25	Seattle (Stouffer Madison Hotel)

The Basics of Bankruptcies: Chapters 7 and 13
6.50 credits

FEB 12	Richland (Hanford House)
FEB 16	Tacoma (Sheraton Hotel)
FEB 23	Seattle (Stouffer Madison Hotel)

The Northwest Securities Institute
10.50 credits

FEB 19	Seattle (Sheraton Hotel and Towers)
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Environmental and Land Use Law Update
7.00 credits

FEB 26	Seattle (Stouffer Madison Hotel)
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Law Office Management: Personnel Problems and Problem Personnel in the Law Office
3.50 credits

MAR 4	Vancouver, WA (Inn at the Quay)
MAR 11	Everett (Holiday Inn)
MAR 18	Yakima (Thunderbird)
MAR 25	Tacoma (Executive Inn at Fife)
MAR 31	Seattle (Stouffer Madison Hotel)

Pacific Northwest Admiralty Law Institute
00.00 credits

APR 14	Seattle (Four Seasons)
-15	Olympic Hotel)



COWLITZ COUNTY REPORT
by TERRY LEE

Sue Baur, the Christmas party skit committee chairperson, is negotiating with major studios after an award-winning and praiseworthy video movie, "The Twelve Days of a Lawsuit," shown at the recent party. Special mention to Alex "lets be reasonable" Styve, Duane "give me

money" Crandall and Gary "the Sheik" Bashor. Wes Johnson, an experienced Oregon lawyer, recently set up for business in our county so he could work with real law and lawyers. His cameo appearances in the video, as the lawyer who didn't know his client or the law, were very good. Special awards were given to Chris "speak softly" Sternagel and in advertising Jim "tackiest by a face" Morgan. Mick McClean delayed his

monthly sojourn to Palm Springs so he could entertain the few lawyers who have seen him in a courtroom. In January a Law for the Non-Lawyer community education class was conducted through the local community college. The cooperation and support of the bar for this program has been outstanding. If anyone sees Lindsey "I'm hunting" Cotterell, please ask him to call home.

EAST KING COUNTY REPORT
by DOUGLAS W. HARRIS

The annual EKCSA holiday party and election was a resounding success this year. The annual gathering was held at Marian's in Bellevue, which did a great job. Last year's president Mary Gaudio was seen loading the leftovers into her truck at the end of the evening.

For the first time in recent memory, elections for trustee and officer positions were hotly contested. The newly-elected officers are as follows: president, Eric Jeppesen; vice president, Barry Hasson; secretary, Steven Toole; treasurer, Jean Kunz. The expanded Board of Trustees is now comprised of newly-elected trustees Don Gulliford, Stephen Fisher, Ken Davidson and Ron Dickinson and existing trustees, Diane Vanderbeek, Steve Hanson, Jim Trujillo, Bruce Gardiner and Doug Harris. We all look forward to another productive year.

Several awards were handed out in recognition of service over the year. Most notably, Ray Dunlap ended his ten-year tenure as EKCSA treasurer. We will all miss Ray's help. Outgoing president, Mary Gaudio, was honored by a gift of her choosing and did her best to look surprised. Mary's energy and dedication to EKCSA over the year was truly amazing, and she will be missed. EKCSA has taken on new direction and purpose under her administration.

The East King County Superior Court clerk's office is actually looking as if it has a chance to become reality within the year. The concept has received broad-based support from many areas and is presently in the King County Council budget process.

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ADMIRALTY NOTE #2: The statute of limitations for personal injuries for tort actions under the Jones Act and unseaworthiness doctrine is three years, 46 U.S.C. § 763(a). Some courts have held that the limitations period is tolled when an employer acts fraudulently, such as by wrongfully telling a seaman that his only remedy for his injuries is workmen's compensation.

KURT M. LeDOUX is available for referral, consultation and association in cases involving injured fishermen, floating seafood processor workers, longshoremen, and other seamen and maritime workers in Washington and Alaska.

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Please give whatever support you can to this project by calling **Diane Vanderbeek** at (206) 451-3991. Diane was honored by EKCBA for her work on this project, which has surpassed all expectations.

The EKCBA membership directory has now been printed and distributed. It lists Eastside attorneys alphabetically and by areas of emphasis. It should be a valuable tool in referring cases in the right direction.

Finally, EKCBA has undergone tremendous change this year. The bylaws were amended to provide for a dues increase and to allow for the establishment of an expanded committee system and various sections. Participation is increasing to reflect the growing number and needs of attorneys on the Eastside. We all look forward to the trend continuing through the coming year.

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

Tacoma attorney **Stanley R. Wagner, Jr.** has been awarded the first Fulbright Research Fellowship to a practicing attorney for study in Korea. His project is an examination of the administrative law and procedure involved in international transactions in Korea. Stan has been in private practice in Tacoma during recent years. Prior to that he was with the Pierce County Prosecuting Attorney's Office.

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

Office Moves. Ryan, Swanson & Cleveland announces that **Sue Ying Leong** and **Timothy W. Dore** have joined the firm. The law offices of **Robert B. Gould** have moved to the Fourth & Blanchard Building; **Douglas K. Barrett** and **Theodore D. Silva** are of counsel, and **David W. Thomas** is an associate there. **Elizabeth Thomas** has joined Preston, Thorgimson, Ellis & Holman as an associate. **Jeffrey J. Donchez** has opened his office in north Seattle. **Zachary Mosner** has re-opened his office in the Mutual Life Building. **Edward R. Skone** (U. of W., class of 1971) has joined Kinzel, Allen & Skone as a principal. **David Gregg** has been promoted to the position of managing attorney at Hyatt Legal

Services' Bellevue office.

Foster, Pepper & Riviera has merged with Roberts & Shefelman to form Foster, Pepper & Shefelman with offices in Seattle, Bellevue, Olympia and Portland, Oregon. **Karen Marie Thompson** and **Suzanne C. Howle** have formed a partnership with offices in the Bank of California Center. **Mary Ann Vance** has relocated to the Bank of California Center. Oles, Morrison & Rinker announces that **Douglas S. Oles** and **Peter N. Ralston** have be-

come partners and **Lisa J. Powell**, **Jeffrey R. Hovik**, **T. Daniel Hefferman**, **Harlan M. Hatfield**, **John V. Ohnstad** and **Barbara L. Zanzig** have joined the firm as associates. **Patrick H. Vane** has become a principal in Dempcy, Braley, Gilyeart, LaDow & Vane with offices in the Times Square Building.

Davis, Wright & Jones announces that **Francis A. Kareken** has become a member of the firm, and that the following are now associates: **Mark W. Berry**, **Laura J. Buckland**, **Crissa**

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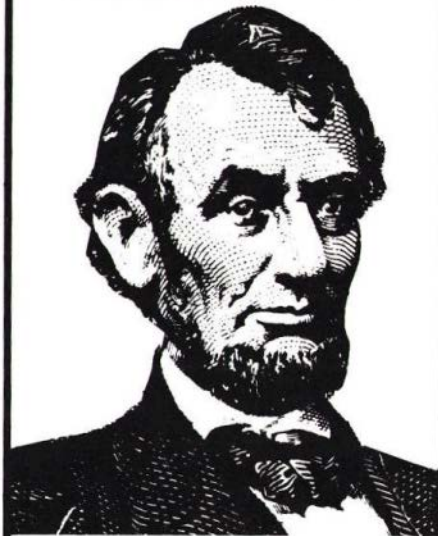
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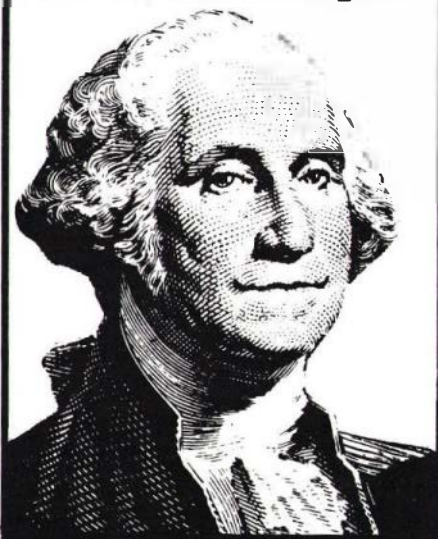
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Byron E. Springer is now associated with Monroe, Stokes, Eitelbach & Lawrence. Craig S. Palmquist has moved to the Fourth & Blanchard Building. Elizabeth K. Selleck (downtown Seattle's answer to Bernice Jonson) has relocated to the First Interstate Center.

Of Note. Gerard M. Shellan has been elected Presiding Judge of the King County Superior Court, and Charles V. Johnson has been elected assistant Presiding Judge. David H. Rockwell has been elected to membership in the American College of Real Estate Lawyers. Daniel C. Blom has been named chair of the Handbook and Bylaws, and Policy Coordination committees, Tort and Insurance Practice Section of the American Bar Association for the 1987-1988 year.

**WASHINGTON
WOMEN LAWYERS
by KATHLEEN PERSINGER**

At its December meeting, the Board of Directors of Washington Women Lawyers elected new state officers. They are Laura Inveen, president (Seattle); Vicki Toyohara, v.p. - Funding (Seattle); Elsa Cole, v.p. - Membership (Seattle); Judith Jeffers, v.p. - Programs (Seattle); Cheryl Carlson, secretary (Tacoma); and Alexandra Cock, treasurer (Seattle).

In January, the WWL Board of Directors met for an annual planning conference. Both past and present board members attended the day long retreat to discuss issues of interest to the organization and to set goals for 1988. These will be outlined in the winter edition of WWL Newsletter.

For membership information, please contact the WWL Office at 1331 Third Avenue, Suite 520, Seattle, WA 98101 / Tel: (206) 622-5585.



DISCIPLINE

Reprimanded

Washougal attorney **Robert C. Lahmann** (admitted 1970) has been ordered reprimanded pursuant to a stipulation to discipline. The discipline was based upon Lahmann's neglect of a probate estate, including his failure to timely file the federal estate tax return, and his retention of client funds, intended for payment of federal estate taxes, in a noninterest-bearing trust account for a period of fifteen months.

Seattle attorney **Gary L. Wolfstone** (admitted 1974) has been ordered reprimanded following a disciplinary hearing. The discipline was based upon Wolfstone's conduct in failing to produce a client's original diary in response to a discovery request, and his direction to the client that she edit, by copying on blank paper, the entries from her original diary which were true and only bring those excerpts to her deposition. At the deposition and thereafter, Wolfstone failed to disclose to opposing counsel that only excerpts of the diary had been produced.

Bellevue attorney **Diane L. VanDerbeek** (admitted 1981) has been ordered reprimanded pursuant to a stipulation to discipline. The discipline was based on VanDerbeek's conduct in knowingly submitting a falsely back-dated fishing license to a game officer.



IN MEMORIAM

Donald H. McGavick of Tacoma died November 21, 1987 at the age of 60. A third-generation Tacoman, McGavick traced his family's Northwest history to the late 1840s. A graduate of Seattle University and Gonzaga Law School, he returned to Tacoma in 1955 to start the firm of McGavick & McGavick. He served on the WSBA Disciplinary Board and as a trustee of the Pierce County Bar Association and the Tacoma Planning Commission and was a lobbyist for the Port of Tacoma and Pierce Transit. Remembrances to the American Cancer Society or the NAACP.

Carl Galland Koch of Seattle died November 20, 1987 at the age of 71. The Seattle native was graduated from the University of Washington and its School of Law. In 1953, Koch became a partner in the Seattle firm of Karr, Tuttle, Koch, Campbell, Mawer, Morrow & Sax, which he first joined in 1940. He served on the Selective Service Commission, as a judge pro tem in the Seattle Municipal

Court, the regional board of the National Conference of Christians and Jews, and the candidates' investigating committee of the Seattle Municipal League.

John F. Evich died in Seattle in November 1987 at the age of 78. A native of Kamiza, Yugoslavia, Evich was graduated from the University of Washington Law School, was a King County prosecuting attorney, had

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served as a Seattle Municipal Court judge, and had been in private practice. Remembrances to the Tall Elks, c/o Ballard Elks, 6411 Seaview Avenue N.W., Seattle, WA 98107.



ET ALIA

"Law in the Workplace"

"Law in the Workplace", a new ABA publication, is available from the ABA, Order Fulfillment, 750 North Lake Shore Drive, Chicago, IL 60611. The 80-page booklets are \$2 each for one to nine copies, \$1.50 each for 10 to 99 copies, and \$1 each for 100 or more copies. Postage and handling is an additional \$1 for the \$2 category.

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Other publications in the "You and the Law" series include "Law and the Courts", "Law and Marriage", "Landlords and Tenants", "Your Rights Over Age 50", "Consumer Credit and Bankruptcy", and "The American Lawyer: When & How to Use One."

Public Notice

1988 quarterly meetings of the Board of Directors of Evergreen Legal Services, a 501(c)3 not-for-profit organization which provides legal services to eligible low-income clients will be held on the following dates: April 16, 1988; July 16, 1988; October 22, 1988.

These meetings commence at 9 a. m. and are usually held in the vicinity of the Seattle-Tacoma Airport for cost economy reasons, and to accommodate board member travel.

For specific meeting site information, which may vary from meeting to meeting based on space availability, please call Brel Menard, toll-free at 1-800-542-0794.



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USSR Legal Tour

A legal tour of the Soviet Union has been organized for May 1988. Members of local bar associations, as well as students, faculty and alumni of the University of Puget Sound School of Law are invited. A flyer describes the tour. Contact Michael Newcity, Assistant Professor, University of Puget Sound School of Law, (206) 591-2214.

**Re: RCW 19.52.020(1)
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The average coupon equivalent yield from the first auction of 26-week treasury bills in January is 6.67%. The maximum allowable interest permissible for **February 1988** is thus **12%**. (For further details and past rates, please see the October 1987 *Bar News*, page 39.)

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- Deed of Trust Foreclosures: After Cox vs. Helenius, Wash. St. Bar News, Vol. 39 No. 5, MAY 1985
- "The Seller's Right of Reclamation and Bankruptcy": Wash. St. Bar News, Vol. 41, No. 7 JULY 1987

LECTURES:

- American Institute of Banking
- Chair and Organizer: CLE/Wash. St. Bar Assn.: "Bankruptcy Pitfalls in Business Transactions: Prevention and First Aid." JULY 1987 Westin Hotel/Seattle (continuing series)

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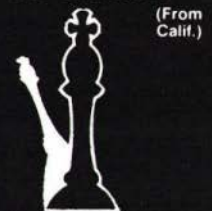
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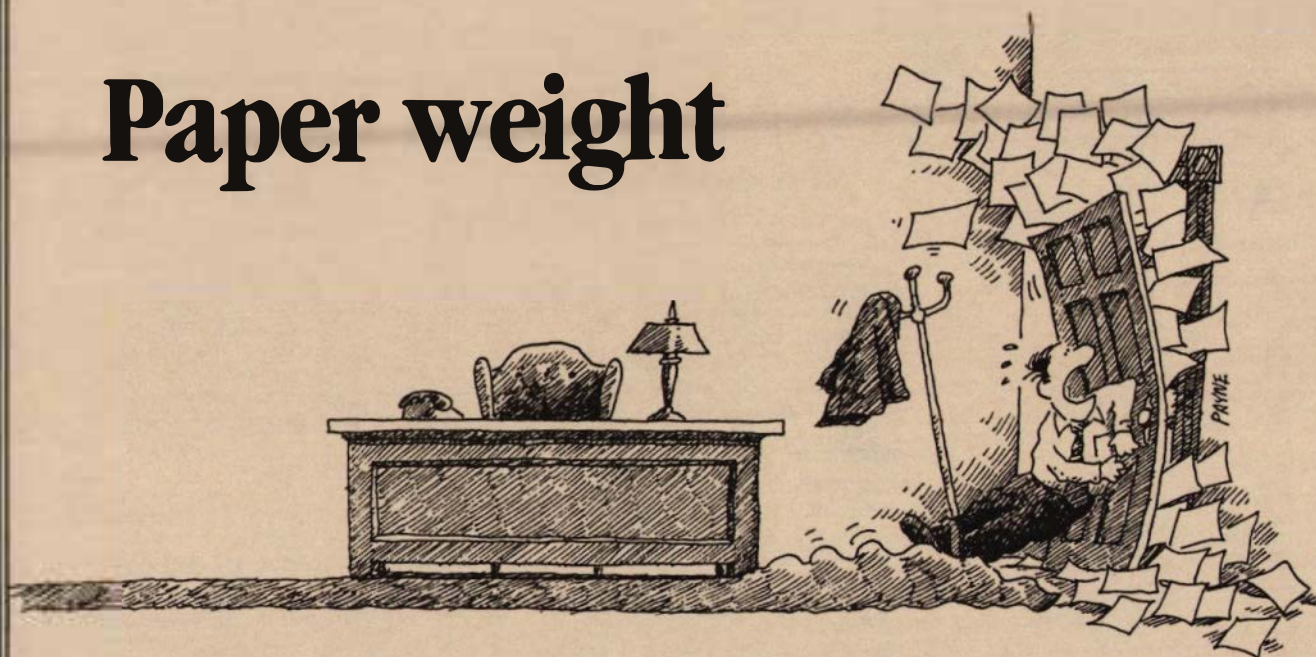
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