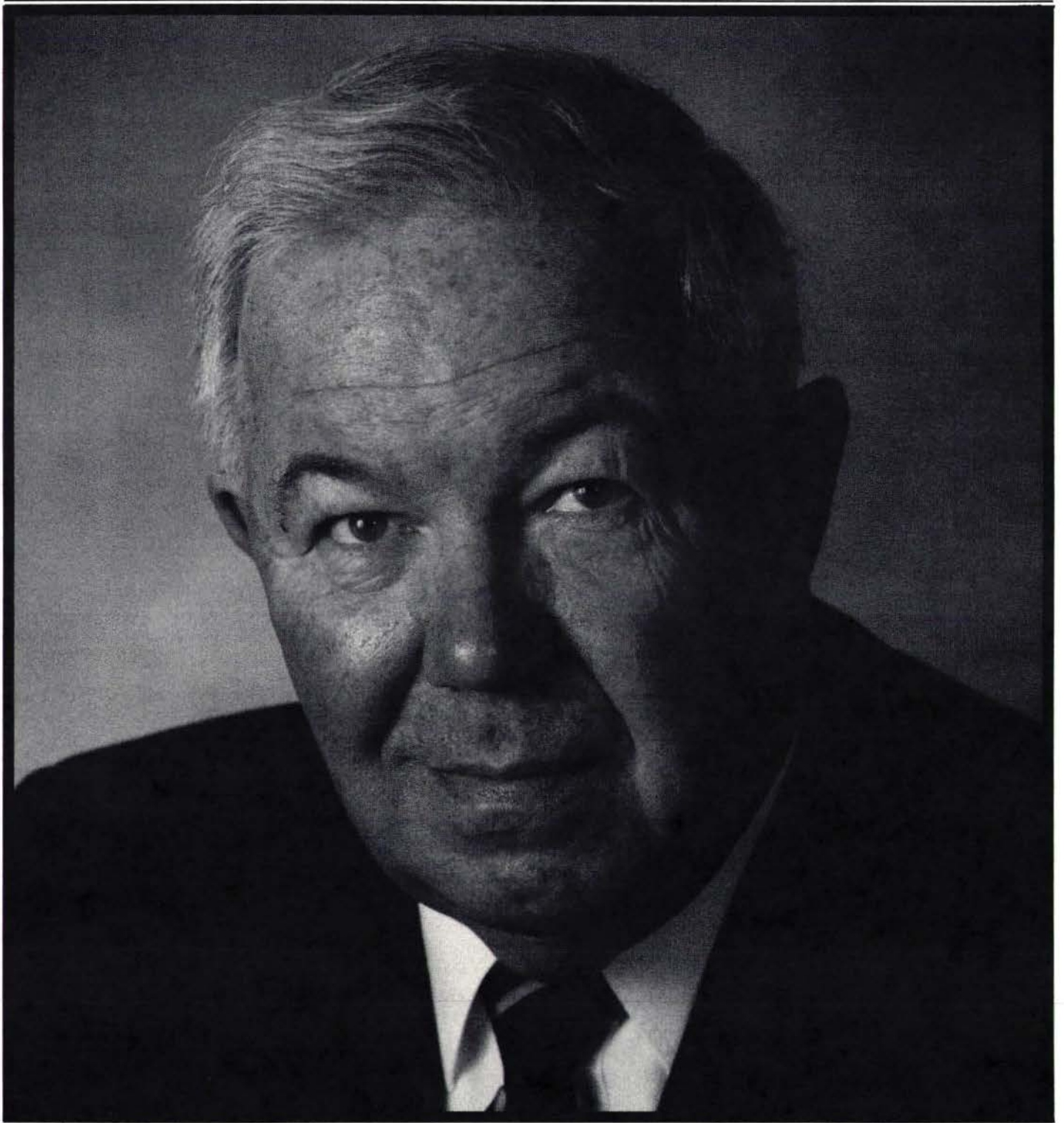


Washington State **Bar**
News

Volume 43, No. 10, October 1989



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President



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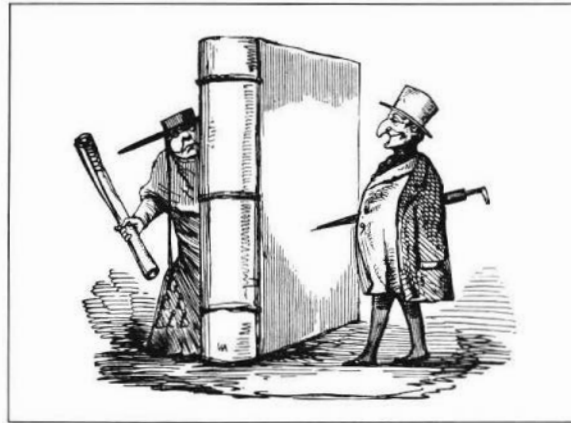
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Letters to the Editor of reasonable length are invited. Such letters should be typed and signed. The Editor reserves the right to select communications or excerpts therefrom for publication, and to edit any letter as may be appropriate.

More On Voir Dire

Editor:

I commend Paul Luvera for expressing my sentiments exactly in his article, "Truth or Consequences — Is Voir Dire Really a Waste of Time?"

The basic difference between the approaches to voir dire on the part of trial lawyers and that of the trial bench is that the trial lawyer represents a client seeking justice and the judge is seeking to expedite the trial process. Sometimes the two conflict.

Compare, for example, Judge Terry Carroll's lecture on voir dire to young lawyers and that of this author.¹ There is a judge, however, believe it or not, a federal judge — Jim R. Carrigan of Denver, Colorado — who offers lawyers voir dire in every case and who believes that challenge for cause should be "liberally interpreted" and "lead towards grounds" for challenge "not away."²

Justice Charles Horowitz wrote, "the right to trial by jury means a trial by an unbiased and unprejudiced jury . . . Voir dire examination enables a litigant to determine whether or not to exercise his statutory right to challenge a juror for cause or to exercise a peremptory challenge."³

Voir dire does not exist for the convenience of the court or the comfort level of the jury. It is a statutory right that gives meaning to the constitutional right of trial by jury. Its abuse ought not to justify its denial.

¹ Both men lectured on the subject of voir dire to young lawyers at a seminar sponsored by the Seattle-King County Bar Association Trial Practice Committee on March 31, 1989.

² Voir Dire by Jim R. Carrigan, October 19, 1988, Spokane, CLE Committee of the WSBA — Voir Dire: Changes In the Wind!

³ *Smith v. Kent*, 11 Wn.App. 439, 443 (1974).

LEMBHARD G. HOWELL
Seattle



Editor:

The issue of voir dire of jurors engenders strong feelings whenever it is raised by members of the bench and bar. While

many, if not most trial judges, criticize the present day conduct of voir dire by a majority of attorneys trying cases in our superior courts, the solutions proposed by those critics often seem to be at cross purposes. A case in point arises from two articles in your August 1989 issue. Judge Nichols of the Whatcom County Superior Court Bench criticizes the conduct of voir dire by many lawyers as wasteful and seemingly without any articulable purpose. The article signed by the many King County Superior Court judges also echoes this criticism. However, consider the solutions offered by both.

Judge Nichols suggests a series of questions to be addressed to each juror seeking to learn the juror's personality, predilections and in effect come up with "what makes that juror tick." As Judge Nichols states, "answers to such questions may give you an idea how Mr. Jones thinks and acts in his own life." One method of doing so is a technique known as "Questioning down a correlated line," described by Dr. Thomas Sannito in his book, *Courtroom Psychology*.

Next look at the King County judges' article. Its premise as well is that voir dire by lawyers is generally wasteful of time and is often counterproductive. It focuses on the "rights of jurors" not to be faced with intense interrogation by inappropriate questions. The letter from juror Betty Dean complaining about lengthy and/or inappropriate voir dire is cited by the King County judges in footnote 2 of the article as an example. Ms. Dean, from the tenor of her letter, seems to indicate that she had already determined herself fair and appropriate to be put on the jury and what is this voir dire all about anyway? She suggests that it is time to get rid of the system of "choosing a jury" and that no juror should have to answer questions which "have no bearing at all on the case in question." Obviously, Judge Nichols' approach would never pass Ms. Dean's test.

What concerns me most about the approach taken by the King County Superior Court bench in its rule limiting voir dire is that it is addressed to overcoming the objections of jurors and achieving time efficiencies, possibly at the expense of justice for the parties. I wish that all judges took the approach of Judge Nichols and permitted questions to be asked of jurors which get into the

jurors' heads. As Judge Nichols points out, only through the open-ended questions which will get the jurors talking and reveal personality will attorneys succeed in finding a rational basis for challenges. It is this very type of open-ended question which many other judges and jurors like Ms. Dean find objectionable.

What is recommended practice in Judge Nichols' court would be forbidden in many King County courtrooms. Recent rule changes in our King County Superior Court have adopted mechanistic solutions to specific problems. All the time, our practice in King County becomes more and more complex, and the additions to the rules create more traps for the unwary. In my view, if the bench is still interested in ensuring that parties do achieve their full day in court and in enabling the adversarial process to achieve just results, judicial interference in the process such as arbitrary time limits and limitation on "inappropriate" questions are not the way of achieving the goal. Bench participation in continuing legal education specifically addressed to voir dire is more likely to solve the problem.

MICHAEL R. CARYL
Seattle

Just Can't Trust 'Em

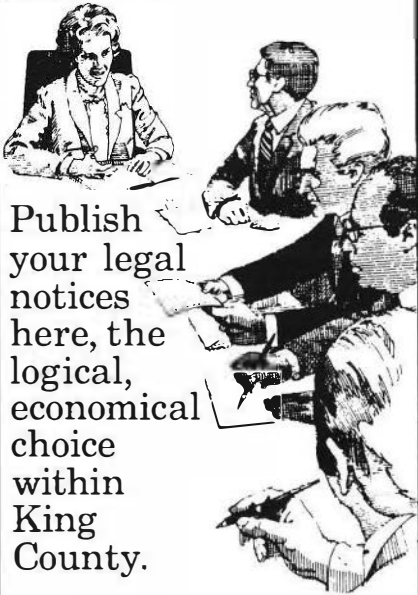
Editor:

I appreciated George Scott's article on the 1989 WSBA Membership Survey. ("1989 WSBA Survey: What We Learned," August 1989, p. 14.) However, I was disappointed that the results of the entire survey were not published in the *Bar News*. It seems to me that the same two pages that were used for Scott's article could and should be used to report the complete statistical results of the survey. Members of the Association could then draw their own conclusions as to the meaning of the results. I hope that you will publish the complete results in an upcoming issue.

GEOFFREY G. REVELLE
Seattle

The complete survey results, including summaries of open-ended responses, ran to 35 pages. We might have been able to get them into ten to twelve pages, at a cost of \$5,000-\$8,000. We don't have the money to do it. — *The Editor*.

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You're Not Asking The Right Questions

Editor:

The *Bar News* periodically carries reports by and about legal service programs, as in, for example, the April 1989 issue. These reports are almost uniformly laudatory, but contain little of detail or critical information. They are remarkably empty of data, finances and other examinable material. They mostly assert that legal aid is good, excellently provided and needs more money. All three premises are questionable (though in this letter I do not assert that legal aid for the poor is bad, only that the assertion is without meaning unless one examines how, where, at what cost and the like).

Some particulars set the stage. The state of Washington has three programs. Those in Tacoma and Spokane are local programs. Evergreen Legal Services is the major and statewide program. It receives money from several sources, a primary one of which has been the national, congressionally-funded Legal Services Corporation (LSC). The basis for funding Evergreen raises a serious

question about the delivery of legal aid in Washington.

Prior to the late 1970s, LSC funded programs by matching the cash or in-kind local resources raised by each. Then the formula was changed to provide a minimum dollar amount for each poor person in each program's area of service, based on census data. Across the country, this led to an unholy expansion and scramble for geographical empire, and to the rise of "statewide" programs, all of which sought to "capture" the poor and their attached funds. The theory was "equal access" to legal aid for all of the poor. The result was different. In Washington, this led to federal litigation between Evergreen and Spokane programs, "turf" battles in which Evergreen essentially prevailed. It has since received LSC dollars for providing services to most of the state. My question is whether those dollars have reached the counties and poor persons for whose sake Evergreen received them.

The current minimum amount is \$8.58 per poor person (I note that most legal services programs receive other governmental monies which may also have distributional requirements. On the LSC equal access formula, see P.L. 100-459, Title VI, sec. 605(1) (1988)).

From 1985 to 1988 I was Director of Community Action, United Way, economic development and other programs in Klickitat and Skamania counties. I have also been a judge and attorney in those counties. I saw, both directly and through interviews with judges, lawyers and social agency personnel, as well as the poor, that little or nothing of actual legal services was being provided there by Evergreen. Mostly what they saw was the end of an 800 number (which told them they could not be helped) and a very occasional visit to a senior center.

I calculated that under the LSC funding formula, 3,500 to 4,000 census poor lived in these two counties. The actual number was much higher, as the census data reflected abnormally good times because of construction at Bonneville Dam. After 1980, the area saw economic devastation with plant closures in timber and aluminum, and agricultural problems. Annualized unemployment was an average of 17% (the highest in Washington and Oregon). By 1988, over 9,000 of the two counties' population were under



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the federal poverty level according to USDA and Community Action reports. (See, University of Washington, *Poverty and Family in Klickitat and Skamania Counties, Washington*, 1988.) Assuming 4,000 persons at \$8 per capita, that is \$32,000 per year, or \$320,000 per decade.

Requests for an accounting produced no real answer. Letters to the board and two executive directors (including the present one), produced no response at all. The only written information about Evergreen finances and operations which I have ever been sent came from LSC by way of a Freedom of Information Act request. Evergreen itself is not subject to such accountability laws. I did attend the dedication of Evergreen's new Vancouver office, approached the present executive director, and orally raised my questions again. I have never received data on service delivery to Klickitat and Skamania counties. It was explained to me that the Evergreen board had decided it made no sense to open any office funded at less than \$80,000. I note that I did advocate for an attorney for these counties or for increased service, but neither has occurred.

I suggest that not only is Evergreen delinquent for failing to provide both services and an accounting, but that the Board, the Bar Association, the *Bar News*, and others, have, in their noble eagerness to improve and support legal service, paid too little attention to its details. I propose that LSC, the Evergreen Board, the Legal Foundation of Washington and others assure not merely that Evergreen is doing good work, but that it serves well all areas for which it is funded. Washington's nonurban, noninterstate five counties are all too used to being shortchanged in governmental funds and services.

Klickitat and Skamania counties could, for \$30,000-plus per year, have a full-time attorney tending to the needs of their poor: one who is really present, understands local problems and priorities, and addresses them. For more than a decade, those counties — and, likely, others — have been cheated.

If one ran the 1980 poverty population figures against funds distributed by the Legal Foundation of Washington (the IOLTA funds), and assumed the dollars should serve the poor, a similar result would occur.

Klickitat and Skamania counties had

one percent of Washington's poor in 1980. Their "share" of the \$8.8 million the Legal Foundation had distributed since 1984 would be \$88,000. Their 1988 share would have been \$27,895. If one counts only 1988 Legal Foundation direct legal assistance dollars, the counties' share drops to \$19,025. Those amounts could fund a full-time attorney at legal aid salaries.

If one combined LSC and Legal Foundation amounts, and added OAA, the total for these two small counties would be over \$60,000 per year. For that amount, a full-time legal aid presence — doing real cases for real people — could be very comfortably had.

I also wish to note that, at the national level, contrary to the belief of many, funding for legal service programs has been increasing and is substantially above earlier years. For 1988, programs received \$425 million, over \$1 million more than LSC funding at its peak in 1981. Funding did fall in 1982, but since then funds for LSC have steadily and substantially risen. This has been accompanied by a laudable increase in pro bono programs (an increase partly leveraged by LSC mandatory pro bono set-asides). This summary suggests a very different picture from that normally presented. This funding picture will continue to improve as IOLTA programs continue to mature (source: 1990 LSC Budget Request to Congress). I note that in 1982, the sole year of decrease, a very large number of LSC-funded programs had substantial carryover surpluses, so that their actual available funding may not have been less.

Ironically, when one adds LSC and Legal Foundation funding, the amount now available per poor person in Washington is \$16.87, substantially *higher* than the \$15.75 recommended by the National Legal Aid and Defender Association and adopted in the WSBA Legal Aid Committee's 1988 report.

Under existing law, one can compel neither an accounting nor proper service delivery from any LSC-funded program. Such programs are exempt from lawsuits on such matters. One can only ask for an accounting. By this letter, I do ask. It may be there is a magic explanation. I can only say that Evergreen's entire failure or refusal to address my concerns has deprived me of it.

ALAN L. GALLAGHER
Stevenson

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James A. Vander Stoep
Elected 1989-1990
WSBA President

The event was the WSBA Annual Meeting. The place was Whistler, B.C. In a delightful variation on the traditional inaugural motif, retiring WSBA president Elizabeth J. Bracelin introduced Suzi Vander Stoep, wife of incoming president Jim, who escorted him to the podium and presented him to those assembled:

It is the practice for the new president of the Washington State Bar Association to be escorted to the podium of the annual assembled meeting by a law partner.

Today, I have been given this honor because I am your new president's partner *by law*.

Jim has a profound concern for your profession and for those who practice the law. He strives for kindness and mercy and justice for all people.

His style is to uplift, and encourage and improve, the profession. He will try to build up your association. . .

Vander Stoep, a Washington resident since age four, comes to the presidency with a long and rich history of social and professional contributions to the state.

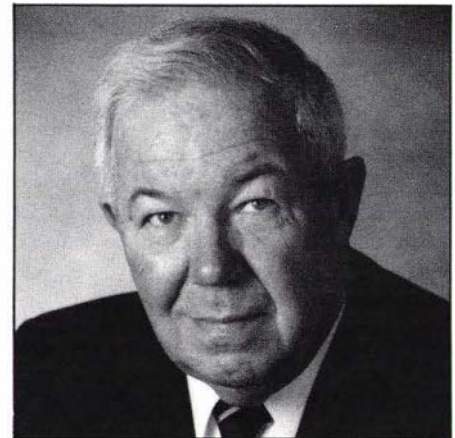
"Home" was Lynden, where his father was a banker and his mother a school teacher. Following a public school education and a B.A. in political science, earned through three years in the Navy and classes at Washington State University, Vander Stoep pursued a law degree at the University of Oregon School of Law. That was in 1947. In 1948, he married his long-time college friend, Suzi Hayne. She taught junior high school for two years in Eugene

while Jim finished school. In the summer of 1950, he passed both the Oregon and Washington bar examinations, and that fall they moved to Chehalis. There, he associated with Hull and Armstrong, a law firm whose roots reach back more than a century to its founding in 1882.

Vander Stoep is the third WSBA Governor — and third WSBA president — to come from that firm, which is known today as Armstrong, Vander Stoep, Remund & Kelly. At this writing, these attorneys have contributed an outstanding aggregate of 13 years of Board service.

Throughout the last 39 years, the Vander Stoeps have been active in the Chehalis community, where their three children were born and raised. They have been involved in both the Girl and Boy Scouts, the Red Cross, the March of Dimes, the Youth Orchestra, Rotary (Jim was president 1959-1960), Westminster Presbyterian Church and the Pacific Northwest Youth Orchestra Association. He is currently the Orchestra's vice president and a board member. He is a director on several corporation boards and was, for many years, board chairman of Lewis Federal Savings and Loan Association. It was acquired by Spokane's Sterling Savings and Loan, and he was recently elected to its board.

Vander Stoep's bar association memberships include those of Washington, Oregon, Lewis County and the American Bar. His firm's law practice is a general one with the exception of the areas of criminal law, dissolutions, bankruptcy and collections. He is a



James A. Vander Stoep

member of the American Judicature Society and a fellow of both the American Bar Foundation and the American College of Trial Lawyers, where he serves on the State Committee. His service on WSBA committees includes those of CLE, Unauthorized Practice of Law and Resolutions. He was a WSBA Governor from 1981 to 1984 and was appointed to complete the term of the late Angelo Petrus in 1987.

The Vander Stoep children have remained in Washington: Daughter Ann and her husband, Steve, live in Seattle, where she is an epidemiologist at the Seattle Children's home. Another daughter, Johanna, and her husband, Eric, live on Bainbridge Island, where she teaches school. Son J. and his wife, E. Ann, live in Seattle, where he, a former three-term state legislator, has just completed U.W. law school.

We are fortunate that the presidential gavel is in the hands of this outstanding community servant and family man. The WSBA looks forward to a good year under his experienced leadership.

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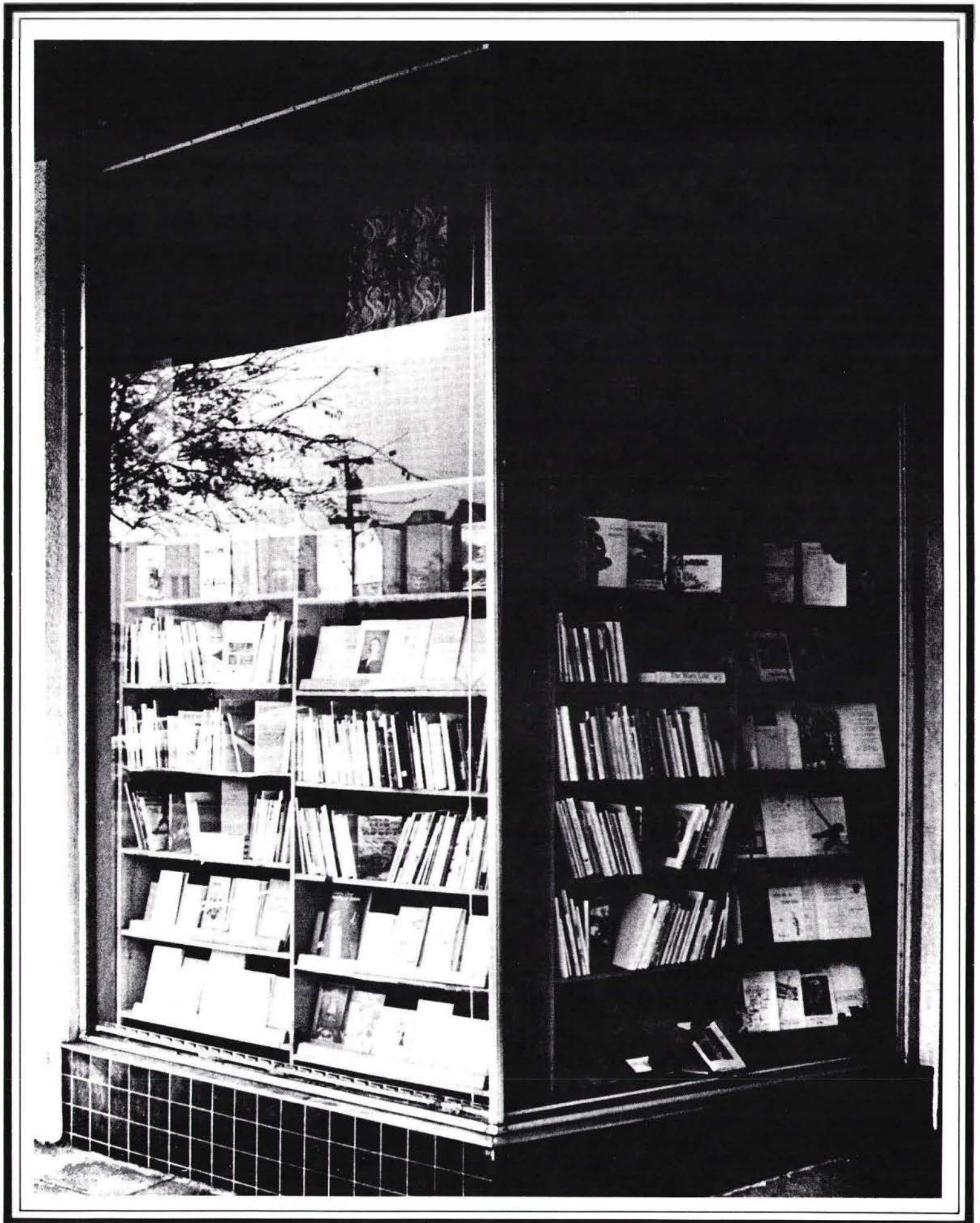
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Editor's Choice

by Lindsay Thompson

In Search of The Perfect Paragraph

C. Edward Good, *Mightier Than The Sword: Powerful Legal Writing in the Legal Profession* (LEL Enterprises, 1989), 247 pp., softcover, \$12.95.

Last year's discussion of the pitiful state of legal writing ("Is It Affect or Effect?," October 1988, at 12), produced such a grand brawl in the letters section of the *Bar News* well into this spring that the chance to review another book on the subject was too good to pass up.

Obviously, things aren't much better than when we last considered this subject, or this work wouldn't be out on the shelves of booksellers. Author C. Edward Good thinks legal writing is bad but that it can be cured by following 19 easy rules developed over the course of ten entertaining chapters. In format and general philosophy, Good is an heir to William Strunk, Jr. and E.B. White, whose masterwork, *The Elements of Style*, is quoted frequently.

Good has some considerable experience to draw on dealing with incorrigibles of legal writing. Fresh off a five-year stint teaching legal writing at the University of Virginia and Georgetown University Law Center, he has given

seminars to the Department of Justice, the Navy's JAG Corps, the Securities and Exchange Commission, the Commodity Futures Trading Commission, and 400 lawyers in the Associate Chief Counsel's Office of the Internal Revenue Service. You can't get much more hardcore than that, and the author has plenty of grisly examples to cite in his book.

In a sense, books like this are all alike. They package some common-sense nostrums anyone could take to heart with a little thought: be brief; use short, appropriate words; and avoid like the plague writing by rote — the unconscious importation of windbagery and dusty phrases repeated by generations of lawyers who never took the time to consider their irrelevance.

But Good packages his rules in an engaging narrative style, with examples easy to remember. It's the sort of book you can remember without having to think about it much — a perfect tome for the TV generation. One of the most use-

ful chapters is that addressing "his/hermaphroditism," the tendency to combine *him* and *her* into *them* and *their* to avoid accusations of sexism. This thoughtless and grammatically incorrect — if politically peace-purchasing — procedure has spawned a set of new problems of lack of clarity, to which Good addresses some sensible solutions.

Nearly every chapter is headed by a quotation from Horace. It would be interesting to see if the Latin form translates into what Good says it does (for example, does *Latina Sententia in libri capite elegantissima est* really mean, "A Latin quotation at the front of the chapter is cool"?). Even if dubious in origin, they're fun, apt and a nice lead-in to the text.

Mightier Than the Sword will probably see its biggest market in law schools, but law firms could do worse than giving new associates a copy of it along with the instruction book on how the phone works. In short, Good is good.

Not At All Like Watching The Making of Sausage

Edward D. Seeberger, *Sine Die: A Guide to the Washington State Legislative Process* (University of Washington Press, 1989), 203 pp., softcover, \$14.95.

The state legislature, as an institution, is one of the least-studied of American political institutions. While regrettable, this is not altogether surprising. Legislatures are ephemeral, meeting for a few months each year, or two. The composition changes constantly. The issues and external forces — the public, the economy — driving its agenda are treacherously ever-shifting. Inside, legislatures work sometimes very slowly, sometimes with breathtaking speed, creating and breaking logjams for reasons no one is entirely sure of.

Still, there have been useful contributions along the way. William K. Muir, Jr.'s *Legislature: California's School for Politics* (University of Chicago, 1982) looks at that state's parliament as a com-

bination mini-Congress and prep school. Malcolm E. Jewell's *Representation in State Legislatures* (University of Kentucky, 1982) takes a comparative look at several different states' legislatures to see what common bonds can be found among those serving in this sort of institution. Edward Seeberger, a former Washington legislator and current director of Senate Committee Services in Olympia, has taken another tack, providing anyone interested in how the process works with an engaging, readable, nuts-and-bolts guide to the process of getting something through the Legislature in Washington.

Seeberger starts with a useful introduction, describing the grand setting of the Capitol Campus, then assembling fascinating data on the composition of

the Legislature since statehood, by types of people and by parties.

From idea to funding in the budget process, Seeberger walks the reader through the maze. Samples of documents commonly used in the process are reproduced, and the skilled use of computer data brings up all sorts of useful and interesting items, like the mortality rate for bills introduced. For lawyers who have clients interested in getting something done at the Capitol, this is a book to keep close at hand, in session and out. For lawyers, brave souls, who think they want to go be part of the process as a legislator, this book is a must. For the citizen, this book is a political Berlitz course, making a foreign tongue and strange customs navigable, if not as familiar as those back home.

Serials Aren't Just For Breakfast

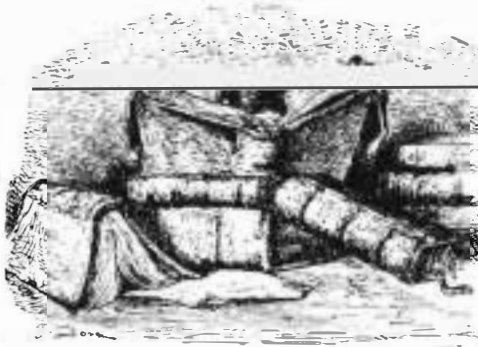
Lia Matera, *Where Lawyers Fear To Tread* (Bantam Books, 1987), 168 pp., softcover, \$2.95.

***A Radical Departure* (Bantam Books, 1988), 181 pp., softcover, \$3.50.**

***Hidden Agenda* (Bantam Books, 1989), 166 pp., softcover, \$3.50.**

Probably nothing is better news for authors and readers alike than the fact that an appealing serial detective character is up and running. Trouble is, many authors tend to treat each adventure of their heroes and heroines as self-contained. References to prior cases are mentioned at most in passing, and with respect, by befuddled local police officials glad to have the amateur step in and spare them the trouble of calling the state crime lab or the FBI. Worst of all, there are no consequences to the detective for being where bodies are with such monotonous regularity. In real life, of course, things are different. You start getting investigated by serial murder task forces.

One of the last authors to successfully grapple with real-life consequences of being associated with a murder — or two — was Dorothy L. Sayers, who put her



character Harriet Vane in the dock for one murder, then on a post-acquittal holiday stumbling over another. Vane found herself snubbed by polite society, suspected by the police, getting abusive mail, and her life pawed at by the press.

Lia Matera has picked up this "realist" tradition with real flair, creating in lawyer Willa Jansson a heroine every bit as much a feminist for her time as Harriet Vane was for the 1920s. Jansson, a San Franciscan who grew up

in Haight-Ashbury with parents who embrace every cause there is, is a young lawyer trying to get a career underway. That's trouble enough these days. But in three books to date, she's not only been around, but the chief suspect in, eight or nine murders.

The first batch come in *Where Lawyers Fear To Tread*, in the claustrophobic, hypercompetitive atmosphere of the Malhousie Law School's law review. Reading a manuscript one day, the editor-in-chief meets the fate that many contributors to law reviews vicariously wish on their editors: she gets her head bashed in. This causes an unseemly but predictable scramble for succession to be "The Big Footnote," a scramble in which Willa inadvertently ends up on top. Next thing you know, faculty members and an alumnus running for attorney general are all rooting around in the law review office to find something in a manuscript.

Post-graduation, and post-discovery of the real murderer, Willa heads off to Oklahoma with a classmate (a doomed romance; he's a Republican). By the entry of *A Radical Departure*, she's back in San Francisco, an associate for a fashionably liberal civil rights-labor law firm, and lunching with the partners at a chi-chi restaurant. The senior partner pops the garnish from his moussé in his mouth, and "by evening, the grand old man of left-wing politics was in the hospital with hemlock poisoning, the restaurant was swearing it didn't garnish its desserts with poisonous roots, the police were knocking at my apartment door with a search warrant, and reporters were chortling with glee to discover I'd been a suspect in the so-called 'law school murders' two years earlier."

Against a backdrop of how the fashionably liberal rationalize making lots of

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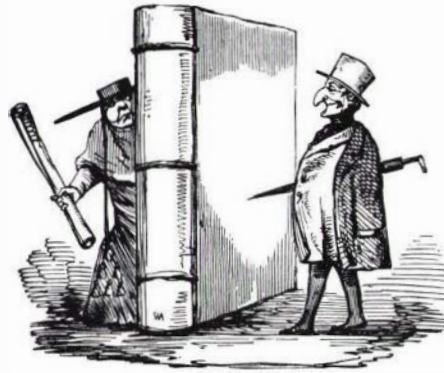
money and living well off the impoverished causes they represent, Willa's firm breaks up. Not so much out of internal disputes — those are there — but because they're being worked out by killing people. By the end of the second novel, two partners and a secretary have bit the dust, and Willa's cleared largely because someone then tries to off her.

Surviving all of that, Willa finds herself in *Hidden Agenda* being phoned by a partner in a posh L.A. law firm. He wants her to come to their new San Francisco office, notwithstanding her colored past and degree from a second-tier law school. Worse yet, this good fortune seems to come from a prominent Reagan administration official formerly associated with the firm who read Willa's law review article on immigration law. Next chapter, Willa's trying to sort out how to assuage her conscience against the burrs of working for the wrong kind of clients and making 90k a year doing it, not to mention getting the idea past her aging radical parents ("Mother," I hedged, watching her turn the crank of a mimeograph Gutenberg would have shunned. "I think it's important for women to assume their rightful positions in the power structure. Don't you?").

Right on cue, conflicts begin surfacing in the firm. And at a retreat in a tiny California resort, one of the other lawyers turns up dead. Not just dead, but poisoned by hemlock. Bad news for our Willa. "Time," she says wearily, "to meet the Merced police."

But she gets off, and at book's end is headed for the firm's Los Angeles office, the only surviving lawyer in the San Francisco satellite.

Willa Jansson is a refreshingly bright character, one with unimpeachable liberal political credentials, but alert enough to give their contradictions a reality check on a regular basis. Her parents will be endearing figures of the political barricades to liberals, and delightfully drawn caricatures to conservatives. Trying to find a middle ground between the genteel starvation of public-interest law and the sold-out prosperity of yupsterdom, Willa Jansson is a character you've known. She's real. Her creator, Lia Matera, writes with increasing confidence and mastery of the architecture of detective fiction with each entry in the series, leaving one looking forward to more.



A Potpourri of Smiles

Daniel R. White, editor, *Trials and Tribulations: Appealing Legal Humor* (Catbird Press, 1989), 297 pp., hardcover, \$19.95.

Humor is notoriously evasive. The punch line that reduces one listener or reader to floor-bound convulsions of mirth will generate in the next a response so restrained as to make the Mona Lisa seem a real party animal in comparison.

Legal humor, for its part, is virtually an oxymoron. It is fairly sparse, for starters. And most of it isn't terribly clever, or even funny. It either requires a law degree to understand, or it is so leaden and deadly that no one wants to: a combination of abuse and humiliation (usually dished out by lawyers and judges af-

fectionately — and posthumously — labeled as "Characters"), cynicism, and outright intellectual lameness (reaching its parlous pinnacle in the puns that torture the titles and readers of law review articles (not to mention Daniel White's book). Editor White, who has mined out most of the ore in those veins already (*The Official Lawyers' Handbook*, *White's Law Dictionary*), has aimed higher with this collection, and he generally succeeds in producing a witty, thought-provoking anthology on life in the law.

Though he bows before all the familiar altars (A.P. Herbert's *Uncommon*

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Law, Dickens, Mencken, and his own prior works), White has cast a wide net. A tiny gem from *The New Yorker*, Veronica Geng's "Supreme Court Round-up," is given a new audience. A.A. Milne, who wrote about much besides Pooh and Christopher Robin, has two short stories on English practitioners. Jerome K. Jerome's "Stage Law" is a hilarious compilation of the rules of law

that obtain in stage plays. In the theatre, he says, "the stage lawyer never has any office of his own. He transacts all his business at his clients' houses. He will travel hundreds of miles to tell them the most trivial piece of legal information," usually bad.

From Bernard Levin, a columnist for *The Times* in London, comes a sardonic essay on a judge's comment in a libel

case that the difference between two newspapers could be told by anyone, "even by a moron in a hurry." Levin meditates on whether a new standard has been set, supplanting that of the reasonable man ("Apply the test, members of the jury: would the missing stair have been noticed by a moron in a hurry?" Or even: "Note, members of the jury, that a man may be a moron without being in a hurry, or in a hurry and yet no moron. Only if you are satisfied that the plaintiff was both...").

Rescued from undeserved obscurity are pieces like Robert Benchley's "Take The Witness!," one of Arthur Train's Mr. Tutt stories and S.J. Perelman's manic jury deliberation, "If It Please Your Honor." In "Design By Regulation," M.C. Dillon describes the construction of the Great Pyramid at Giza as a plan for the Taj Mahal run through the permit process:

The appropriate setback from the street is achieved by locating the main entrance some fifty feet above ground level and entering the building by way of a descending shaft . . . Although the room measures only 17 feet by 34 feet, its area, for purposes of this application, is more than 13 acres. Fortunately, the design of the building permits the infraction to be cured by further raising the chamber to the level where the area to the outside walls will not exceed fifty percent of the lot area.

Edward A. Hogan, Jr. contemplates the frightening thought, "How A Law Professor Tells His Children The Story of The Three Bears" ("The first was too hot and the second too cold. The third was just right and she ate it all up. This was trespass *de bonis asportatis*."). Others consider the first divorce in "*of Eden vs. Eden*," and an interesting jurisdictional issue in "*Mephistopheles vs. Faust*."

All in all, pretty good fun. Good editors are perhaps less visible than White; he gives the reader a six-page introduction, five of his own pieces, and dozens of page-end filler legal definitions in a style that tries to out-Ambrose Bierce. Apparently, even editors need editors sometimes. Still, *Trials and Tribulations* is good for a giggle at least; at times a guffaw.

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News from The Publishers

The American Law Institute-American Bar Association Committee on Continuing Professional Education has just published the second edition of its practical text, *Buying, Selling and Merging Businesses*, by Jere D. McGaffey.

"This information-filled volume is a single source of reference for attorneys involved in business acquisitions," ALI-ABA says. "It provides step-by-step guidance for solving the practical and legal problems that typically arise in connection with planning and carrying out a business acquisition or merger. The text concentrates on tax and securities law aspects of a business acquisition and the changes of the last ten years in these areas that have made this second edition necessary."

This "how-to-do-it" volume provides the anatomy of an acquisition transaction; a practical approach to drafting an acquisition agreement; samples of the documentation required for business acquisitions, including forms for immediate use in satisfying securities regulations; coverage of the Securities and Exchange Commission's newly adopted amendments to Regulation D, including new Rules 507 and 508; explanation of tax-free reorganizations, taxable acquisitions, and Securities Act regulations; a review of accounting opinions and accounting releases from the SEC; and U.S. Department of Justice Merger Guidelines.

Comprehensive appendices containing applicable statutes, rules, and regulations add to the usefulness of the text.

Buying, Selling and Merging Businesses, Second Edition, is available from ALI-ABA at a special introductory price through November 30, 1989, of \$75 plus \$6.50 for postage and handling (Order No. B519); after November 30, the regular price is \$90 plus \$6.50. To order, write ALI-ABA, 4025 Chestnut Street, Philadelphia, PA 19104.

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Federal Sentencing Law and Practice by Thomas W. Hutchison and David Yellen has just been published by West Publishing Company. It is the first and only book to provide a guideline-by-guideline analysis. Completely up-to-date, it even includes the text of amendments to the guidelines that are to become effective November 1, 1989.

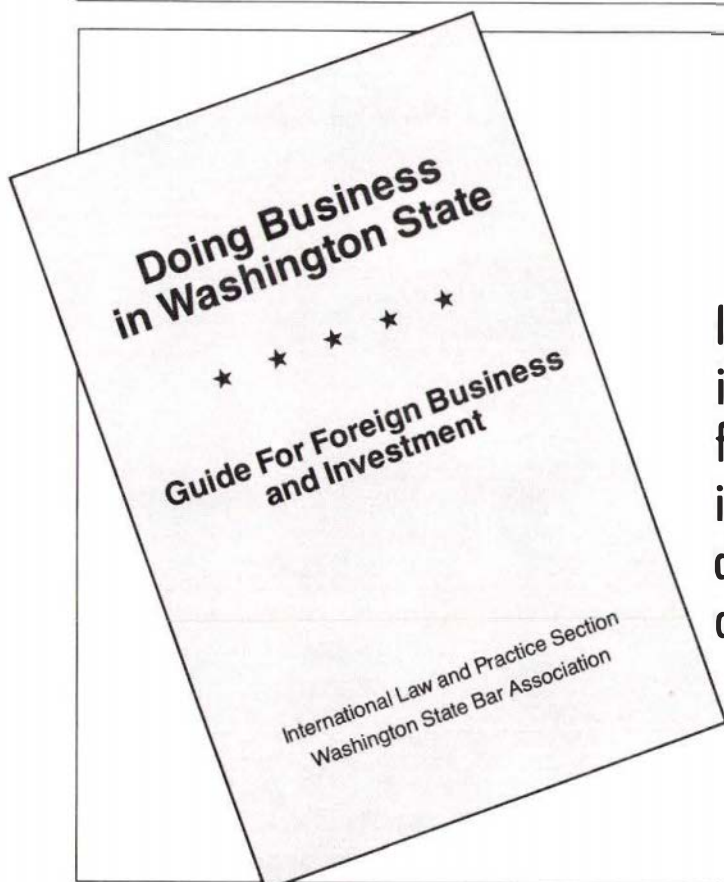
Written for judges, prosecutors, defense attorneys, and probation officers, this new practice book is for anyone who wishes to know how to use the guidelines or is otherwise involved in the new federal sentencing system. "It's very easy to use because the authors' analyses and annotations follow the official text of each Federal Sentencing Guideline and commentary as issued by the U.S. Sentencing Commission," West declares.

The authors explain what each guideline is intended to do, if it achieves the intended result, or if it is ambiguous. Guidelines that are ambiguous are discussed in terms of how to avoid problems. There are significant discussions of plea agreements, permitted departures from the guidelines and procedures for appealing sentences. In prepar-



ing their commentary and annotations, the authors have drawn upon the Sentencing Commission's commentary, case law, legislative history, sentencing statutes, and their own experience in

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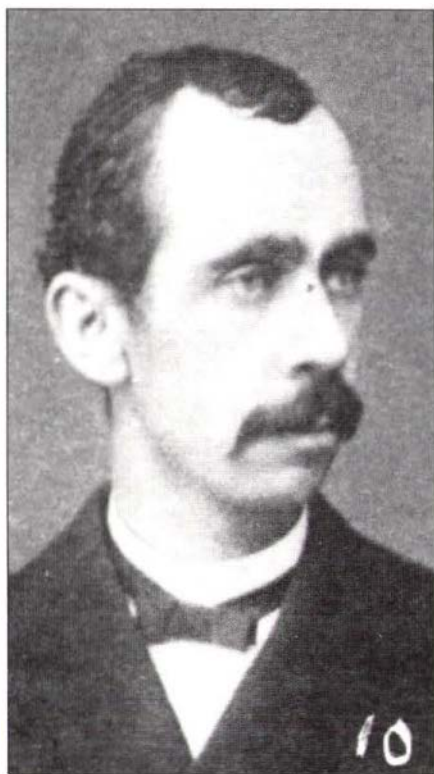
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George Turner And The Judiciary Article

Part II: The Constitutional Convention of 1889 Creates a Judiciary for Washington

by Charles K. Wiggins

Having surveyed George Turner's remarkable career, we now focus on the controversies and points of view surrounding the genesis of our court system.



T.C. Griffiths, July 4, 1889
(Photo courtesy of Washington State University Libraries
Historical Photograph Neg. No. 89270)

The Judiciary Article

President Hoyt's first, and perhaps most important, duty was to divide the delegates into the committees to draft the articles which would be presented to the convention as a whole for amendment or adoption. Turner was named chairman of the judiciary committee, perhaps in return for his support of Hoyt's candidacy.

The judiciary committee considered three basic models for Washington's courts: the territorial district courts, the Oregon circuit courts and the California superior courts. Those of Washington Territory consisted of a Supreme Court, district courts, probate courts and justices of the peace.¹ The district courts were courts of general jurisdiction. Originally three in number, Congress added a fourth judicial district, to which

George Turner was appointed in 1884.² The four district judges came to the capital once a year to sit as the Supreme Court. Originally, this meant that the judge who tried the case sat on the Supreme Court in review of his own decision, but with the addition of a fourth judge Congress provided that the judge who had tried the case in the lower court should not sit in review of it. Each district judge held terms of court at different places within his district.³ The Enabling Act also provided for probate judges and justices of the peace. From the first territorial code of 1854, the Legislature abolished all distinctions between actions at law and suits in chancery, providing for one form of action known as a "civil action."⁴

The Oregon constitution of 1857 established county courts of probate jurisdiction and limited civil jurisdiction, similar to the probate judges and justices of the peace in Washington Territory.⁵ Oregon's circuit courts were courts of general jurisdiction, holding terms of court in different counties, just as the Washington territorial district courts held terms of court throughout their districts.⁶ The California constitution, by contrast, established a court of general jurisdiction in each county, always open and without terms of court.⁷

The *Portland Oregonian* published a model constitution by a prominent Seattle attorney, W. Lair Hill, on July 4, 1889, the opening day of the convention. The Hill constitution strongly influenced the convention delegates.⁸ Hill, who had practiced law in both Oregon and California, urged the adoption of the California system, which swept away the common law or itinerant circuit court system which still prevailed in Oregon:

I am forced to the conclusion that [the California system] is in many ways preferable; better adapted to the expeditious transaction of business; better adapted to the correct, just and uniform application and administration of the laws; better



Daniel Buchanan, July 4, 1889
(Photo courtesy of Washington State University Libraries
Historical Photograph No. 89271)

enabling the court to give its attention and its energies to the enforcement of rights and redress of wrongs, instead of wasting a large share of both in the settlement of technical questions touching the relations of the various courts to each other, of the judges to the courts themselves, of the proceedings and judgments of court to the beginning and end of terms, and the like — all of which we lawyers were wont to consider as things important, if not essential, to the orderly conduct of judicial business, until California took hold of the subject with a strong hand and intelligent purpose, and demonstrated that much of what we had supposed to be necessary to judicial procedure is useless rubbish, and that a good

deal of what we thought promotive of justice is obstructive of it.⁹

Turner believed that the superior court system brought the courts "within easy reach of everybody and a sure speedy action on all cases . . ."¹⁰ He defended the system against the charge that it was too expensive to have a superior court judge in every judicial district, pointing out that combining civil, probate and criminal matters would save the salaries of separate judges.¹¹

The judiciary committee chose to establish each court and its jurisdiction within the body of the constitution. Delegate Hoyt of Seattle, a former territorial Supreme Court judge, proposed leaving the jurisdiction of the court to the Legislature.¹² Turner responded that this was not a matter of legislation, but of establishing a principle of government, and Hoyt's proposal lost by a decided vote.¹³

The delegates vested the Supreme Court with original jurisdiction in a few instances, and appellate jurisdiction in all other cases except for civil actions seeking to recover \$200 or less.¹⁴ The

phrase "appellate jurisdiction" eliminated centuries of archaic procedural niceties which distinguished between a "writ of error" in a common law proceeding and "review by appeal" in a proceeding in equity.¹⁵ Hill had proposed that the Supreme Court have "jurisdiction to revise the final decisions of the Superior Courts . . ."¹⁶ Hill never explained what he meant by "revising" superior court decisions, but implied that circuit courts such as the Supreme Courts of Washington Territory and the United States exercised "revisory jurisdiction" over decisions of individual justices sitting as trial judges. Hill's proposal for revisory jurisdiction came from the Oregon constitution¹⁷ and survives in the Washington constitution's provision for extraordinary writs necessary and proper for the Supreme Court's "appellate and revisory jurisdiction."¹⁸ The judiciary article abandoned the territorial practice under which the judges of the Supreme Court had both tried cases and then sat in banc on appeal from one another's judgments. He perceived "substantial unanimity" that vesting the functions of both original and

appellate jurisdiction in the same judges was "manifestly objectionable in principle and inconvenient in practice,"¹⁹ as evidenced by the women's suffrage cases described in an earlier article in this series.

The delegates vigorously debated whether the Supreme Court should have three judges, as proposed by the committee, or five, as recommended by a minority report.²⁰ Two concerns emerged during the debate in the committee of the whole:²¹ The delegates felt that a larger bench would be less susceptible to corruption and bribery; several delegates expressed dissatisfaction with the close collegiality on the three-judge territorial Supreme Court. Other delegates favored three judges on the ground of economy. Delegate Ralph Oregon Dunbar of Klickitat County rejected the plea of economy:

There will be great questions to be decided within the next few years, and we want a court strong in number and learning. It was easier to control three men than five. All a corporation would have to do would be to control one man in a

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court of three to get a favorable decision. Like Caesar's wife our Supreme Court should not only be virtuous but above suspicion. The convention should not consider the paltry sum of \$8,000 or \$10,000 in the interests of the commonwealth.²²

Griffitts of Spokane echoed Dunbar's sentiments, exclaiming, "In God's name, do not leave the courts in a careless condition."²³ Sullivan of Tacoma added his opinion that the territorial bar had lost confidence in a bench of three judges, "notably by reason of its following the lead of one man who had thrown out cases repeatedly upon small technicalities, some of which had been carried to the United States Supreme Court, and by that court put back again upon the docket."²⁴ Stiles of Tacoma explained somewhat more diplomatically, "It is not, as has been intimated, that a widespread suspicion of the judges individually pervades the minds of the lawyers, but chiefly that the feeling of good fellowship which was inseparable from a small number of judges

had had its effect upon the decisions of the court, and from this had come many of the ill-judged decisions of that court."²⁵

Neither Sullivan nor Stiles had referred by name to any individual judge, but Turner apparently felt compelled to defend the Court:

Several delegates here, and several gentlemen admitted to the privileges of the floor, have been members of the Supreme Court of this territory, and for myself, from my reading and my experience, I declare that for ability, integrity and judicial learning, it will compare favorably with any other court in the country. It has done anything in its career worthy of serious criticism. There have been exciting questions that have excited adverse criticism, but no court can escape this. I do not care to sit silent under these circumstances and listen to such criticisms upon that court as have been made today.²⁶

Buchanan, the "thrifty Scotsman of Ritzville," defended the three-judge

court. Buchanan had been born in Glasgow, Scotland, immigrated to Wisconsin in 1850, and to Washington in 1885.²⁷ He was 69 years old, a farmer, and was by at least one account "venerated as the sage and father of the body in which he sits so influential a part."²⁸ Another reporter characterized Buchanan's speeches as "quaint and solemn, but with a voice, accent and manner that always attracts the undivided attention of the members."²⁹ He opined that the lawyers must be very suspicious of each other when they said that corruption might creep in among any of their number, even on the bench.³⁰ Buchanan discounted any fear of corruption, and thought that five judges would have a "soft snap."³¹ Buchanan responded to the criticisms of the three-judge territorial Supreme Court: "The trouble now is that the present court gets together and sits upon each other's decisions, and so any reference to the present court is no argument, for the present court is in no way analogous to the proposed Supreme Court."³² Griffitts' proposal for five Supreme Court judges prevailed on the vote of 44 delegates.³³ On motion of

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Browne of Spokane, the delegates also authorized the Legislature to increase the number of judges from time to time, and to allow the court to sit in separate departments.³⁴

The election of judges sparked debate on several issues. The delegates appeared to agree with Lair Hill that judges should be elected, and that the executive appointment of judges is "inconsistent with the spirit of Republican government."³⁵ Hill reported the answer of a "gentleman who had considered the subject pretty thoroughly" to the suggestion that appointed judges were abler and more independent:

That is a lawyer's view of it, and possibly it is correct, though I doubt it. At all events, correct or incorrect, it is immaterial; for the people of this republic have concluded that their courts of justice are of sufficient importance to warrant their being brought into conformity with republican institutions; and they are not going to allow anybody hereafter to force upon them better judges than they

think they need.³⁶

Only one delegate, Buchanan of Ritzville, argued for appointment rather than election of judges. Buchanan began his speech by characterizing the selection of judges as "perhaps the most important subject that will come up before us."³⁷ He expressed concern that judges might be elected by the "rabble": "If they are nominated in political conventions they will be selected for their ability to strengthen the ticket rather than for their character."³⁸ Buchanan disavowed any concern about corruption among appointed judges, although he acknowledged that even in this convention there might be a few men who could be bought. When the chairman called Buchanan to order for making assertions derogatory to the delegates, Buchanan joked, "I cheerfully withdraw them. I did not think any gentleman here thought they applied to him."³⁹ Buchanan's motion lost by a decided vote.

Warner of Colfax proposed minority representation on the Supreme Court — if two judges stood for election, each voter could vote only for one, if three

stood for election, a voter could only vote for two, and so on.⁴⁰ The Democratic Congress had inserted a similar provision into the Omnibus Admissions Act to insure Democratic representation in the constitutional conventions of the predominantly Republican northwestern territories, and the Washington Democrats wished to perpetuate the custom on the Supreme Court bench. The Republican delegates uniformly opposed minority representation on the ground that politics should not be dragged into judicial elections, and that it improperly restricted the right of suffrage. The Democratic delegates uniformly favored the proposal on the ground that it protected the minority against encroachments by the majority. The *Seattle P.I.* reported:

Nearly every one of the Democrats expressed his impressions, which were always for Warner's amendment, and almost all the Republicans had impressions by which they were led to believe the opposite way, and when the vote came to be taken it was found that there were 43 Republicans who were in favor of a nonpolitical bench and there were 24 Democrats who wanted one of their party always to sit in judgment on their cases in the Supreme Court.⁴¹

Moore of Spokane offered a variation on the election of Supreme Court judges, proposing to divide the state into two districts, electing two judges from each district and a chief justice from the state at large.⁴² Moore argued that his proposal would make judicial elections more nonpartisan and avoid political trades in convention. Moore's proposal lost by a decisive vote.⁴³

The delegates debated reducing the judicial salaries proposed by the committee — \$5,000 for Supreme Court judges, and \$3,000 for superior court judges. Hoyt of Seattle thought the matter should be left to the Legislature, but Turner urged that these were principles of government which should be settled by the convention.⁴⁴ Turner expressed some discomfort about the debate in view of "a suggestion by some of his zealous friends and in the public print that he was to be a candidate for the Supreme bench,"⁴⁵ but was able to bring himself to oppose any reduction of



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salaries because he believed \$5,000 to be the fair, just and reasonable sum.⁴⁶ Delegates who favored a reduction in salary argued economy, while opponents urged that judges should be paid a fair salary so that they could be free of speculation and business interests. Buchanan approached the question in his own unique style:

There was another way of looking at it, and that was counting it by the day — \$3,000 was about \$10 per day, very good wages. \$4,000 was \$13.33 per day and \$5,000 was \$16.66 per day. It looks larger when it is looked at in this way. The average farmer in the state who works hard every day and has to pay his taxes toward these big salaries is satisfied if he clears \$1 per day. A judge of the right kind who gets \$3,000 or \$4,000 is well paid. I will go \$4,000 but not a cent more. I wish I had the education of some of you lawyers.⁴⁷

The delegates finally agreed upon \$4,000 for Supreme Court judges and \$3,000 for superior court judges.

The delegates debated whether the superior court judges should serve six-year terms, as recommended by the judiciary committee, or four years as the minority proposed.⁴⁸ Turner defended a six-year term on the ground that judges would be tempted or swayed by public

"...the hardest task a judge has to perform is to deliver an opinion which he knows to be the law, but also knows is opposed to the feelings of the people around him."

opinion for a second term if the short term were adopted. Godman of Dayton replied that Turner's concern about influence over judicial decisions was inconsistent with his argument that a court of three judges was sufficient and would not be corrupted because of its small number: "If a judge is honest he cannot be corrupted if he is on the bench for a long or a short term."⁴⁹ Turner denied any inconsistency:

He declared from personal experience that the hardest task a judge has to perform is to deliver an opin-


ion which he knows to be the law, but also knows is opposed to the feelings of the people around him. Two years is not much perhaps, but if judges are to truckle to public opinion it certainly is better to let them truckle only once in six years instead of once in four years.⁵⁰

The four-year term prevailed on a vote of 36 to 34. Turner had not given up, however, and again urged a six-year term when the entire article came up in convention several days later. The convention overwhelmingly adopted the report of the committee of the whole, demonstrating that once a matter had been contested and decided, the delegates were reluctant to reopen the issue.⁵¹

One superior court judge was provided for each of three counties — King, Pierce and Whitman — with the other counties combined in one-judge judicial districts of two or more counties. Durie of King County opened a debate which has never ended when he asked for two judges for King County: "It has been a hard whip almost unbearable to litigants in this county that they have not been

able to clear up their court docket."⁵² Turner objected that this action would open the flood gates, and that every county would clamor for more judges.⁵³ The delegates rejected the proposal, and King County was left to petition the Legislature for more judges.

Eshelman of North Yakima proposed to divide the district formed by Kittitas, Yakima and Klickitat counties and give one judge to Klickitat and one to the other two. "He thought Judge Turner would remember that during the time he sat on the bench only one equity case was tried."⁵⁴ Predictably, Turner seemed to recall that nearly all the equity cases were finished while he was on the bench.⁵⁵ Eshelman argued that Klickitat needed a separate judge because it was so isolated, practically lost to the other counties because it had no railroad connection. This reminded Dunbar of Klickitat County of the Indian who said he was not lost, only his wigwam was lost: "He was not sure whether Klickitat or Kittitas was lost."⁵⁶ Durie then suggested that for judicial purposes Klickitat County be attached to King County.



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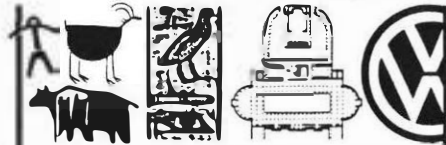

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Eshelman's motion lost by a decided vote.

Crowley of Walla Walla urged that justice courts be abolished, quoting territorial judge Nash who observed that they "moved in a mysterious way their wonders to perform."⁵⁷ Turner felt that justice courts were necessary, but quoted Nash again as saying that. "The only way to treat a justice court judge was to stand over him with a stuffed club and knock him with it at the first indication of wavering from the right track."⁵⁸

"Judges should be active factors, not mere figureheads, in the trial of cases."

Suksdorf of Spokane County moved to strike out the prohibition against judges commenting on the evidence.⁵⁹ The delegates considered amending the section to provide that judges may state the testimony as well as declare the law.⁶⁰ The former judges, Turner and Hoyt, both favored the amendment on the ground that, "As it stood the section was likely to embarrass the judge. It was necessary to refer to the facts in order to make the law plain to the jury."⁶¹ Moore of Spokane also favored the amendment on the ground that, "Judges should be active factors, not mere figureheads, in the trial of cases."⁶² Buchanan, who never hesitated to challenge the legal profession, agreed with the amendment because he thought, "The judge ought to be allowed to protect the jury from lawyers who tried to befuddle them when they were on a doubtful case."⁶³

"The judge ought to be allowed to protect the jury from law- yers who tried to befuddle them when they were on a doubtful cast."

The lawyers who opposed the amendment wished to preserve a proper separation between the functions of judge and jury. Sullivan of Whitman did not believe that judges had any business with the facts: "After both attorneys had commented fully on the facts, the only

effect of the judge doing so is to give him the last word, and to give one side or the other an extra attorney according to which side the judge happens to incline to."⁶⁴ Dunbar of Goldendale thought that if judges were to comment on the

... if judges were to comment on the facts, juries might as well be abolished, for the judge could carry nine cases out of ten.

facts, juries might as well be abolished, for the judge could carry nine cases out of ten. Griffiths of Spokane shifted the debate to a more personal plane, observing that the gentlemen who opposed the amendment did so because their own experience convinced them of the evil of allowing a judge to interfere in the facts. (The territorial judges had enjoyed the power under applicable federal statutes of commenting on the testimony.⁶⁵) Turner could not refrain from responding to Griffiths' allusion to his personal experience, probably because Turner's district had included Spokane. Griffiths' home:

Mr. Turner did not remember a case where a judge had induced a jury to render an erroneous verdict by what he had said on the facts, but he had known artful lawyers to try to get erroneous verdicts by false logic or misstatement and had seen the judge lead the jury back to the true position by a calm statement of the fact afterward.⁶⁶

The amendment failed and the section was adopted with the prohibition against judicial comment on the evidence.

The committee of the whole overwhelmingly disapproved a proposal by the judiciary committee that the judges of the court could select a disinterested member of the bar to participate as judge in deciding any case in which a judge was disqualified from hearing the case.⁶⁷ This provision was less important with the increase of Supreme Court judges from three to five. Sullivan of Whitman County criticized the provision as "un-American."⁶⁸ The *Post-Intelligencer* reported, "The obnoxious Section 23, providing for the substitution of a member of the bar in place of a judge of the Supreme Court when dis-

qualified in any case, was received with unanimous disapproval and was quickly expunged."⁶⁹ Pro tem judges were allowed in the superior court, but only by agreement of the parties.⁷⁰ Pro tem judges were not authorized on the Supreme Court until 1962, when the constitution was amended to permit judges or retired judges of courts of record to temporarily sit as Supreme Court judges.⁷¹

The delegates included several innovative features in the constitution. The judiciary article authorized the appointment of court commissioners in each county to perform "like duties as a judge of the Superior Court at chambers, subject to revision by such judge, to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law."⁷² Appointment of court commissioners freed the judges to handle contested matters more efficiently. Delegate Sullivan of Tacoma proposed a new section requiring the Superior Court judges and the Supreme Court judges to report each year to the governor "such defects and omissions in the laws as they may believe to exist."⁷³ Turner applauded the proposal as an excellent provision, and it was adopted.

Footnotes

- ¹ Enabling Act, 10 U.S. Stat. 172 (1853).
- ² W. Airey, *A History of the Constitution and Government of Washington Territory*, pp. 276-77. Ph.D. Thesis, University of Washington (1945).
- ³ Airey, *supra* at 271.
- ⁴ Airey, *supra* at p. 295.
- ⁵ Oregon Constitution of 1857, Art. VII, § XII.
- ⁶ Oregon Constitution of 1857, Art. VII, § IX.
- ⁷ Knapp, *Origin of the Constitution of the State of Washington*, 4 *Wash. Hist. Q.* 227, 238 (1913).
- ⁸ *Journal of the Washington State Constitutional Convention 1889*, p. v. B. Rosenow, ed. (1962).
- ⁹ *Morning Oregonian*, July 7, 1889.
- ¹⁰ *Tacoma Morning Globe*, July 17, 1889.
- ¹¹ *Id.*
- ¹² *Spokane Falls Review*, July 20, 1889.
- ¹³ *Id.*
- ¹⁴ Wash. Const. Art. IV, § 4.
- ¹⁵ See generally R. Pound, *Appellate Procedure in Civil Cases* (1941).
- ¹⁶ *Lair Constitution*, Art. VI, § 4, *Morning Oregonian*, July 4, 1889.
- ¹⁷ Oregon Constitution of 1857, Art. VII,

§ VI.

- ¹⁸ Wash. Const. Art. IV, § 4.
- ¹⁹ *Morning Oregonian*, July 4, 1889.
- ²⁰ *Journal, supra*, p. 106, July 16, 1889.
- ²¹ From time to time the convention delegates sat as a "committee of the whole" to allow unlimited debate on a draft article submitted to the convention.
- ²² *Tacoma Morning Globe*, July 19, 1889.
- ²³ *Id.*
- ²⁴ *Spokane Falls Review*, July 19, 1889.
- ²⁵ *Id.*
- ²⁶ *Spokane Falls Review*, July 19, 1889.
- ²⁷ *Olympia Washington Standard*, August 23, 1889.
- ²⁸ *Id.*
- ²⁹ *Seattle P.I.*, July 19, 1889.
- ³⁰ *Seattle P.I.*, July 19, 1889.
- ³¹ *Id.*
- ³² *Spokane Falls Review*, July 19, 1889.
- ³³ *Seattle P.I.*, July 19, 1889.
- ³⁴ *Spokane Falls Review*, July 19, 1889.
- ³⁵ *Morning Oregonian*, July 4, 1889.
- ³⁶ *Morning Oregonian*, July 4, 1889.
- ³⁷ *Spokane Falls Review*, July 19, 1889.
- ³⁸ *Id.*
- ³⁹ *Id.*
- ⁴⁰ *Seattle P.I.*, July 19, 1889.
- ⁴¹ *Seattle P.I.*, July 19, 1889.
- ⁴² *Spokane Falls Review*, July 19, 1889.
- ⁴³ *Id.*
- ⁴⁴ *Spokane Falls Review*, July 20, 1889.
- ⁴⁵ *Id.*
- ⁴⁶ *Id.*
- ⁴⁷ *Id.*
- ⁴⁸ *Journal, supra*, at 101, 106, July 16, 1889.
- ⁴⁹ *Tacoma Morning Globe*, July 20, 1889.
- ⁵⁰ *Spokane Falls Review*, July 20, 1889.
- ⁵¹ *Seattle P.I.*, July 23, 1889.
- ⁵² *Seattle P.I.*, July 20, 1889.
- ⁵³ *Id.*
- ⁵⁴ *Spokane Falls Review*, July 20, 1889.
- ⁵⁵ *Id.*
- ⁵⁶ *Id.*
- ⁵⁷ *Spokane Falls Review*, July 20, 1889.
- ⁵⁸ *Id.*
- ⁵⁹ *Journal, supra*, Art. IV, § 16, p. 104 (July 16, 1889).
- ⁶⁰ *Spokane Falls Review*, July 21, 1889.
- ⁶¹ *Spokane Falls Review*, July 21, 1889.
- ⁶² *Id.*
- ⁶³ *Id.*
- ⁶⁴ *Id.*
- ⁶⁵ *Id.*
- ⁶⁶ *Id.*
- ⁶⁷ *Journal, supra*, Art. IV, § 23 at 105.
- ⁶⁸ *Tacoma Morning Globe*, July 19, 1889.
- ⁶⁹ *Seattle P.I.*, July 21, 1889.
- ⁷⁰ *Journal, supra*, Art. IV, § 7 at 102.
- ⁷¹ Art. IV, § 2(a), adopted by Amendment 38, Laws 1961, H.J.R. No. 6, p. 2757, approved November 6, 1962.
- ⁷² Art. IV, § 23.
- ⁷³ Art. IV, § 25.

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THE BOARD'S WORK

Whistler, British Columbia, Canada: September 11, 1989

Present: President Bracelin, President-elect Vander Stoep and the Governors, including Governors-elect Howell, Schultz and Slater. *Also present:* Judge Harold Clarke (Superior Court Judges' Assn.); Harold Clarke, III (WSBA Young Lawyers Division); Stew Cogan (SKCBA Trustees); Frank Edmondson (Government Lawyers); Ed Holm (Legal Foundation of Washington); Mike Larson (SKCBA Young Lawyers); Sheryl Garland (Washington Women Lawyers); John J. Michalik (WSBA Executive Director); and Lindsay Thompson (*Bar News* Editor/Clark County Bar Assn. Trustees).

Hail and Farewell: President Bracelin gave her final report as president, concluding it with praise for the Board. The Board returned the sentiment, praising the president with a standing ovation.

No More Green Cards: Every year the Board gets one or more requests for waiver of APR 3(b)(1), which requires U.S. citizenship or resident alien status to sit the Bar examination. Considering one in executive session in May — and prodded by a letter from Chief Justice Keith Callow questioning the need for the rule — the Board requested WSBA Counsel Robert Welden to study the issue.

Welden's memo to the Board indicates the rule is a vestige of formerly noncomprehensive alien exclusion laws in Washington, and it runs counter to the general practice of state bars. Thirty-eight states have no such rule. In addition, federal cases led Welden to question whether there is a compelling state interest in having such a requirement. He thought not, and the Board agreed. They unanimously repealed APR 3(b)(1).

If It Ain't Brokerage, Don't Fix It: In July the Board

approved amendments to RPC 1.14 and RLD Title 13, permitting client trust funds to be deposited in brokerage accounts insured by the Securities Investors Protection Corporation (SPIC). But the Rules of Professional Conduct Committee got second thoughts. SPIC, they said, does not guarantee the return of an investor's funds if the depository fails, as do the more familiar FDIC and FSLIC. And SPIC does not guarantee the integrity of client funds deposited with their insurers. The Committee thought the degree of risk unacceptably high compared to other client fund investment vehicles available, and they recommended repeal of the amendment pending further Committee study.

Governor Mike Carlson, noting that he'd been the only Governor to oppose the idea initially, moved to repeal the amendment; the Board voted unanimously to do so.

RAP Video Isn't Just on MTV: The Board continued their review of proposed amendments to the Rules of Appellate Procedures. The most contentious was one carried over from last month, which would amend RAP 9.1 to allow a videotaped trial to constitute a record on appeal, but would still require a typewritten record to be prepared. Written submissions from Court Rules and Procedures chair Nicholas Wagner and Court of Appeals Judge Edward Reed were considered by the Board on questions of ease of review and lack of expense. In the end, the Board approved an amendment to RAP 9.1 which would allow parties to an action to stipulate to the use of videotape.

Other, more technical amendments were approved to RAP 9.2, 9.5, 9.6 and 18.9.

Disbarred Lawyers: In July, the Board heard a proposal from the Rules of Professional Conduct Committee to amend RLD 1.1(h) and withdraw Formal Ethics Opinion 171. The

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actions would allow lawyers in tightly controlled circumstances to employ disbarred lawyers. Presently there is an absolute prohibition, which, it is felt, precludes the possibility of rehabilitation. Barring a disbarred lawyer from legal work, it was said, denies him or her unemployment in an area of competence, and makes harder the keeping up with the law required for application for reinstatement.

This month the Board considered revisions to the proposal made since they sent it back in July. Several Governors were concerned about appearances: could a lawyer, disbarred on Friday, be back at his desk (ostensibly as a clerk) on Monday, where clients might not appreciate his reduced qualification? Governor Jeff Tolman thought some interval should pass before a disbarred lawyer could go to work for another lawyer, to avoid the "revolving door effect." So, on a motion by Governor Paul Stritmatter, action on the amendment was tabled until some further fine-tuning is done.

Shall We Be Ants or Grasshoppers? The Attorneys' Professional Insurance Committee asked for some guidance on what, if anything, they should be doing to advance the creation of a bar-controlled insurance company to help cushion the effects of the next downturn in malpractice insurance availability.

Member responses to the insurance questions on the general survey this spring were a bit equivocal, but members of the Board felt that was the result of the way the questions were phrased, as well as people's short memories of the last tight insurance market. Governor Ed Shea said, "We need to take the lead now. When the next crunch comes — as it will, in 1991 or '92 — it will be too late to act on providing alternative coverage." Governor Don Curran agreed. "There is lethargy now on the need for a captive company, but our members will react when the crisis comes. We need to anticipate."

Governor Paul Stritmatter thinks members will come around if they are reminded of "the last time" and educated on the usefulness of a captive company. But Governor Jim Turner wondered, "Even if we start now, can we get up a company in two years? And where will the money come from?" The matter was sent back to committee for more work.

Wrap-up In Whistler: In other action, the Board:

- heard reports from the WSBA executive director that CLE book sales are booming;
- approved an increase in dues, from \$8 to \$12, requested by the Intellectual and Industrial Property Section;
- settled a few more unresolved appointments to Association committees;
- approved amendment of the trust account regulations to allow an appeal of any spot-audit decision causing a lawyer or firm to have to pay more than \$1,500 to even up discrepancies;
- appointed Nancy Gibbs a trustee of the Legal Foundation of Washington to succeed Lowell Halverson.

Next Meeting: October 20-21, 1989 in Leavenworth. The meeting is open to interested persons.

One Hundredth Annual Meeting, Whistler, British Columbia, Canada: September 15, 1989

More than 350 persons attended the Association's one hundredth annual meeting at the Whistler Conference Center. The Association's hour-long centennial videotape project, "The First Hundred Years," was introduced by its author and producer, Governor Ed Shea, and was well-received by the audience.

President Elizabeth Bracelin told members that the Association has weathered a trying year well. The Gary Little scandal, the Novack Commission Report, and continuing

financial stringencies presented difficult decisions.

The president praised the Board of Governors and membership for "not rushing to judgment" until there was enough information to consider in each case, and for giving their time and input to the Gates Commission and the Association's response to the Novack Commission. It was gratifying, she said, that the Novack report found no evidence of fee abuse on the part of Washington lawyers. "Our lawyers are public-spirited people . . . and members of a very honorable profession."

Chief Justice Keith Callow reported the state of the judiciary much improved from early in the year, when it was "under siege and in danger of losing its independence. The Legislature was considering retribution for judges . . . we should be answerable to the law and the electorate, and able to make decisions without fear of punishment." He had high praise for lawyers who stepped up to the defense of the judiciary, particularly in response to the punitive proposals arising from the Gary Little scandal.

The Chief Justice also announced an ambitious legislative program for 1990, including authorization of the appointment of *pro tem* judges without stipulation of litigants; a constitutional change of the limit of three commissioners per county; a removal of pension restrictions limiting retired judges' ability to serve *pro tem*; state assumption of 100% of judges' salaries; and establishment of a more predictable method of allocating new judgeships.

After recognition of outgoing Board of Governors Mike Carlson, Ed Shea and Julie Weston, new president James Vander Stoep of Chehalis was introduced by his wife, Suzi.

Vander Stoep said communication will be a priority in his term. Thousands of members of the Association can't or don't acquaint themselves with the activities of the Association, he said, creating a climate of suspicion and distrust that some have played upon to dissent for dissent's sake. "This creates a dangerous potential," Vander Stoep continued. "I welcome the chance to come and talk with any local bar association."

After presentation of the Award of Merit to Smithmoore P. Myers, Spokane, Legal Foundation of Washington president Margaret McKeown told the meeting the Foundation's programs and funding continue to go from strength to strength, and praised the outstanding work of local bar associations and individual lawyers to advance access to justice for the poor.

Late News

A letter to the editor in the September 1989 *Bar News* has been found to be a hoax, *Bar News* editor Lindsay Thompson has announced.

The letter, attributed to Whatcom County Bar Association president John Erickson and variously interpreted as poking fun at or criticizing Association president Elizabeth Bracelin, was sent to the *Bar News* as a copy of a letter sent to Bracelin with a cover letter requesting its printing in the *Bar News*. Both letters were on bond, letterhead paper.

Thompson said that henceforth all letters to the editor will be verified for authenticity by direct contact with their senders and that the *Bar News* Editorial Advisory Board has been asked to look into how to prevent a recurrence. "This has never happened before, as far as we know," Thompson said. "One would hope one could trust the authenticity of letters on attorneys' stationery. Apparently not. On behalf of the *Bar News* I apologize to Mr. Erickson, Ms. Bracelin and members of the Whatcom County Bar Association, all of whom have been embarrassed by this unfortunate event."

—by **Lindsay Thompson**
Editor, *Bar News*



October 1989

3 Pre-Divorce Financial Planning: Tools and Techniques to Aid in Developing and Evaluating Settlement Proposals, Everett. Also presented October 5 in Port Orchard, October 10 in Poulsbo, October 12 in Seattle, October 17 in Tacoma, and October 18 in Federal Way. *Sponsored by:* Puget Sound Association of Pre-Divorce Consultants. *For information:* (206) 698-2484.

6 Oral Advocacy for the Experienced Trial Attorney, Spokane. Also presented October 13 in Seattle. *Sponsored by:* WSBA. *For information:* (206) 448-0433.

6 Winning Trial Techniques, Portland. *Sponsored by:* Northwestern (Lewis & Clark) School of Law. *For information:* (503) 244-1181.

6 Corporate Counsel Institute, Seattle. *Sponsored by:* WSBA. *For information:* (206) 448-0433.

7 Doing Business Under the Canada-U.S. Free Trade Agreement, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

12 Liability of Architects and Engineers, Seattle. *Sponsored by:* WSBA. *For information:* (206) 448-0433.

12-13 Seventh Annual National Fishery Law Symposium, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

13 Fourth Annual International Business Law Seminar, "The Tides of Trade: The Four Tigers," Portland. *Sponsored by:* Northwestern (Lewis

& Clark) School of Law. *For information:* (503) 244-1181.

16 WSBA World Peace Through Law Section meeting. Noon. Seattle. *For information:* Brian Linn, (206) 242-9876.

17 People's Law School, Seattle. P.m. First of seven consecutive Tuesdays ending November 28. *Sponsored by:* Asian Bar Association of Washington. *For information:* (206) 235-2352.

16-18 Law Office Management Regional Institute, Seattle. *Sponsored by:* WSBA. *For information:* (206) 448-0433.

18 Successful Computer Solutions for Lawyers, Seattle. *Sponsored by:* CLE International. *For information:* (206) 621-1938.

18 1989 Crime Victims' Conferences: Sex Offenders in our Community: Prevention and Protection. Spokane. Also presented October 20 in Seattle. *Sponsored by:* WA St. Atty Gen'l. *For information:* Barbara Winkler, (206) 753-6221.

19 Small Business Representation: Landing, Developing and Servicing Small Business Clients. Live satellite telecast. *Sponsored by:* ALI-ABA. *For information:* (800) CLE-NEWS, ex. 1661.

19-20 34th Annual Estate Planning Seminar, Seattle. *Sponsored by:* WSBA. *For information:* (206) 448-0433.

19-20 1990 Affirmative Action Briefing, Seattle. *Sponsored by:* National Employment Law Institute. *For information:* (415) 924-3844.

21 Depositions: Tactics, Strategies and Problems, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

25-26 Creditor/Debtor Workshop, Seattle. *Sponsored by:* WSBA. *For information:* (206) 448-0433.

26 Franchising Workshop. Seattle. All day. *Sponsored by:* Stoel, Rives et al. *For information:* Gary Duvall, (206) 624-0900.

26 Current Issues in Commercial Real Estate Transactions. Live satellite telecast. *Sponsored by:* ALI-ABA. *For information:* (800) CLE-NEWS.

27 Art That Angers—Artistic Expression and the Law. Seattle. A.m. *Sponsored by:* Washington Volunteer Lawyers for the Arts. *For information:* (206) 223-0502.

27 Copyright—What Every Artist Must Know. P.m. *Sponsored by:* Washington Volunteer Lawyers for the Arts. *For information:* (206) 223-0502.

27-28 The NEPA at Twenty: The Past, Present and Future of the National Environmental Policy Act, Portland. *Sponsored by:* Northwestern (Lewis & Clark) School of Law. *For information:* (503) 244-1181.

28 Annual Commercial Law Institute, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

28 Superior Court Judges' Association Regional Seminar on Jury Instructions, Pasco. *Sponsored by:* Superior Court Judges' Association and Board for Trial Court Education. *For information:* (206) 753-3365 or SCAN 234-3365. *Note:* Attendance limited to first 60 attorneys.

November 1989

2 SKCBA 3rd Annual Judicial Appreciation Dinner, Seattle. 7 p.m. *For information:* Sharon Dunn, (206) 624-9365 or Margo Keller, (206) 624-1230.

3 Consumer Protection, Antitrust and Unfair Business Practices Conference, Seattle. *Sponsored by:* WSBA. *For information:* (206) 448-0433.

3 Eighth Annual Federal Tax Conference, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

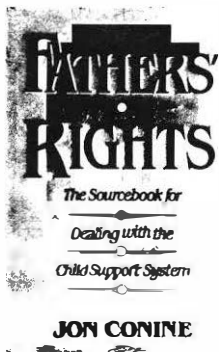
3 Comparative Law, Blaine. *Sponsored by:* WSBA. *For information:* (206) 448-0433.

4 Family Law, Yakima. Also presented at Sea-Tac Airport November 18. *Sponsored by:* WSBA. *For information:* (206) 448-0433.

10 WSBA/WSCPA, Seattle. *Sponsored by:* WSBA and Washington Society of Certified Public Accountants. *For information:* (206) 448-0433.

"Fathers' Rights is a survival manual for every man who is contemplating marriage or divorce, or is obligated to pay child support."

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Child Support Enforcement Program*



Author Jon Conine has worked in child support enforcement for 17 years. A member of the Executive Council of Child Support, he has written many state laws and regulations. He lives in Olympia, Washington.

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10 Current Issues In Medical Negligence, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

11 Successful Solo and Small Practice, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

16-18 Northwest Real Estate Symposium, Seattle. *Sponsored by:* WSBA. *For information:* (206) 448-0433.

17 Professional Responsibility, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

17 Federal Practice and Procedure, Portland. *Sponsored by:* Northwestern (Lewis & Clark) School of Law. *For information:* (503) 244-1181.

20 WSBA World Peace Through Law Section meeting. Noon. Seattle. *For information:* Brian Linn, (206) 242-9876.

December 1989

2 Plea Bargaining, Seattle. *Sponsored by:* UW School of Law and WSBA. *For information:* (206) 543-0059.

4 Labor Management, Seattle. *Sponsored by:* American Arbitration Association. *For information:* Call collect, (212) 484-3233.

5 How To Draft Wills, Spokane. Also presented December 7 in Seattle. *Sponsored by:* WSBA. *For information:* (206) 448-0433.

5-6 Sixth Annual Hazardous Waste and Management Conference, Portland. *Sponsored by:* Northwestern (Lewis & Clark) School of Law. *For information:* (503) 244-1181.

7-8 Sixth Annual Hazardous Waste and Management Conference, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

8 Contested Issues in Local Government, Seattle. *Sponsored by:* WSBA. *For information:* (206) 448-0433.

9 Ethics Workshops, Portland. *Sponsored by:* Northwestern (Lewis & Clark) School of Law. *For information:* (503) 244-1181.

16 Business and Biographical Information, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

18 WSBA World Peace Through Law Section meeting. Noon. Seattle. *For information:* Brian Linn, (206) 242-9876.

28 Best of CLE, Seattle. *Sponsored by:* WSBA. *For information:* (206) 448-0433.

(*Calendar* carries information on events of interest to members of the Association. Please send event notices to Lindsay Thompson, Editor, *Bar News*, 7414 N.E. Hazel Dell Avenue, Vancouver, WA 98665. Deadline is the 25th of each month for the second issue following.)

Notices of Interest to Association Members

Disciplinary Notices

Suspended: Seattle attorney **Michael D. Mullison** (admitted 1987) was ordered suspended from the practice of law for one year by order of the Supreme Court entered July 26, 1989 and effective May 25, 1989, the date he began his Interim Suspension pursuant to RLD 3.1. The discipline was based on Mullison's conviction of second degree theft of a retainer fee paid by Mullison's client to a law firm employing him. Following the termination of his suspension, he will be on probation for two years under a variety of conditions.

Public Notices

People's Law School

The Asian Bar Association of Washington (ABAW), a nonprofit corporation with nearly 100 active members, will host a People's Law School in Seattle's International District this fall. Topics include: your courts and how they work, how laws are made, divorce law, consumer rights, landlord-tenant, small business, and estate planning. Cosponsors are Washington State Trial Lawyers Association (WSTLA) and Renton Vocational Technical Institute.

Washington Pattern Jury Instructions: The Supreme Court Committee

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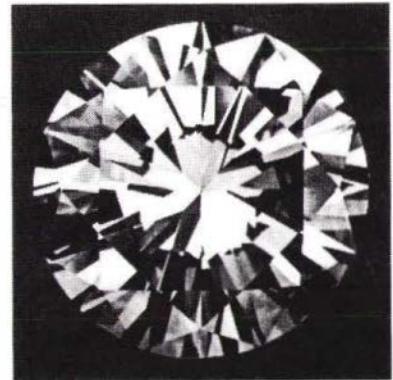
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on Pattern Jury Instructions is now revising and updating the pattern criminal jury instructions, which are published by West Publishing Company as part of its Washington Practice Series (Volume 11). The committee welcomes any suggestions or comments members of the Association may have regarding the revision project. Contact the Committee c/o The Office of the Administrator for the Courts, Temple of Justice AV-01, Olympia, WA 98504. Meeting minutes of the WPI Committee are also available on request.

King County Courts Announcement:
The King County Clerk's Office wishes to announce a simplification of filing procedures. Effective immediately, all original documents intended for the case legal file should be filed in one place regardless of type: WINDOW 1. The only exception to this procedure is for Orders Shortening Time and Criminal Motion Confirmation matters with less than two days before the hearing. These two types of papers should be handed directly to Calendar Staff at Window 11 for timely processing.

Working papers (judges' copies, courtesy copies, bench copies) for the Civil Motions, Summary Judgment and Supplemental Calendars must still be filed at Window 12. To assure that working papers are correctly routed, please mark them "Working Papers" and put the date of the hearing, both preferably in red at the top of the document.

Assistance Requested

The Legal Foundation of Washington has provided funds to prepare a comprehensive law-related education (LRE) directory. This compilation of resources, activities and projects will be available in the spring of 1990. The gathering of information has already begun. To make this directory as useful as possible information is needed on materials used or known about in law-related education, such as books, films, lesson plans, and regularly recurring LRE events, including mock trials, teacher training and awards.

The University of Puget Sound Institute for Citizen Education in the Law (UPSICEL) is compiling the directory with technical assistance and guidance from the Washington Center for Law-Related Education, the grant recipient.

The directory will be distributed free to teachers, curriculum developers, libraries, attorneys involved in LRE, and organizations offering LRE programs. Readers knowing of materials and resources that should be included in the directory or wishing to receive a free copy should write to Julie Ann Gold, UPSICEL, University of Puget Sound School of Law, 950 Broadway Plaza, Tacoma, WA 98402-4470, by October 31, 1989, or call (206) 591-2215 (Tacoma) or (206) 285-5552 (Seattle).

In re RCW 19.52.020(1):

Legal Interest Rates

The average coupon equivalent yield from the first auction of 26-week treasury bills in September 1989 is 8.31%. The maximum allowable interest permissible for **October 1989** is therefore **12.31%**. Compilations of the average coupon equivalent yields from auctions of 26-week treasury bills appear on page 39 in the October 1987 *Bar News* for 1982-1984, and on page 37 of the June 1989 *Bar News* for 1984-1989.

(Items for inclusion in "Digest" should be sent to Lindsay Thompson, Editor, *Bar News*, 7414 N.E. Hazel Dell Avenue, Vancouver, WA 98665.)

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Howell, Schultz and Slater Elected WSBA Governors

(The *Bar News* thanks Caroline Davis and Paula Pridgeon and the *SKCBA Bar Bulletin* for material used in this column.)

Lembhard G. [Lem] Howell was born in rural Jamaica in 1936; his family soon immigrated to New York. He was graduated with honors in history from Lafayette College in 1958 and was on active duty in the U.S. Navy from 1958 to 1962. In 1964, he was graduated from New York University School of Law. He clerked in the Washington Supreme Court until 1965 and served as an assistant attorney general for the state until 1968, when he entered private practice with Len Schroeter, a Seattle attorney. He is now a sole practitioner emphasizing personal injury.

Howell has been recognized for his professional contributions with the Washington State Trial Lawyers Association Trial Lawyer of the Year award and his election as both treasurer and parliamentarian of the Association of American Trial Lawyers. Active in politics, he chaired the Hart Committee in 1984 and also the Washington State Delegation to the National Democratic Convention. He has served in numerous bar and professional organizations, including the Loren Miller Bar Association, which he helped found. He is a trustee of the Melvin Belli Society, is a member of the International Society of Barristers, and is listed in "Best Lawyers in America."

Howell is noted for his plaintiff advocacy in controversial cases and his championing of minority causes. He takes particular pleasure in courtroom victories which have established the duty of a general contractor to provide a safe work place for the employee of a subcontractor, won equal access for blacks' membership in local trade unions, and established the rights of plaintiffs to discovery and examination of internal records and investigations of police to establish their misconduct.

Lem and his wife, Pat, have two daughters: Helen practices law in San Francisco, and Elizabeth is a first-year medical student at Harvard University.

Howell will replace Julie Weston on the Board, representing the Seventh District.

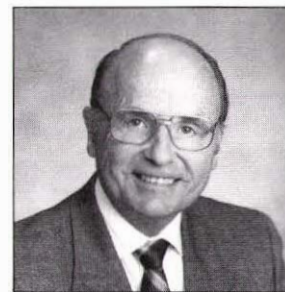
John G. Schultz (aged 50) was raised in Spokane and earned his B.A. and J.D. degrees from Gonzaga University. After graduation from law school in



Lembhard G. Howell



John G. Schultz



John T. Slater

1963, he was a law clerk for the Honorable Robert T. Hunter at the Washington State Supreme Court.

Following his law clerkship he joined his present firm, then known as Leavy & Taber. The late James Leavy was a former member of the WSBA Board of Governors, and Duane Taber is now a superior court judge for Benton and Franklin counties. Schultz is the senior partner in a general practice firm of seven lawyers known as Leavy, Schultz & Sweeney, P.S. His practice emphasizes litigation and is weighted heavily in favor of insurance defense.

Schultz has been active in Bar Association activities: He represented the Fourth Congressional District in the Young Lawyers Committee (a predecessor of the Young Lawyers Division) from 1966 to 1969. He was a Bar examiner with the Board of Examiners from 1970 to 1972, and was on the Court Rules and Procedures Committee from 1975 to 1977. Recently he served three years on the WSBA Disciplinary Board (1985-1988). He is the immediate past president of the Benton-Franklin Bar Association.

Schultz has been married for 30 years to Pennsue Schultz; they have four children. His eldest son, Robert, is a graduate of Washington State University and Gonzaga University School of Law (1985). Robert is a partner in the firm.

Schultz also has been active in community affairs. He is a member of the Pasco Kiwanis Club, and is past president of the Pasco Chamber of Commerce.

Schultz will succeed Ed Shea as Board representative for the Fourth District.

John T. Slater was born in Bellingham, Washington, on January 11, 1927, was graduated from Bellingham High School and entered the Naval Air Crewman Program in January of 1945, where

he served until discharged in August of 1946. He attended Western Washington University for several years; he received a Bachelor of Science degree from the University of Washington in 1950, was graduated from the University of Washington School of Law in 1952, and admitted to practice in September of that year. Upon graduation, he clerked for Justice Ralph Olson of the State Supreme Court until July of 1953, when he returned to Bellingham and became associated with Leo Goodman in the general practice of law and practiced with him until his death in 1980. Presently Slater shares offices with Mark Boyson and is a partner with his son, J. Timothy Slater, in a general practice but with some emphasis in the areas of school law, banking, estate planning and probate.

Slater served for eight years as part-time Bellingham Assistant City Attorney (1956-1964), handling mainly criminal matters. He has served as secretary and president of the Whatcom County Bar Association and three-year terms as a member of the State Bar Ethics and Judicial Recommendation committees. He is presently completing a three-year term on the Disciplinary Board, having previously served in the capacity of Special District Counsel and Hearing Officer for the Board.

He has also been active in the Washington Council of School Attorneys, having served both as an officer and director of that organization.

During the past 36 years, he has been active in numerous community, religious and youth activities in the Bellingham area. His wife, Barbara, and he have three grown children: two daughters, Kellie and Patricia, and a son, J. Timothy. Their family recreational interests are mainly boating, fishing, hunting and other outdoor activities.

Slater will succeed Mike Carlson as representative for the Second District.

King County Judges *The Call of the Private Sector*

Two King County Superior Court judges have announced their retirement from the bench to take positions with a California-based private mediation firm.

Judge Stephen M. Reilly, a 12-year veteran on the King County bench, announced his resignation August 15, to take effect this fall. On December 1 he will join Judicial Arbitration and Mediation Services, Inc., (JAMS), a California corporation which employs about 90 former and retired California trial and appellate court judges in offices throughout that state. Reilly will be associated with the company's first out-of-state office, to be located in Seattle.

Presiding Judge Gerard M. Shellan announced his retirement, effective October 31, on August 15. Appointed by Governor Dixie Lee Ray in 1977, Shellan served two terms as presiding judge of the state's largest court system, was widely honored by bar and judges' organizations for excellence on the bench, and in recent years had undertaken an outspoken role in seeking solutions to the court congestion problems of the King County courts. Shellan will join JAMS as its senior judge in the Seattle office.

In announcing his retirement, Shellan released a lengthy letter to his judicial

colleagues, in which he called on his fellow judges to speak out as leaders of the community in favor of needed changes, and not to fear the pleas of those who advocate the status quo on a consistent basis. Among his farewell proposals was one that the state assume the total salary of trial judges, helping mitigate the financial burden on counties of meeting the need for more judges. He also called for a commission to be created whose purpose would be to determine periodically the need for new judgeships in all counties, based on a consideration of case loads, filings, disposition rates, population, trial time needs, and other factors.

Shellan said the recently announced proposal of the WSBA Young Lawyers Division for adoption of a merit selection system for judges "should give all of us food for thought . . . Some form of merit system, if impartially administered, is preferable to our present method since it would attract a greater number of highly qualified candidates," but doubted that the current political climate is ripe for such a change.

Assistant Presiding Judge Charles V. Johnson will assume the presiding judgeship on November 1.

U.K. M&A

London Lawyers In the Chips

Little-recognized in the wave of controversy of Japanese investment in

America is the fact that, for the last several years, it has been exceeded by British investment in its former colonies. More noticed has been the rise of large corporate takeovers emanating from the sceptered isle, most recently Sir James Goldsmith's bid for BAT.

Behind this stirring of large-scale entrepreneurship is an increasingly large and prosperous cadre of London attorneys. In an August "Business Focus" report in London's *The Sunday Times* titled "The Lawyers Take Over," the talk of the city is of vast new law offices being built, complete with American-style gyms, squash courts and other amenities. Top lawyers in such firms are reported to be pulling down as much as £750,000 (US\$1.176 million), and articulated clerks just out of law school are being hired for £14,000-£17,000 (US\$22,000-\$26,000), with compensation rising to £30,000 for qualified solicitors with two years in practice. From there, salaries are going up £5,000 for each year of experience to £45,000, when rainmaking skills break out top practitioners into larger sums.

Driving the demand for lawyers in the merger and acquisition field is the increasing integration of the European — and international — economy. Recent U.K. business scandals, and the complexity of international deals, are forcing the parties to such transactions to seek independent counsel where, in the past, one firm might have represented all the parties.

But lurking in the cheery economic picture are several small clouds. One is that the rise — and fall — of the Wall Street takeover lawyer a few years ago will repeat itself in London a few years hence. Of more pressing moment is the fear that bigger, more experienced American law and financial firms will muscle their way into the increasingly lucrative British market. Already, Coudert Bros. of New York has announced it is hiring twenty London attorneys.

Continuing Legal Education

Yah, sure, Y'betcha, Y'all

There was a decidedly Southern flavor to the eighth annual Poulsbo CLE and Dinner August 24 at the Sons of Norway Hall. The event, sponsored by the Poulsbo firm of Roof, Tolman & Kirk has managed to become, in the opinion of many, the best continuing legal educa-

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Like a good souffle, just how it works out is a mystery, but major parts of the recipe must be both the access of the distinguished CLE speakers to participants and the dinner which accompanies the day-long seminar. At the affair, famous lawyers and judges from all over have repaired to be awarded Poulos's "Small Town Lawyer Made Good" award. Past recipients include U. S. Supreme Court Justices John Paul Stevens and Antonin Scalia; Washington Supreme Court Justice Robert Brachtenbach; U. S. District Judge Robert Bryan; and attorneys Paul Luvera, Gerry Spence, and J. Harris Morgan.

This year the principal speakers were the Small Town Lawyer for 1989, Bobby Lee Cooke of Summerville, Georgia, whose practice over the past 40 years has been the inspiration for many lawyers and the television series, "Matlock." Charleston, South Carolina lawyer Gedney M. Howe, III was featured speaker, following in the footsteps of such luminaries as Richard "Racehorse" Haynes; Joseph Jamail, Irving Younger, Jay Foonberg and Washington Supreme Court Justice James Doliver.

About 300 attended the event, including many of the state's leading judges and attorneys.

Computers

Riding Circuits Now Means Something Different

The American Bar Association has completed the first-ever survey of law office automation in firms of 25 or fewer attorneys. While previous studies have looked at the needs of the 500 largest firms, more than 80 percent of the lawyers in private practice (about 400,000) are affiliated with smaller firms.

The survey asked both managing partners and individual attorneys a series of 120 questions covering everything from their attitudes toward technology, awareness of new technologies and plans for future purchases to the types of equipment already in use, who uses computers in the firm and reasons for not automating. The results give a comprehensive picture of the state of office automation in smaller law firms.

Responses to the survey showed a high level of interest among lawyers in using microcomputers to improve their efficiency and make their firms more

competitive. The survey revealed that:

- Ninety-five percent of the respondents have one or more computers in their firms
- Forty-eight percent of the respondents personally use a computer (recent surveys of larger firms show a 30 percent level of attorney computer usage)
- Of the respondents who do not use computers, 46 percent plan to do so in the next year
- The most important characteristics for future products will be ease of movement between applications, and compatibility with other systems in the office
- For those who do not plan to use computers, the primary reasons are that they do not think it is cost effective and they do not type

The nationwide mail survey was conducted by the ABA's Legal Technology Resource Center (LTRC) and cosponsored by 20 organizations active in the legal marketplace.

The LTRC is an umbrella entity for a number of ABA projects designed to help attorneys better use technology. Some of the current projects include:

- The Technology Hotline — (312) 988-5465 — a one-stop source for information on all ABA technology related products and services, and general legal technology information
- The LawTech Center — a hands-on learning facility, where lawyers and other legal professionals can "test-

drive" the latest legal technology products in an informative, non-sales setting

- ABA/net, "The Lawyers' Network" — the computer-based communications and information network designed and managed by the ABA, which includes rapid document exchange and conversion, access to legal and general information databases and on-line conferences
- LTRC Software Reviews — reviews of legal software products that have undergone a rigorous testing process and meet ABA-established performance guidelines.

More information on the survey, or other activities of the ABA Legal Technology Resource Center is available from the ABA's Patrick Reardon at (312) 988-5399.

Washington Defense Trial Lawyers Elect New President

The Washington Defense Trial Lawyers (WDTL) announced the election of Ronald B. Leighton as president of the organization for the coming year at their annual convention held in Whistler, B.C., July 13-16.

WDTL is a 695-member organization of attorneys who devote substantial time to the defense of persons and companies in civil litigation matters.

Leighton is a partner in the law firm of Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim.

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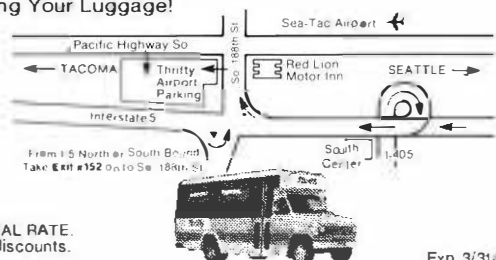
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My Drug and Alcohol History

A few short years ago, I had a law practice consisting of helping my drug- and alcohol-using friends avoid their creditors and of representing them in their divorces and criminal matters. For providing these services, I was paid very little. My self esteem was such that I didn't feel that my time was worth much. On reflection, I suppose at that time it probably wasn't. My wife was ready to leave me, and my once-perfect credit was in a shambles. I had pneumonia three times in one year because of abusing cocaine and alcohol. I would often come to the office after being up all night on a binge. I would justify it by thinking that at least I wasn't drinking during the day. The odd part of it all is that I really didn't see anything wrong with my life. I simply felt that I was living it in the fast lane. In fact, I would often brag to my friends about how I was able to live the life of two people: on one hand, I was a respectable husband, father and lawyer, and on the other I was the streetwise, swashbuckling drug user.

Many of my friends were drug dealers. I used to enjoy the thrill of hanging around those types. It seemed also to provide the thrill I had been missing for quite some time. You see, I am also a Vietnam combat veteran. Without knowing it, I was suffering from delayed stress syndrome, and this tied in nicely with my alcoholism and drug addiction. Living on the edge gave me that rush of excitement that I used to feel when I was in tight situations in Vietnam. My own adrenalin was another drug that I had become addicted to.

About six years ago, I came home at 8:00 in the morning, after a night of drinking and drugging. I said hello to my then-pregnant wife and went in to check on my 14-month-old little boy. When I came back out to talk to my wife, I was astounded to see her reading a book from an organization called "Alanon." It hit me like a sledgehammer in the face that my wife found outside help necessary because of a problem which I

had. This was the first time I realized I *had* a problem.

To someone not closely involved with drug and alcohol addiction, it may seem odd that I hadn't discovered this sooner. Those familiar with the treatment of alcohol and drug addiction know that this is quite normal.

I continued to drink and use drugs over the next three years, and managed to lose almost everything important to me. I was evicted from two offices; my wife and children left me; and I had few friends. The thing that was shocking to me, though, was that even though I had tried to cut down or quit drinking and using drugs, I wasn't able to. I didn't drink or use drugs every day, so I felt that I was able to handle it.

Finally, I noticed an ad for a meeting of Alcoholics Anonymous that was for lawyers. My ego told me that I could go to a meeting with other lawyers because they weren't like the alcoholics that I'd always read about. I was taken to a meeting by a lawyer who I still see on a regular basis. I was very surprised to find that I was just like the people there. It has been three years since my life was in the misery of using drugs and alcohol.

Now my family is put back together; I have recently bought a large house; and my law practice is expanding beyond my dreams. I am also a peer counselor for the WSBA Lawyers' Assistance Program, and I am able to receive pleasure from the help that I am able to give others. I can feel comfortable in the fact that my children will look at me with pride in their eyes, rather than with contempt. Above all, I can look at myself in the mirror and see self-respect instead of self-loathing. I am a human being once again.

If this fact pattern sounds familiar, or if alcohol, depression, drugs, etc. have become the focus of your life, call us. LAP provides confidential, effective assistance. We can assist you or your fellow lawyer. We are at (206) 448-0605.



Edited by

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

Creditor/debtor law. (*Case 1.*) Employee entered into structured settlement of injury claim against employer whereby employer established substantial trust for employee's benefit. In employee's later bankruptcy case, *held*: Trust was spendthrift trust under Washington law and trust fund therefore did not become property of bankruptcy estate. Employee never had control over funds that went into trust and merely acquiesced to trust agreement, which included an effective anti-alienation clause. *In re Jordan*, 96 B.R. 284 (9th Cir. BAP 1989).

(*Case 2.*) Mechanic's and materialman's lien claimants who had recorded notices of lien against property that thereafter became property of bankruptcy estate did not lose their liens for failure to take action within eight months after recording lien notices, as required by Washington statute. Section 108(c) of Bankruptcy Code tolls all state

time limits on civil actions, regardless of whether time limit is statute of duration or of limitation. *In re Hunters Run Limited Partnership*, 875 F.2d 1425 (9th Cir. 1989), *reversing* 70 B.R. 297 (W.D. Wash. 1987), reported in this column July 1987.

(*Case 3.*) Creditors who had commenced state proceedings to set aside alleged fraudulent transfer before debtor's bankruptcy case was filed did not acquire priority over bankruptcy trustee in property transferred. Although Washington law recognizes equitable lien for benefit of creditor who takes action to set aside fraudulent transfer, it also requires that transferee, as indispensable party, be brought within jurisdiction of court in such action. Since creditors had not made transferee party to state proceedings, they did not acquire equitable lien by which to claim priority over trustee. *In re Schneider*, 99 B.R. 52 (Bank. W.D. Wash. 1989).

(*Case 4.*) Plaintiff, after having equity in home exempted in bankruptcy and

after receiving discharge in bankruptcy case, commenced action for misrepresentations concerning condition of home at time of purchase. *Held*: Plaintiff lacked standing to bring action. Action accrued before he commenced bankruptcy. Because he had not listed claim as asset in bankruptcy case, claim had not been administered. Therefore, only trustee in bankruptcy had standing to bring action. *Linklater v. Johnson*, 53 Wn.App. 567, 768 P.2d 1020 (3/9/89).

— *M. D. Rombauer*

Criminal law. Washington Supreme Court, rejecting federal rule allowing warrantless automobile search on mere probable cause, held that state constitution required both probable cause and exigent circumstances that would excuse failure of police to seek warrant. Three concurring judges urged adoption of "bright-line" rule, rather than rule requiring consideration of "totality of the circumstances." *State v. Patterson*, 112 Wn.2d 731, 774 P.2d 10 (6/15/89).

— *G. R. Nock*

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Evidence. In narcotics prosecution, defendant sought to impeach prosecution witness with letters witness allegedly wrote, in which witness had induced witness in another unrelated case to give false testimony and had threatened life of other witness and his family. Rejecting alleged violation of right to confrontation, appellate court held that trial court properly refused to allow impeachment because letters were

barred as extrinsic evidence under ER 608. Alternatively, court said state had "compelling interest" in securing testimony of prosecution witness, who might not have testified if impeachment had been allowed. Dissenting judge thought defendant should at least have been allowed to cross-examine witness about letters, in order to "graphically demonstrate [witness's] disdain for judicial proceedings and a willingness to

undermine the process by suborning perjury." *State v. Barnes*, 54 Wn.App. 536, 774 P.2d 547 (6/20/89).

— K. B. Teglund

Planning and zoning. (Case 1.) Washington lawyers should take note of the recent United States Supreme Court decision in *Brendale v. Confederated Tribes and Bands of Yakima Indian Nation*, ___ U.S. ___, 109 S.Ct. 2994 (6/29/89). As to a part of the Yakima Reservation that lay within Yakima County, the Court held that the tribal government had the power to regulate the use of land within "closed" areas, and the county had power to regulate land use within "open" areas. "Closed" and "open" areas were defined in a resolution of the Yakima Tribal Council, dated 4 August 1954.

(Case 2.) When city, collaborating with community organization that opposed private apartment-house development, refused to process applications, intentionally stalled applications, applied different procedures to applicant than usually applied, and otherwise intentionally blocked development, city was liable to developer for damages for tort of interference with business expectancy. However, city was not liable for city council's downzoning of applicant's land, because council, acting on zoning in quasi-judicial capacity, had immunity. Thus, city was liable only for actions of other city officials. Case grew out of *Parkridge v. City of Seattle*, 89 Wn.2d 454, 573 P.2d 359 (1978). Present case is *Pleas v. City of Seattle*, 112 Wn.2d 794, 774 P.2d 1158 (5/22/89).

— W. B. Stoebuck

Real property. (Case 1.) Defendant moored houseboat in lake adjacent to plaintiff timber company's lands for over 10 years and used about half acre of plaintiff's land without permission fairly regularly, sometimes with small structures such as privy and woodshed. Defendant believed erroneously that plaintiff's land belonged to state of Washington. Another neighboring houseboat owner also made use of same half acre, but with plaintiff's permission, apparently about as much as defendant used it. *Held*, defendant does not have title to half acre by adverse possession because defendant's usage, being shared with neighbor, was not "exclusive," one of the required elements for adverse possession. However, fact that defendant,



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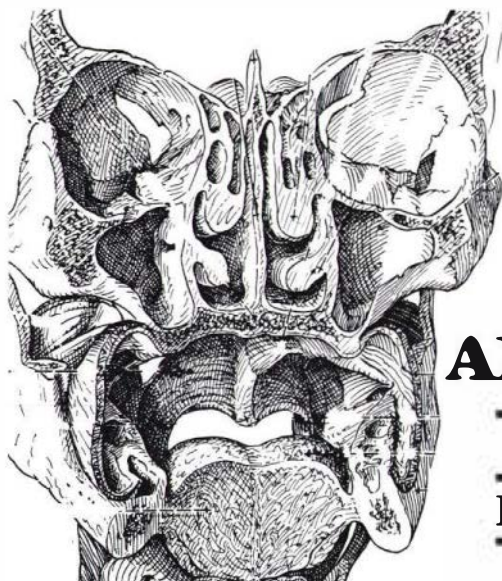
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believing land belonged to state, did not have "good-faith belief" he was owner was not a bar to adverse possession, *i.e.*, did not prevent "hostility." Court reaffirms and clarifies its decision in *Chaplin v. Sanders*, 100 Wn.2d 853, 676 P.2d 431 (1984), that adverse possessor's state of mind is irrelevant, and good faith is not required. *ITT Rayonier v. Bell*, 112 Wn.2d 754, 774 P.2d 6 (6/15/89).

(Case 2.) Tenant operated business that involved storage of foam rubber in leased building. Local fire department demanded that tenant install fire-resistant storage facility for foam rubber and extend sprinkler system. Though tenant denied that fire department's interpretation of fire code was correct, rather than to appeal fire department's decision through administrative channels, tenant quit premises and took position that lease was terminated on theory of commercial frustration. *Held*, tenant is still liable to landlord; lease not terminated by commercial frustration, because tenant had duty to attempt to resolve dispute with fire department through administrative appeal or even by declaratory judgment action before quitting. (Comment. Apparently lease did not limit tenant's use of premises to the particular business. Should the doctrine of commercial frustration apply when the lease permits a tenant to make other uses that are not forbidden? - W.B.S.) *Stevedoring Services of America v. Marvin Furniture Manufacturing*, 54 Wn.App. 424, 774 P.2d 44 (6/12/89).

(Case 3.) Person who takes an interest in land, in this case beneficiary's interest under deed of trust, is charged with such notice of rights of tenant in possession as inquiry would show. Even though circumstances made it probable that tenant had only a short-term leasehold, beneficiary was charged with notice that tenant, who was in possession, was there under unrecorded 20-year lease. Thus, when beneficiary foreclosed and purchased at its own foreclosure sale, it took title subject to tenant's 20-year lease. *Peoples Nat'l Bank of Washington v. Birney's Enterprises, Inc.*, 54 Wn.App. 668, 775 P.2d 466 (7/5/89).

— W. B. Stoebuck

Wills and estates. (Case 1.) Witnesses to attempted will codicil signed affidavit of subscribing witnesses authorized by RCW 11.20.020, but they did not sign attempted codicil; only now-deceased testator signed attempted

codicil. *Held*, attempted codicil fails. Witnesses' signatures on affidavit are no substitute for statutory requirement that they sign will or codicil as witnesses. *Estate of Ricketts*, 54 Wn.App. 221, 773 P.2d 93 (5/22/89).

(Case 2.) Petitioner brought will contest, contending that another document was true will, but failed to issue citations to three charitable beneficiaries who were given same gifts under both documents. Trial court dismissed petition for failure to join parties required by RCW

11.24.020. On appeal petitioner argued that they were "necessary" but not "indispensable" under Civil Rule 19 and that petition should not have been dismissed. *Held*, reversed and remanded for determination whether three beneficiaries were indispensable under CR 19. RCW 11.24.020 and CR 19 are consistent. If parties not indispensable, it was error to dismiss. *Estate of Van Dyke*, 54 Wn.App. 225, 772 P.2d 1049 (5/22/89).

— T. R. Andrews

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NEWS FROM HOME

• The Young Lawyers Division of the Seattle-King County Bar Association has elected new officers and members of the Board of Trustees, effective August 1, 1989. **Daniel Gottlieb** was elected chairperson; **Michael Larson**, vice chairperson; **Marc Lampson**, secre-

tary; and **Donna McNamara**, treasurer. New lawyer trustees elected to three-year terms are **Michele Jones-Garling**, **Mike Reynvaan** and **Adrienne Tollefsen**. New lay trustees are **Ken Rudee** and **John Odland**, and new law student trustees are **Maria Barnes** and **Joan Mell**. The new officers and trustees will represent a membership of 1,700 attorneys and oversee a \$300,000 budget.

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• "The Best Lawyers in America," published annually, lists the law firm of Stoel Rives Boley Jones & Grey with the largest number of attorneys for Washington and Oregon. This is the second consecutive year the firm has headed the combined lists.

Stoel Rives Boley Jones & Grey had a combined total of 22 lawyers listed, followed by Perkins Coie with 20, Bogle and Gates with 18, Davis Wright Jones 15, Lane Powell 11, and Schwabe Williamson with 10.

The book, "The Best Lawyers in America," annually publishes the results of a nationwide survey of attorneys. The authors are Steven Naifeh and Gregory White Smith, and the publisher is Woodward/White in New York.

• Justice **Robert F. Utter** of the Washington State Supreme Court was recently elected a vice president of the American Judicature Society at its annual meeting in Honolulu. He was formerly the Society's secretary.

Utter received B.S. and LL. B. degrees from the University of Washington. He is currently an adjunct professor of law at the University of Puget Sound School of Law. He was active in the Conference of Chief Justices, serving as an executive committee member and as chairman of its State Justice Institute Committee. He was Distinguished Jurist-in-Residence for 1987 at Indiana University School of Law-Indianapolis. He is a Justice Fellowship board member and has chaired the Big Brothers/Big Sisters of Thurston County and the Washington State YMCA Youth and Government Committee. He served as chief justice of the Washington Supreme Court from 1979-1980.

Founded in 1913, the American Judicature Society is a national independent organization of more than 20,000 concerned citizens working to improve the nation's justice system. Among its goals are creating greater public understanding of the role of the courts, selecting judges for their professional qualifications, protecting judicial independence while maintaining the highest standards of judicial ethics and improving court systems. AJS publishes newsletters, monographs and the journal, *Judicature*, holds conferences and seminars, maintains an information and consultation service, conducts empirical research and operates the Center for Judi-

cial Conduct Organizations.

• The Western Trial Lawyers Association installed attorney **H. Frank Stubbs** of Tacoma on its board of governors at its August annual convention in Maui, Hawaii.

• **M. Margaret McKeown**, Seattle attorney with the firm of Perkins Coie, was elected a director and treasurer of the National Association of IOLTA Programs at the association's annual meeting in Honolulu in August. The NAIP meeting was held in conjunction with the American Bar Association's annual meeting.

McKeown is president of the board of the Legal Foundation of Washington which administers the IOLTA (Interest on Lawyers' Trust Accounts) program for Washington state. She will serve a two-year term with the national group.

EAST KING COUNTY REPORT

by **RANDOLPH I. GORDON**

Golf, anyone? Or should I say *everyone*!

On August 17 some three score and 13 players participated in the sixth annual East King County Bar Association tournament at the Carnation Golf Course, with over four score for dinner afterwards. Tournament handicaps were calculated by formulae too complex for your reporter to comprehend, and awards were given based upon the unadjusted gross number of strokes as well as the net strokes after adjustment for handicaps determined per the Callo-way System. Nonetheless, I am assured by resort to sources whose accuracy cannot reasonably be questioned that the methodology was beyond reproach. Or, at least, no one is complaining.

And why should they? Nearly everybody won.

There were 15 golf awards given, and 16 additional drawing prizes after dinner. The former presumably relate to skill on the golf course; the latter to luck off the course. The top prizes went to **Grant Anderson** (1st Low Gross) and **Lee Brillhart** (1st Low Net), followed by **Gail Ryder** (2nd Low Gross) and **Tom Hayward** (2nd Low Net), and by **Dan Phillips** (3rd Low Gross) and **David Best** (3rd Low Net) who were awarded hotel accommodations in Victoria and Vancouver, British Columbia at, respectively, the Four Seasons and Hotel Vancouver; Coast Plaza (in Stanley Park) and Sheraton Inn; The Em-

press and Hyatt Regency. Prizes were awarded to the 6th Low Gross and Net score levels.

Peter Glase received a special award for the fewest putts (a not inconsiderable skill once you get on the green) and was awarded accommodations at the Westin in Seattle. **Ann Kruse** received a sweat-shirt and bottle of wine for her High Gross finish and, presumably, her sportsmanlike conduct and character in the face of adversity.

Chris and Carol Frost and Chris' secretary, **Phyllis Allen**, have been or-

ganizing this EKCBA event since its inception six years ago. Each has the delightful tendency to give the credit to the others. Despite diligent efforts, your reporter has been unable to pierce this shield of modesty, but inside information suggests that Carol and Phyllis did most of the work, with Chris receiving the reflected glory arising from having married and hired well.

The post-dinner drawing winners included The Honorable **Brian Gain**, Bellevue District Court Judge, who received his just desserts following

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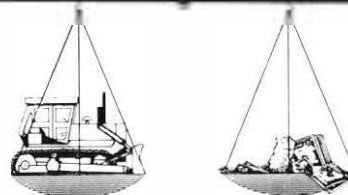
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dessert.

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megabytes for all titles, although loading all titles is not required to run the program. The program is designed to permit you to copy the statute directly into pleadings and is available on 35 floppy disks (5¼") and 45 disks (3½"). Call EKCBA Trustee **Bruce Gardiner** (823-9456) for information.

Are we having fun, or what?!

PIERCE COUNTY REPORT
by **GEORGE S. KELLEY**

Michael B. Smith outshot 129 other

entrants and won the Edgar Eisenhower trophy for low gross score at the bar association's annual golf tournament at Gig Harbor's Madrona course. He shot a tournament record 69.

Grant B. Anderson, a.k.a. the downtown Grant Anderson, won the S.A. Gagliardi trophy with a low net score of 70. This is the trophy which was lost after some previous winner did not return it. Judge **William Brown** (ret.) has spent a great deal of time since his retirement searching for it without success. It appears someone simply purchased a replacement.

Corinne Dixon turned in the low net women's score but there is no traveling trophy for this division. Before the golf committee is charged with sex discrimination, it might consider a women's trophy honoring **Elizabeth Shakleford** or **Blanche Funk Miller**. They were contemporaries of Edgar Eisenhower and S.A. Gagliardi, although neither woman reportedly ever swung a club, at least on a golf course.

Dick Benedetti won the handicap division, and **Randy Hansen** won the Cal-loway. No trophies were awarded for these divisions.

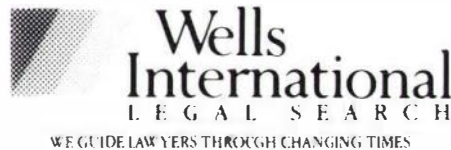
Numerous prizes were awarded, funded in part by the "sales" of sponsorships of individual holes to title companies, banks and bail bondsmen. For the record, no prosecutor or other person connected with law enforcement played any hole sponsored by a bonding company — we don't want to convene a special inquiry court over a golf tournament.

In another sporting note, Judge **Waldo Stone** placed first in his division (65+) at the Seafair Triathlon held in and around Lake Washington. His honor far outdistanced his competitors, at least by several years.

John Robson was wed in Lovelock, Nevada, having traveled there by motorcycle. John and his bride-to-be were stopped by the local Lovelock police on their way to the wedding because the bride was not wearing her motorcycle helmet. She did not wish to ruffle her hair and spoil the wedding picture. John not only talked his way out of the ticket, but got a police escort to the courthouse for the wedding — Good show John!

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

"Come On Down." This issue pre-

sents the inaugural awarding of what, it is hoped, will be annual recognition to those attorneys whose telephone-directory advertising deserves special recognition, for one reason or another. First, the "Pat Sajak - Wheel of Fortune" award for the broadest spectrum of areas of practice: to Foshaug, McGoren & Sawyer; for the most blatant exploitation of undergraduate (Stanford) and law school (Harvard) academic reputations: to **Ken Shellan**; the "Barbie Doll" award for photographs with the cleanest, most wholesome appearance: to **Ron Perey** and **Julia Langley**; for the longest-running use of a picture taken at least more than fifteen (15) years ago, which no longer bears any true resemblance to the attorney: (tie) **Tracy Madole** and **Paul Kirschner**; the Rand McNally award for the most graphic use of a map or directions to the attorney's office: **Wimer & Harpold**; the "Pay n' Save" award to **Albert & Slater**, who offer "park 'n ride hours" and senior citizens' discounts; for the advertisement most closely-resembling a Cal Worthington used-car ad: to **Mike Jacobs** (U of W School of Law Class of 1971) and **Mike Tompkins**; the Oliver North patriotism award: to **Dan P. Danilov**, whose advertisement includes a depiction of the Statue of Liberty; the "Dave Del Dotto - You Can Make a Fortune in Real Estate" award for the most gaudy background picture of an attorney's office: to **Smythe, Van Siclen and Associates**.

Three other presentations were made at the gala awards dinner, but the recipients' names will not be disclosed in order to minimize potentially libelous or inflammatory comment. Those awards were: 1) the advertisement most likely to violate truth-in-advertising laws; 2) the advertisement most likely to be assessed treble damages as violative of Washington's Consumer Protection Act; and 3) the "Monty Hall - Let's Make a Deal" award for the advertisement which seems to offer everything to attract new clients.

Office Moves. Davis, Wright & Jones announces that **Edwin D. Rauzi** and **Gary G. Fujita** have become of counsel to the firm in the Seattle office. **Garth A. Schlemlein** has joined Betts, Patterson & Mines as a principal, and **R. Andrew Bergh** and **Steve W. Berman** have joined the firm as of counsel. **Trent D. Kelly** recently left Westlaw and is now serving as bailiff for Judge **James Dore** of the King County Superior Court. **Stephen O. Kenyon** has become of

counsel to the Seattle office of Stoel, Rives, Boley, Jones & Grey. **Robin L. Thompson** and **Leona C. Bratz** have joined Applewick, Trickey & Spicer as associates. **Karen Sluiter** has opened an office in the Lake City Professional Center.

New Ventures. Davis, Wright & Jones and **Richard L. Sinnott** have formed Century Public Affairs, a limited partnership engaged in government relations consulting with offices in Washington, D.C. and Seattle. **Ann Garretson** has formed Ann Black Garretson Advertising, a media consultation design and placement agency.

Worthy of Note. The Washington State Trial Lawyers Association's annual convention held in Salishan, Oregon, featured one of the first contested elections for the position of president-elect in several years. Election-eve festivities included a 1950s rock band sponsored by one candidate, and a salsa celebration by the other candidate. In spite of the fact that he declined an opportunity to have the *Sewanee Mountain Revue*, a famous (?) Seattle country & western band, play for his electioneering, social hour, **Keith L. Kessler** (an old rock 'n roller, himself) was elected president-elect. Other salient events at the WSTLA con-

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vention included the under-40 minute win of the 10-kilometer run by **Dan Hannula**, and the 3-on-3 basketball tournament won by some team from Selah.

IN MEMORIAM

Neil J. Lynch, 73, died July 17, 1989 in Olympia. A graduate of Georgetown University Law School, Lynch joined the Washington Bar in 1948 and his brother John in practice in Olympia for nearly four decades. Lynch & Lynch added another Lynch in 1977, when Neil's son Joe joined the firm.

Lynch was a member and past president of the Thurston-Mason Counties Bar Association, a past director of the Bank of Olympia and the American Red Cross' Olympia chapter, and former city attorney for Tumwater. He is survived by two sons: **Joe Lynch**, who continues in the family firm in Olympia, and **Mike**, an attorney in the tort claims division of the Washington Attorney General's Office.

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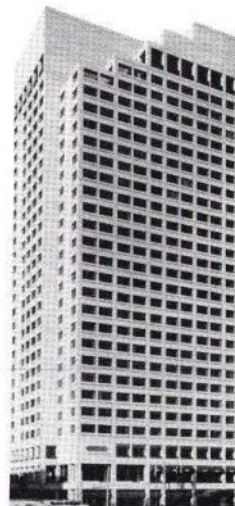
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