Washington State Bar News
Volume 43, No. 11, November 1989

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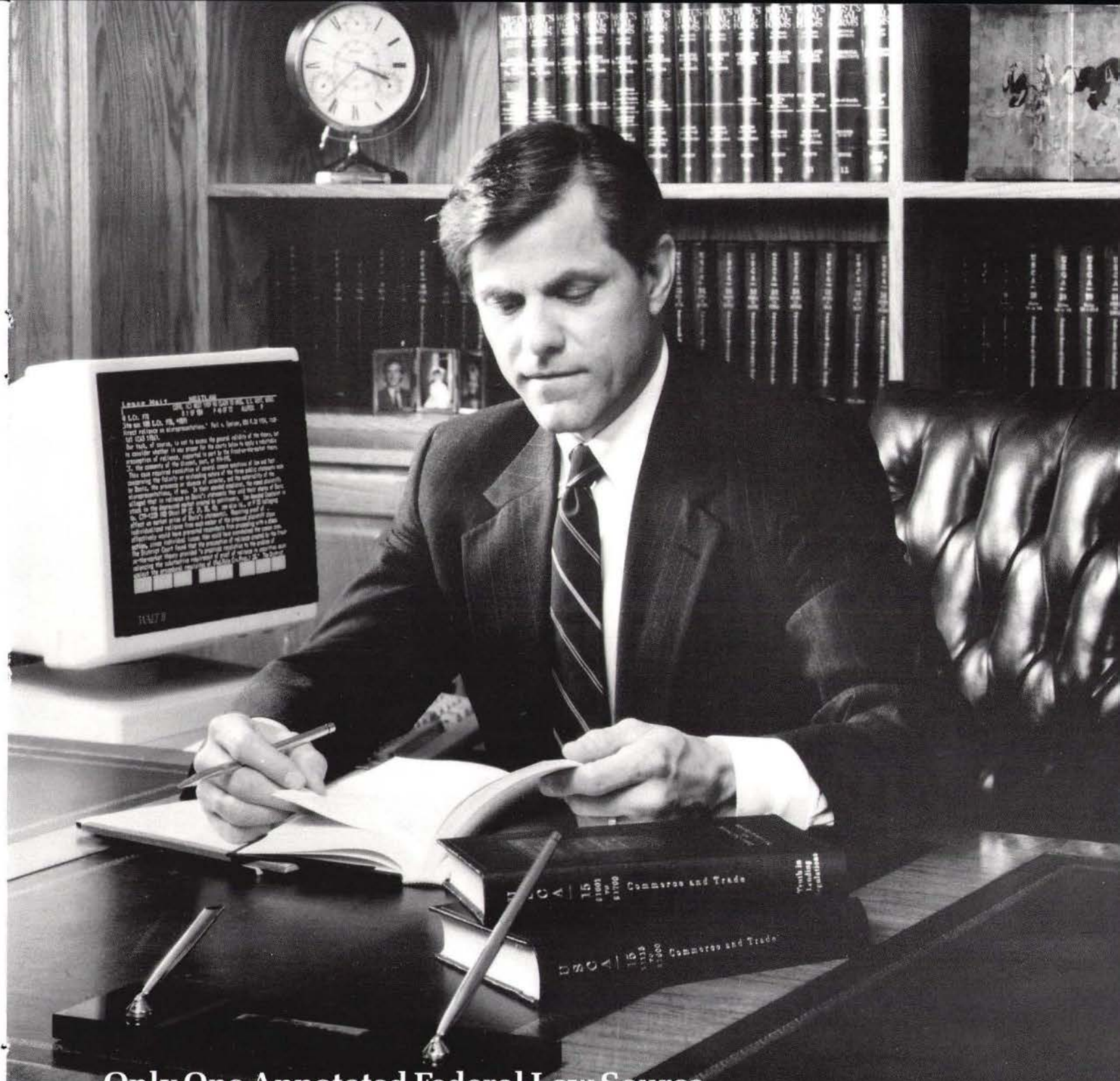

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courtesy of Washington State Historical Society

The Capitol, Olympia
1889

FEATURES

DEPARTMENTS

ART CREDITS

Olympia photographer **Harry T. Halverson** took the cover photo of our state Capitol dome interior. Designed by New York architect, **Ernest Flagg**, the Legislature Building became part of a capitol campus group concept (see August 1989 *Bar News* cover) realized by New York competition-winning architects **Walter R. Wilder** and **Harry K. White**. In 1919, work began on the building as we know it. The dome is 287' high, contains 1,400 cut stones and weighs 15,400 tons. The cast bronze "Angels of Mercy" chandelier, suspended from a one-and-a-half-ton chain, weighs five tons and is illuminated with 202 bulbs. A 262-step maintenance stairway leads to the dome top. In 1976, the entire structure was reinforced, and it is now virtually "earthquake-proof."

To receive a full description and history of the Legislative Building, the Capitol Campus and visiting hours, send a self-addressed, long envelope to The Blue Brochure, Visitor Services, AB-12, Capitol Campus, Olympia, WA 98504, or call (206) 586-8687.

The widely recognized logo for Washington's Centennial '89 Celebration was designed by artist **David Wells**, who was selected in a statewide competition in 1985.

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LETTERS

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.

Voir Dire: The Debate Rages On . . .

Editor:

As in all controversies except those where judgment is granted on the pleadings at the opening bell, all sides in the continuing rhetoric over the limitation of voir dire have important points to make. While I personally agree with Paul Luvera's general point of view, I can sympathize with the court's need to hurry things along, as well as the juror who felt lawyers were being nosey. On the other hand, many judges have lost sight of the fact that they were once lawyers, and probably no better than average in trial skills at that, so their ability to properly voir dire a juror may be no better than that of the average practitioner. More than once or twice I have heard a trial judge ask a juror "You can be fair, can't you?" or its equivalent. I am reminded of the old adage "a house built on a sand foundation . . ."

The American jury system is not a matter of juror selection, but rather deselection. We are stuck with the panels which are chosen and presented to us at the outset. Isn't it fair to allow counsel to intelligently inquire as to a juror's state of mind by seeking some background? An open-ended question into the organizations to which a juror belongs or the activities in which he or she engages during leisure time is far more enlightening than asking whether or not (s)he will follow the law or be fair. If the court insists on asking the questions, how about posing some that give some insight into attitudes, such as religious preference or political party affiliation? I would have a better idea about a juror's attitudes in general if I knew (s)he was a member of the Ku Klux Klan or the Mothers Against Drunk Driving.

Is it important which group — lawyers or judges — conducts the inquiry? If both groups were more skilled in the process of interrogation, the souls and attitudes of the prospective jurors would be laid bare for all to see. I believe everyone's time would be best spent by obtaining some continuing legal education into the subject.

The Washington State Bar CLE could benefit its members by examining the subject of voir dire at trial-related CLE programs. The program at the Annual Meeting appears to be a small step in that direction, but there should be other programs as well. Texas, where I now practice, annually provides many interesting and informative CLE programs on the subject of voir dire. Already this year, the State Bar of Texas has put on at least three seminars which have treated voir dire from both the plaintiff's and defendant's viewpoints. I am sure that it has been the subject of continuing legal education programs put on by the various law schools and other providers as well.

Since I have a new copying machine, I am taking the liberty of enclosing the papers which were presented at a recent seminar I attended. The planning committee of your CLE programs might find these papers helpful. Perhaps inviting some of the participants in the war of words in the *Bar News* to present a series of CLE discussions would give them an opportunity to show their fellow lawyers how knowledgeable they really are.

MADISON R. JONES
Houston, Texas

(Mr. Jones enclosed "Voir Dire - Plaintiff's Perspective," by Richard W. Minthoff and Scott Rothenberg of Houston, and "Voir Dire: Defense Perspective," by Terry O. Tottenham of Austin. Both were included in "The Ultimate Trial Notebook" provided at the June 1989 State Bar of Texas Annual Meeting.

Paul Luvera's original article continues to cause comment. It has recently been reprinted in *CTLA Forum*, published by the California Trial Lawyers' Association, and in the Idaho Trial Lawyers Association magazine — *Editor*.)

New Appellate Commissioner Named

Editor:

As Chief Judge of Division One of the Court of Appeals, I wish to thank the members of the Bar for their response to our search for a new commissioner. Mary Ellen Hudgins has been selected from a field of 130 applicants. She will join Larry A. Jordan and William H. Ellis, Jr., as Commissioners of Division I. The appointment, effective September 11, 1989, was made to replace JoAnne

L. Tompkins who, after three and one-half years as commissioner, left the court to return to practice as a partner in the firm of Williams, Kastner & Gibbs.

Hudgins has served as staff attorney to the Court of Appeals, Division I since September 1986. A native of Cle Elum, Washington, she received her Juris Doctor degree from the University of Puget Sound Law School in 1976, graduating magna cum laude and first in her class.

Hudgins was in private practice first with the law firm of Helsell, Fetterman, Martin, Todd & Hokanson in the area of general litigation. She also was a principal in the firm of Smith, Bush & Hudgins where she worked primarily in the area of creditor/debtor and commercial litigation.

In addition to her work in private practice, Hudgins was a trial attorney with the Seattle office of Equal Employment Opportunity Commission and Litigation Director of the Northwest Women's Law Center. In the latter capacity she managed the Center's litigation and was the lead trial counsel in *Blair v. Washington State University*, 108 Wn.2d 558, 740 P.2d 1379 (1987). *Blair* established the right of female athletes to equal treatment in intercollegiate athletics. Hudgins received the Matrix Table Women of Achievement Award in 1983 for her work on this case.

Hudgins has been a member of the Washington Bar since 1977 and served as a member of the Board of Bar Examiners from 1980-1982. She prepared and graded questions in the areas of U.C.C., Corporations, and Constitutional Law.

Hudgins has also served on a number of boards of directors in the community including the boards of Pacific Health Associates of Seattle and the Northwest Women's Law Center. Currently, she serves as president of the board of trustees of the Seattle Academy of Arts and Sciences.

In light of Hudgins' academic background, her appellate and private experience, we are confident that she will do an excellent job as commissioner.

H. JOSEPH COLEMAN
Chief Judge, Division I
Seattle

Lien Laws: An Update

Editor:

I read with interest the letter of Thomas M. Blake entitled "Lien Laws Need Changes," which appeared in the September 1989 issue of the *Bar News*.

Blake and all members of the Association should be made aware that Kerry Lawrence and I have drafted a comprehensive revision to the Washington lien laws, which has been in committee in the Legislature for almost two years now. Kerry and I have spent literally thousands of hours drafting and speaking to all segments of the construction and construction-related industry (including financial), soliciting comments to the proposed draft in an effort to produce the most fair and simplest lien revision practicable.

The revised Washington Construction Lien Act is presently the focus of a task force established by the Labor and Economic Development Committee of the Washington State Senate, which task force has met on several occasions. It is our hope that the report of the task force, in conjunction with the broad interest shown by the Legislature, will combine to result in a comprehensive change in Washington's mechanic's liens.

We encourage both Blake and any other lawyer interested in the project to contact either my office, or Kerry Lawrence's, for a copy of the proposed act and to make any comments they so desire.

JEFFREY A. SMYTH
Seattle

We Should Authorize Some Action Against Unauthorized Practice

Editor:

Barely a month goes by when I do not see yet another example of the harm being caused by so-called "paralegal" firms engaged in the unlicensed practice of law.

Recently, a new client brought a petition, findings/conclusions, parenting plan and a decree which had been "drafted" by such a firm in Tacoma for $100. Upon a brief review, I noted the following defects:

1) Failure to provide allocation of retirement and social security benefits;
2) Failure to specify place of payment for child support;
3) Inconsistent findings regarding spousal maintenance;
4) Incorrect setting of child support below guidelines;
5) Failure to advise client of necessity to execute deeds to transfer interest in real property and compliance with short plat ordinances;
6) Incorrect venue in all captions;
7) A judgment summary where no judgment was ever entered.

I have also noted that the Board of Governors has "expressed its continuing

concern" about these activities but has stated that the Association could take no direct action in this area and that a court rule concerning these activities should neither be adopted nor recommended at this time.

All of us remember that our oath of office contains a phrase which states that we shall not permit these same activities. I would ask that all other practitioners with similar horror stories relate them to their respective district governors and to Chief Justice Callow.

In short, people are being hurt out there, and the time has long since passed that we should get off our collective derrieres and put these charlatans out of business.

RICHARD C. ADAMSON
Shelton

About That Letter —

Editor:

I must express my disgust over the letter appearing on page 9, column 3 of the September 1989 *Bar News* entitled "And While I'm At It."

I feel compelled to publicly condemn the recent letter in the *Bar News* attributed to John Erickson (I note the local rumor that this letter was written on Erickson's stationery without his knowledge).

This recent letter is a continuation of the distasteful attempts at humor by some of my colleagues in the Whatcom County Bar Association. It is unfortunate that these activities have continued. I would not have expected such behavior to begin, but having started, it should have stopped a long time ago.

The attitudes displayed by the writer(s) only reflect the lack of professionalism, character and sense of humor of its writer(s).

The members of the State Bar Association and the public should be aware that the attitudes displayed by that letter are not representative of the attitudes of all of the members of the Whatcom County Bar Association.

The writer(s) of the letter should be ashamed and embarrassed by their behavior. At a minimum, Elizabeth Bracelin deserves a public apology.

JONATHAN K. SITKIN
Bellingham

(The letter to which Sitkin refers was a hoax. See "The Board's Work," *Bar News*, October 1989. — *Editor.*)

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LINDSAY THOMPSON, *Editor*
JENNIFER KLAMM, *Managing Editor*
DENNIS M. EAGAN, *Advertising Director*

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Reaching Out

James A. Vander Stoep

It is with a great deal of pride and respect that one takes the presidency of WSBA — pride in being selected and respect for the long line of highly regarded lawyers who have held the position in the past.

There are many ongoing programs of the Association which will continue to benefit the public, the bench and the bar. Perhaps the most visible is the volunteer lawyer program, known within the profession as "pro bono."

A prime objective of mine is to improve communications within the Association. Our numbers now exceed 15,000. Many thousands of lawyers cannot, do not or will not involve or inform themselves of activities of their Association. Many become disillusioned about involvement after expressing willingness to serve on committees and not receiving appointments. This is a condition to which there is no ready answer. There are just many more volunteers than there are vacancies. As to being informed, I commend the several Governors who send out reports of Association work to lawyers in their districts following meetings. The *Bar News* is doing a great job. I have informed local bar associations of my desire to meet with them. My first invitation was from the Lincoln County Bar, which was having its annual dinner meeting in Harrington. If you can find both Chehalis and Harrington on a map of Washington, you'll see they are geographically distantly removed from each other. It was a delightful evening for me, and I took the opportunity to fill them in on five of the more than 30 worthwhile programs in which our Association is actively involved.

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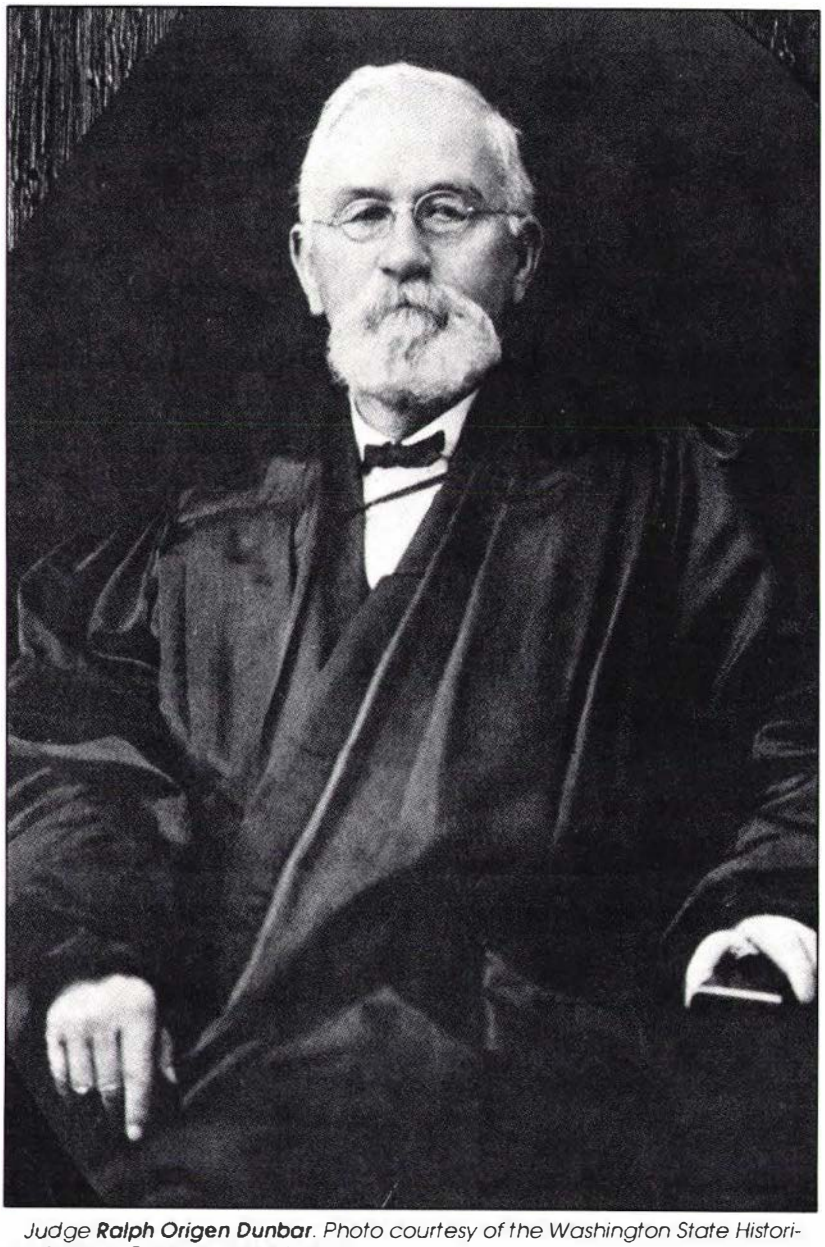
The Twenty-Three Lawyer-Delegates To The Constitutional Convention

by **Charles K. Wiggins**



Judge ***Ralph Origen Dunbar****. Photo courtesy of the Washington State Historical Society, Tacoma, Washington.*

Portrait of the Lawyer-Delegate

Twenty-three of the delegates to the Washington Constitutional Convention of 1889 were lawyers.[1] Who were these men; how did their talents serve them in convention; and what forces shaped their debates and votes?

The lawyer-delegates were a young group, with a median age of 42. Twice as many had prepared for their legal career by reading law in a law office as by attending law school. Of the seven law school graduates, two had studied at Michigan, the remainder at Berkeley, Union Law School at Cleveland, Chicago, Harvard and Columbia. Fourteen had read law, three in California, two in Washington Territory, and the balance in Ohio, Missouri, Wisconsin, Idaho Territory, Michigan, Oregon, Colorado and Alabama.[2] Seventeen of the lawyer-delegates were in private practice, most in two- or three-man firms. Two were bankers, one the territorial auditor, one a prosecuting attorney, and one owned and operated an abstract company. Two pairs of delegates practiced as partners: J.Z. Moore with T.C. Griffitts of Spokane Falls, and S.G. Cosgrove of Pomeroy with M.M. Godman of Dayton.

Politically, the lawyer-delegates mirrored the overwhelming Republican majority in the convention — 15 were Republican, six Democratic and two independent. Most had political aspirations, and many were later elected to office: George Turner to the U.S. Senate; Hoyt, Stiles and Dunbar to the Washington Supreme Court; Godman, Moore, Sturdevant, E.H. Sullivan and Mires to the superior court bench and Godman, Kinnear, Mires, Allen and Dyer to the State Legislature. S.G. Cosgrove was elected governor in 1908, but was stricken by a fatal illness and served in that capacity only for the one day of his inauguration.[3]

Geographically, 14 of the lawyer-delegates came from the larger communities of the state: Seattle, Tacoma, Spokane Falls, Walla Walla and Olympia, and nine were from smaller communities. The lawyers made a clean sweep of the election in Spokane Falls — all five delegates from that city were lawyers, and they were a remarkable group. George Turner was recognized as one of the ablest delegates to the convention (see an earlier article in this series). J.J. Browne was reported to be one of the wealthiest men in the territory.[4] He had settled in Spokane Falls in 1878, when the town had only 54 citizens, and had purchased one-quarter of the entire town site.[5] He built up a successful law practice but discontinued it in 1885 to devote his attention to his real estate investments, the Browne National Bank —

which he founded in 1888, editorship of the *Spokane Chronicle*, and presidency of the Spokane Mill Company.[6] T.C. Griffitts, at 32 one of the youngest delegates to the convention, was a prominent trial lawyer described by a contemporary biographer as "almost invincible before a jury":

> His career at the bar has been marked with unvarying success. In the defense of persons accused of crime he has been singularly successful, having within 10 years acquitted 24 different defendants of the crime of murder in the first degree without a single conviction, and having defended men and women charged with almost every crime in the calendar. In that period of time he has met with but one verdict of guilty. In the practice of civil law he has been no less successful, and there is scarcely a prominent lawsuit in the records of Eastern Washington in the last 8 years in which he has not appeared, and in which his handiwork is not shown.[7]

The influence of the lawyer-delegates in convention exceeded their proportionate numbers. The president of the convention, John P. Hoyt of Seattle, was a lawyer, as were 13 of the 23 committee chairmen. Near the end of the convention, a contemporary newspaper singled out the more noteworthy delegates to the convention, all of whom were lawyers. George Turner of Spokane Falls and T.L. Stiles of Tacoma headed the list:

> [Turner and Stiles] are acknowledged to be the ablest men on the floor of the convention, and the former has been frequently referred to in discussions as a master of logic and debate. Mr. Stiles is not so skilled in debate as his distinguished colleague, but he possesses a master intellect. These two men took the lead on all matters in the convention, acted as advisors to the committees and, in a measure, shaped the policy to be pursued on questions concerning the interests of the public. They seldom advocated a measure which did not carry. Whenever they spoke they were listened to with the most profound attention. They spoke often a great deal, and when men and measures are compared after the convention has adjourned, it will be found that Judge Turner and Mr. Stiles head the list.[8]

The article also singled out the leadership roles played by attorneys Hoyt, Browne, Godman, and Griffitts. T.L. Stiles won the "beauty contest," being pronounced by the newspapers as the handsomest of the delegates.[9] The unfortunate Griffitts, invincible though he may have been before a jury, took last place: "Any member of the convention could knock out Griffitts in beauty."[10] A Democratic newspaper reported more sympathetically that Griffitts' face, though "not at all handsome . . . portrays earnestness of purpose and great decision of character."[11]

The lawyer-delegates spoke frequently on the floor of the convention. One newspaper reported that "Ten of the members of the convention do as much talking as all the remainder of the delegates put together" — 7 of the 10 were lawyers.[12] Their speaking style varied:

> Griffitts is a very ready speaker with an inconquerable and sometimes tiresome penchant for superlations and glittering generalities. Turner is slow, clear and logical. Moore possesses the oratorical temperament and is effective in delivery. . . E.H. Sullivan is inclined to be declamatory, but he has the faculty of saying something pertinent almost every time he speaks. Kinnear always commands attention and nearly always carries his point. Crowley is peculiar and generally sounds the keynote of the debate. Browne is forcible and says what he wants to say in a very short time period. Dunbar is a debater and nearly always says just the right thing.[13]

The contemporary newspaper accounts reflect these differing styles of debate, as well as a remarkable breadth of reasoning and precedence. The lengthy debate over the veto power of the governor illustrates the broad range of authority to which the delegates appealed. Several delegates referred to contemporary political history, criticizing the veto power exercised by former President Cleveland, Governor Pennoyer of Oregon, and Governor Waterman of California. Others ranged more broadly:

> Turner cited the French Revolution and its horrors, Gowey the Declaration of Independence, Weir the 10 commandments, Sullivan the wisdom of Solomon and volumes of history were plundered to find some instance that showed conclusively either the frightful abuse of the veto or the manifest wisdom of its maintenance.[14]

The contemporary newspaper accounts reflect these differing styles of debate, as well as a remarkable breadth of reasoning.

Bed and Breakfast

Public accommodations in Olympia were overflowing with the crush of delegates, journalists, distinguished visitors and lobbyists who gathered for the 52 days of the constitutional convention. The Olympia Board of Trade found quarters for all of the delegates, and many citizens took in boarders to provide accommodations.[15] The unofficial headquarters for the delegates was the Carlton House, where 12 delegates lodged and where others gathered to talk shop or to play cards.[16] Several social events relieved the tedium for wives in attendance — and delegates. The Olympia Board of Trade hosted a large clambake for them at Butlers Cove, a short cruise from Olympia. Territorial Governor Miles Moore held a public reception attended by nearly all of the delegates, who danced until 4:00 in the morning.[17]

Lobbyists descended on Olympia in some force. Unlike the politicians, the lobbyists were not always eager to identify themselves.[18] The newspapers speculated about the identity of various lobbyists, and one even purported to unmask as lobbyists delegates Turner and Moore,[19] both of which speculations were certainly incorrect. A contemporary newspaper account explained how to identify the lobbyists and their causes:

> The lobby is here. You can single out the lobbyist in any crowd. His clothes are cut after the latest fashion and of the finest materials. He usually wears a high silk tie, his manners are elegant, his cigars of the best, he is always affable and smiling, and one of the easiest men to approach. That sort of man represents the interests of railroad and other big corporations.
>
> Next you come across a suave polite gentleman of middle age. His hair is brown and long, his eyes are blue, his face fat and rosy, and when he smiles he smiles the winsome smile of a pretty woman and shows a pretty row of white pearly teeth. He will talk woman suffrage to you by the yard, hour or day, just as long as you will stand it.
>
> Then there is the clerical lobbyist who is here too in the interest of a clause in the constitution to exempt church property from taxation. He objects to being called a lobbyist because he is a church man, and while he does not employ the seductive methods — champagne and fine cigars — of the brother who wants railroads exempted from the heavy burden of taxation, he is a lobbyist nevertheless. The Women's Christian Temperance Union, the prohibitionists and liquor men, high tax and low tax advocates, tideland owners, and other great interests will all be represented in the lobby.[20]

Each morning the delegates climbed one mile uphill from the business district of Olympia to the territorial capital; each noon they trudged back down the hill for lunch and then back up for the afternoon sessions. The evenings were frequently occupied with committee meetings. This rigorous schedule occasioned one of the earliest debates of the convention, on July 5, the first full day of deliberations. Delegate Buchanan of Adams County objected to a proposed adjournment from noon to 2:00 for lunch. The "thrifty Scotsman of Ritzville" lectured the delegates on the urgency of their task:

> Gentlemen, there is little time to waste. Let us get ahead with the work. In 12 weeks comes election time, and we must give the people time to think over what we are going to give them. If we idle our time away now, that means long night sessions in the near future.[21]

Buchanan renewed his protest in the afternoon when Griffitts attempted to fore-

close further debate about the hours of the meeting by fixing the convention hours at 10:00 a.m. to noon, and 2:00 to 5:00. Buchanan moved to commence at 9:00 a.m. instead of 10:00, asking in his broad Scotch brogue, "I would like to know what the members of the convention are going to do between the time of breakfast and the opening of the session if we don't start in until 10:00."[22] Durie of Seattle, another Scotsman, thought it was time to seriously oppose the gentleman from Adams County, responding in his own highland brogue:

> The members of the convention view with alarm the deep and insidious design of the gentleman from Adams to deprive them of their breakfast. . . We nearly lost our dinner through him today and now he proposes to put our breakfast in danger.[23]

Durie the Scotsman prevailed over Buchanan the Scotsman and the convention adjourned until 10:00.

Day-To-Day Proceedings In Convention

The delegates divided into committees, each of which drafted a proposed article for the constitution. Initially, the committees met and worked in the morning, and the full convention convened only in the afternoon.[24] The territorial capital lacked adequate committee rooms, and the committees were forced to meet wherever they could, generally in the room of some member.[25] Committee meetings were open to the public, but no records exist of the committee deliberations and the newspaper accounts of committee meetings are sketchy at best.

"If you want it, it's fundamental; but if you don't, ... it's legislative."

Committee deliberations were temporarily disrupted by an onslaught of propositions and resolutions. Beginning on July 9, numerous delegates read proposals for clauses to be included in the constitution. Most of these propositions were petitions signed by private citizens urging the adoption of various measures such as women's suffrage, prohibition, election provisions, regulation of corporations, ownership of the tidelands, and numerous other important issues. After two wasted days, the delegates decided to refer all propositions to the appropriate committee, which could report back to the convention at any time prior to the committee's final report.[26]

When a committee had compiled its draft article, it was printed and read to the full convention. The members then convened into a "committee of the whole" and fully debated and amended the proposal article. At the conclusion of debate, the committee of the whole "rose and reported progress," and the article as amended would be again subject to debate and amendment on a more limited basis.

The delegates struggled to limit the constitution to important principles which should be a permanent part of the

state government, and to eliminate those matters so transitory that they should be left to the Legislature. This struggle became characterized for the delegates by the slogan "fundamental versus legislative." The delegates distrusted the Legislature because they were well aware of corruption in the state legislatures of their day and of abuses in the territorial legislature.[27] The delegates' distrust of the Legislature prompted Dunbar of Klickitat to comment that, "If a stranger from a foreign country were to drop into this convention, he would conclude that it had a great enemy, and that this enemy was the legislature."[28] At the same time, the delegates recognized the need to allow flexibility for the Legislature to deal with problems in the future. Weir of Port Townsend quoted the distinguished constitutional jurist Thomas M. Cooley, who had recently advised the North Dakota constitutional convention:

> In your constitution making, remember that times change, that men change, and that new things are invented, new devices, new schemes, new plans, new uses of corporate power, and that such things are going on hereafter for all time. . . Don't in your constitution legislate too much. In your constitution you are tying the hands of your people. Do not do that to the extent as to prevent the legislature from performing all purposes that may be within the reach of proper legislation. Leave something for them. Take care to put proper restrictions upon them, but at the same time leave what properly belongs to legislation, to the legislature of the future. You must trust somebody in the future, and it is right and proper that each department of government shall be trusted to perform its legitimate functions.[29]

The newspapers heavily criticized the delegates for spending excessive time on "legislative" matters. One criticized the delegates for believing that they had "been called together for the purpose of regulating the speed and direction of the wind, the rising of the sap in the trees or the evolutions of the heavenly bodies in this and neighboring solar systems."[30] The delegates were particularly criticized for debating and including in the constitution starting salaries for many state offices, including judgeships.[31]

"Don't let your constitution legislate too much ... you must trust somebody in the future, and it is right and proper that each department of government shall be trusted to perform its legitimate functions."

The delegates were quick to adopt the slogan "fundamental versus legislative" as a rhetorical device. As delegate Fairweather wryly commented, "If you want it, it's fundamental; but if you don't want it, it's legislative."[32]

The Push To Completion

As July ended, the delegates became increasingly anxious about their perceived lack of progress. Some had initially expected that the convention would be finished by August 1,[33] and they noted with envy that the North Dakota convention had drafted a complete constitution by July 31.[34] Two concerns spurred the delegates on to finish the constitution: they were anxious to return to their business interests; and, the Enabling Act called for a vote to ratify the constitution on October 1.[35] The delegates wished to complete the constitution so that the political parties could nominate officers to be elected simultaneously, saving the substantial expense of an extra election.[36]

The delegates' first step was to lengthen the convention hours by meeting in the evening, as well as morning and afternoon.[37] The second step was a proposal to limit speeches, which followed the longest speeches to date, almost eight and three quarters' minutes.[38] Turner, who had delivered one of the offending eight-and-three-quarter-minute speeches, opposed the motion on the ground that every delegate should have the opportunity to express his views.[39] Moore quoted Judge Jameson, a professor of constitutional law at Chicago Law School, that a man was an enemy to his country who would try to shut off debate in so important a body.[40]

The gag rule was tabled on Turner's motion, and there it might have lain had not the speeches become lengthier during a debate over public subsidies of private enterprises, the "Walla Walla scheme" to help finance a local railroad.[41] The following day, Dyer called up his motion to limit speeches to ten minutes and to limit members to speaking only once on any question except by consent.[42] E.H. Sullivan and Dunbar both supported the motion, arguing the urgency of completing the business at hand and pointing out that many mem-

bers left the hall during debate, returning only when a vote was called.[43] Moore and Griffitts objected to the ten-minute limitation, particularly since the convention was about to begin debate on the controversial corporations laws.[44] Browne and Cosgrove pointed out that the motion would save very little time, since there had been few speeches which had exceeded ten minutes. The delegates, apparently tired of long speeches, adopted the gag rule by a vote of 51 to 17.[45] The following day, the delegates decided that the ten-minute limitation would not apply during debate on school lands and tidelands.[46] Thereafter, business proceeded more expeditiously until the delegates reached the most difficult issue for the convention — disposition and ownership of the tidelands — the subject of next month's article. □

[1]H.E. Allen, J.J. Browne, T.C. Griffitts, James Moore and George Turner, all of Spokane Falls; Francis Henry and T.M. Reed of Olympia; T.P. Dyer, John Hoyt and John Kinnear, all of Seattle; T.L. Stiles and P.C. Sullivan of Tacoma; D.J. Crowley and B.L. Sharpstein of Walla Walla; S.G. Cosgrove of Pomeroy; R.O. Dunbar of Goldendale; M.M. Godman of Dayton; George Jones of Port Townsend; Austin Mires of Ellensburg; R.F. Sturdevant of Dayton; E.H. Sullivan of Colfax; J.F. Van Name of Kelso and J.J. Weisenberger of Bellingham. The traditional head count is 22 lawyers, apparently based on the occupational listings in *Barton's Legislative Handbook and Manual of the State of Washington* at pp. 167-68 (1889-1890). I have departed from Barton in deleting Gwin Hicks from the roll of lawyers, finding no evidence that Hicks ever studied law or was admitted to the bar. I have added J.J. Browne and J.P. Hoyt, both of whom are listed by Barton as bankers, but both of whom were admitted to the bar and had practiced law before entering the banking profession. Hoyt served as Supreme Court Justice both of Washington Territory and of Washington State.

[2]I have not discovered the legal training of two of the lawyer-delegates, T.C. Griffitts and George Jones.

[3]C. Snowden, *History of Washington*, Vol. V, 236 (1911).

[4]*Tacoma Morning Globe*, July 2, 1889.

[5]J. Hawthorne, *History of Washington*, Vol. I, pp. 359-60 (1893).

[6]*Id.*

[7]H. Hines, *An Illustrated History of the State of Washington*, 353 (1893).

[8]*Tacoma Morning Globe*, August 19, 1889.

[9]*Spokane Falls Review*, July 17, 1889; *Olympia Washington Standard*, July 19, 1889.

[10]*Spokane Falls Review*, July 19, 1889.

[11]*Olympia Washington Standard*, August 9, 1889.

[12]*Seattle Post-Intelligencer*, July 29, 1889. The 10 loquacious delegates were Turner, Griffitts, Moore, Godman, Warner, Buchanan, E.H. Sullivan, Browne, Weir and Dunbar.

[13]*Seattle Post-Intelligencer*, July 19, 1889.

[14]*Seattle Post-Intelligencer*, July 27, 1889.

[15]*Tacoma Morning Globe*, July 2, 1889.

[16]*Tacoma Morning Globe*, July 14, 1889; *Olympia Washington Standard*, August 16, 1889.

[17]*Tacoma Morning Globe*, August 10, 1889; *Olympia Washington Standard*, August 16, 1889.

[18]*Tacoma Morning Globe*, July 13, 1889.

[19]*The Seattle Times*, July 9, 1889; July 14, 1889.

[20]*Tacoma Morning Globe*, July 3, 1889.

[21]*The Seattle Times*, July 6, 1889.

[22]*Seattle Post-Intelligencer*, July 6, 1889.

[23]*Id.*

[24]*Seattle Post-Intelligencer*, July 10, 1889.

[25]*Tacoma Morning Globe*, July 13, 1889.

[26]*Spokane Falls Review*, July 17, 1889.

[27]J. Fitz. *The Washington Constitutional Convention of 1889*, pp. 28-29 (1951) (Master's Thesis available at University of Washington Library).

[28]*Seattle Post-Intelligencer*, August 1, 1889.

[29]L. Knapp, "Origin of the Constitution of the State of Washington," IV *Wash. Hist. Q.* 227, 265 (1913).

[30]*Tacoma Morning Globe*, July 31, 1889.

[31]*Tacoma Morning Globe*, July 31, 1889; *Seattle Post-Intelligencer*, August 1, 1889.

[32]*Seattle Post-Intelligencer*, August 12, 1889.

[33]*Seattle Post-Intelligencer*, July 22, 1889.

[34]*Tacoma Morning Globe*, July 31, 1889.

[35]*Seattle Post-Intelligencer*, July 23, 1889.

[36]*Tacoma Morning Globe*, July 23, 1889.

[37]*Seattle Post-Intelligencer*, July 23, 1889.

[38]*Seattle Post-Intelligencer*, July 29, 1889.

[39]*Seattle Post-Intelligencer*, July 28, 1889.

[40]*Id.*

[41]*Seattle Post-Intelligencer*, August 2, 1889.

[42]*Seattle Post-Intelligencer*, August 2, 1889.

[43]*Spokane Falls Review*, August 3, 1889.

[44]*Id.*

[45]*Id.*

[46]*Journal of the Washington State Constitutional Convention*, p. 219 (B. Rosenow ed. 1962).

"FINISH THE VANDERVEER SUPREME COURT TICKET BY DEFEATING PEMBERTON."

Photo courtesy Dr. William H. Pemberton.

Judge **William H. Pemberton**, ca. 1932.

The Fighting Judge

by **Alan L. Gallagher**

Declaring a sitting Supreme Court judge "unfit," in 1924 the organized Bar of Washington entered judicial campaigns for the first time. Ads and letters identified Justice William H. Pemberton with radical lawyer George Vanderveer and the hated IWW Wobblies. Pemberton was portrayed as one who would set class against class, who libeled the Court as supporting "the interests," and who would uncritically rule against business. After only two years on the bench, marked by its highest dissent rate, Pemberton barely survived the primary and was crushed in the general election.

Pemberton is one of those typical figures of early 20th-century Washington, people who came close to victory and permanent influence but who were relegated by events to a lesser role. His career, however, is of great interest. His own character and biography are fascinating, deriving from the leading Quaker family of the country. His career reflects the uncertainties of progressives during a period when they sought identity and party. His Supreme Court tenure reflects a moment when progressives lost a chance to win the court for a decade.

The Pembertons of Philadelphia were its leading family in the 1600s and 1700s, the "first family" of 18th-century Quakerism. To the less-charitable eyes of citizen Tom Paine, in *Common Sense* and *The Crisis*, they were the traitorous leaders of the "Pemberton-ridden Quakers." In Pennsylvania, they voluntarily withdrew from leadership rather than approve military force against the Indians. In 1776, John and Israel Pemberton led a group of Quakers who were imprisoned without trial or charges and exiled under guard to Virginia by the Revolutionary Government, because they would not bear arms for either side. Judge Pemberton thoroughly knew the history of his name which, as Sterne had *Tristram Shandy*'s father observe, "irresistably impressed upon our character and conduct."

Pemberton was born in West Milton, Ohio in 1872. His parents were both Quaker ministers and raised Will on a small farm in a region settled by Quakers, and which became the northern terminus of the underground railroad. He grew into a slim robust youth, small with stocky chest, graceful and with extreme "catlike" quickness of body and mind.

Farm work led to a football letter at Earlham, which he attended from 1891-1895, and again in 1896, majoring in mathematics. He attended graduation, but there is no record that he graduated. At Earlham, he came under the influence of two cousins named Trueblood, the dominant figures at the college, who engaged their students in elocution, physical education and Shakespeare, and imbued a love of Emerson and Whitman. Pemberton became a leader in speech and football. One Trueblood was the only Democrat on a Republican faculty, and so stood out even among Quakers. Pemberton left in 1896 to participate as a delegate in the campaign of William Jennings Bryan and attended the Chicago convention. He later taught in the little red schoolhouses of the day, marrying fellow school-teacher Louella Phoebe "Louie" Thomas, partly of Quaker descent and partly descended from a long line of Indian and Revolutionary War heroes. Pemberton became deputy county clerk in Troy, Ohio, near the Thomas family.

In 1902, he registered in the law department of the University of Tennessee, and later moved to Washington state. With a Tennessee law license fresh in his hands, he thought — as did many others at the time — that Whatcom County was destined to hold the great port city and railroad terminus of the Northwest, and he cast his lot with its destiny.

He began private practice in partnership in Bellingham with Jeremiah Neterer. Pemberton had few business clients, but he aggressively represented injured workers against the "lumber barons" and the railroads. He became an extremely popular Bible teacher for adults at the Garden Street Methodist Church. In 1907, he ran for mayor as an independent progressive, on a platform of enforcing the liquor laws. The churches, temperance groups such as WCTU, Good Government League and granges supported him. Prior to election day, sermons supporting him were given in nearly all the churches. He ran a close second.

"The history of Bellingham . . . is inextricably entangled with the 'newspaper wars'. . ."

The history of Bellingham for the first four decades of this century is inextricably entangled with the "newspaper wars" and the continuing furious animosities of its leading characters, whose connections meshed intimately with

leaders in state and national politics. At the turn of the century, the Bellingham Bay Improvement Company (BBI) was formed by leading businessmen to acquire lands and profit from the hoped-for coming of the transcontinental railroad. Its partners acquired the *Herald*, primarily owned by conservative Republican Samuel Perkins of Tacoma. Local progressives and radicals attacked the BBI's plans through the *Reveille*, owned by progressive *The Seattle Times* Republican "Colonel," Alden J. Blethen. Edited from 1903 through 1909 by the "vituperative" Les Darwin, the *Reveille* claimed scandal, fraud, tax-cheating and other crimes, and the *Herald* replied in kind with bitter invective which polarized the community. These attacks drove several BBI partners out of town and severely hampered syndicate growth. Allied with the *Reveille* were the county granges, democratic superior court judge E.E. Hardin and prosecuting attorney Frank Bixby. The progressives finally overstepped themselves when a full tax board review they sought actually granted the BBI lower taxes. When the *Reveille* lost Darwin's services, and the *Herald* gained AP wire service rights, Blethen increased the level of attack, but only to gain leverage to sell out. In 1911, the syndicate bought the Blethen papers and placed Chicago newsman Frank Sefrit in charge. The BBI's plans never did come to fruition, and the railroad bypassed Bellingham.

But the newspaper conflict set local alliances and their tone for decades. Pemberton became allied with the progressive forces, as a national Democrat, but local independent progressive. He first became partner with plaintiffs' lawyer Neterer (later superior court judge from 1906-1910 and appointed federal district judge by Woodrow Wilson in 1914). When Neterer went to superior court, Pemberton and Charles Sather became partners; Neterer rejoined them in 1910-1914. Pemberton's early work paid so little that he also sold encyclopedias and dabbled in real estate at tax sales. His local political base was improved as he resided widely in the community, acquiring through his law practice homes which he fixed himself and then sold. Throughout his career, he was forever engaged in unsuccessful schemes to become wealthy, leading him into several tangles which clouded prospects.

Pemberton brought the flavor of crusade to his representation of working men. He was aggressive and unwilling to lose. From 1905 to 1914, he argued 18 cases before the Washington Supreme Court, winning 16 and gaining favoring dissents in the other two. His typical client was an injured worker or employee seeking benefits or wages from an employer. He became identified with the common man and the jury system.

Pemberton's "Quaker sense of directness emphasized substance over procedure, fairness for the working man, and 'the masses against the classes'."

His Quaker sense of directness emphasized substance over procedure, fairness for the working man, and "the masses against the classes." He campaigned for justice "between the people and the interests." In Whatcom County, these were not abstract terms. As surely as Twain's Pudd'nhead Wilson, Pemberton's first choices set his career.

Pemberton was elected superior court

judge in 1912 and served until 1921. He ran for the Supreme Court in 1914, was considered for appointment, with *Reveille* editor Les Darwin's assistance, in 1916, and ran again in 1918, 1922, 1924 and 1926. He was motivated to run by his experience as a local judge. Sixteen of his decisions were appealed and only eight affirmed. Pemberton saw these reversals dictated by a pro-"interests" court which interfered with jury and trial judge findings. His campaign themes generated statewide enthusiasm and justified his seeking appointment from Democratic governor Earnest Lister, for whom Darwin worked as political go-between and director of state fisheries and wildlife, headquartered in Bellingham. With Blethen and Darwin (Blethen's son-in-law), Pemberton had a good start on a statewide base. An effective public speaker, he became identified as a highly visible Democrat and progressive, who would speak plainly.

Enforcement of prohibition remained a Pemberton preoccupation. His wife was a leader in church and temperance movements. He and ally Bixby had convicted an agent of Perkins for possession of Perkins' liquor, and the *Herald* in turn prosecuted and sought Bixby's disbarment. And Pemberton's wealth schemes continued to cause him trouble. In 1920, the *Herald/Reveille* embarrassed Pemberton with charges that he and Judge Neterer had criminally and civilly defrauded the county by using its equipment and labor in an ultimately unsuccessful attempt to drain Lake Terrell to grow lettuce and tulips. The market fell, drainage and Dutch partners proved uncertain, and the judges were unable to pay the county. Under the Washington constitution, Pemberton, the papers claimed, should have known public monies could not be used for private purposes. These allegations cost Pemberton reelection. After the election, he convened a grand jury to investigate local law enforcement corruption and open violation of liquor laws, but litigation-produced delays enabled his opponents to gain control and indict Pemberton, Hardin and seven others for criminal fraud. The charges were promptly dismissed, but were followed by a civil suit for the money owed the county (about $9,000), which was eventually settled. In following campaigns, the papers mentioned the indictment but not the dismissal.

After defeat, Pemberton as *amicus* appeared on the losing side of a battle, in which the *Reveille* incorporated to claim the name *American*. During the 1910s, Darwin had also served as sometime-editor of the *Journal-Progressive*, which supported Pemberton. Later in the 1920s, Pemberton successfully defended Darwin in a lawsuit resulting from Darwin's acting as a go-between for Lister in buying newspaper support. The careers of Pemberton, Darwin and Sefrit tangle at each step from 1902 through 1938.

Charles Sheldon, in *A Century of Judging*, reports that Pemberton was widely perceived — once one emerged from the partisan atmosphere of Whatcom County — as "one who had served with distinction on the trial bench and had the support of labor and the Grange." In 1922, running against incumbent Chester Hovey, Pemberton was vindicated when he was elected with over 125,000 votes to the Supreme Court.

The Court Pemberton joined was widely perceived — outside Washington — as liberal. It had, after all, allowed most of the progressive reforms. In fact, as Sheldon well describes, it was in the early 1920s split into threes: three conservatives, three moderates and three liberals. Pemberton had run because the Court had been showing itself increasingly unfriendly to legislation and to newer progressive efforts. The Court's work was largely done in two panels. Pemberton was first assigned to Panel Two, which in 1923 was the liberal wing of the Court. In his first year, on the panel most receptive to him, he proved very productive. Taking time lag — which every new judge experiences — into account, he wrote 76 opinions his first year, more than any other judge. However, in 1924, he was reassigned as the only liberal on a reconstituted and solidly conservative Panel Two. This left him with fewer opinions and more dissents than any other judge and established his reputation as a dissenter (46 dissents without opinion, 24 dissenting opinions, two concurrences without opinion). In Sheldon's study of the 1923-1924 terms, Pemberton emerges with the highest dissent and dissonance rates.

The statistics are somewhat misleading. Proper analysis, to adjust Sheldon, would look to the effect of panel assignment and time lag as well as content of decisions and personal dynamics on the Court. Although Pemberton proved a pointed dissenter, winning the admiring notice of Holmes and Brandeis, and further earned the epithet of "the fighting judge," he was personally liked by other members of the Court and carried the Court with him in several major cases. It was because he affected the balance of power on the Court that he came under heavy attack when he sought reelection.

A typical dissent was *Pacific Typesetting Company v. International Typographer's Union*, where the Supreme Court sent back for trial a case where the union

had struck not only the employer but also a business with contracts with the employer. The majority characterized the case in classical contract terms and as a secondary boycott against a non-combatant. Pemberton argued that the contractor "voluntarily ceased to be an innocent bystander, but became an active participant. . . ." and announced his support for labor to fight on equal terms.

In two workers' compensation cases, *Kavaja* and *Tomavich*, he observed there was no explanation other than accident for the workers' admitted injuries:

> The law takes away the common law right of the working man. It deprives him of the right to trial by jury, and should be liberally construed in the interest of the unfortunate working man who receives an injury.

In *Humphrey*'s case, the majority declined, for lack of jurisdiction, to set aside a conviction "notwithstanding such evidence conclusively establishes the judgement was wrong." The trial court had found with after-acquired evidence, "it is admitted that appellant was convicted of a crime of which he was innocent." Pemberton chastized the Court's refusal to set aside such a conviction.

With pointed sarcasm, where the Court suspended an attorney who became a notary though not deemed a resident, Pemberton observed:

> There are so many laws no one can remember all of them. . . . The judges themselves cannot remember all the laws. The court overlooked a statute in the case of *State v Hanover*. . . . and upon rehearing said that this statute "was inadvertently omitted from consideration." This same statutory provision had been called to the attention of the court on two prior occasions.

In a series of such dissents, Pemberton articulated principles which have since become widely accepted law, including deferral to legislatures, trial courts and juries, and expert administrative agencies. His court and public opponents were troubled not merely by his articulation, but by his success in such important cases as *Northern Pacific Railway*, where his opinion allowed the state to regulate railroad rates within the state. He clearly rang progressive themes of respect for state and local governments regulating business for the public good.

". . . Pemberton articulated principles which have since become widely accepted law . . ."

In the 1924 reelection campaign, a series of forces converged to unseat Pemberton. On the national level, "Silent Cal" Coolidge and the Republicans won the presidency overwhelmingly. Both Coolidge and Washington state Republican gubernatorial winner Roland Hartley represented anti-labor themes. In Washington, the major issue was Homer T. Bone's public-power initiative, which aroused "the interests" to intense opposition. Pemberton was seen as a supporter of public power, and one who would favorably interpret the law if it passed. Two other highly liberal Supreme Court candidates, W.D. Lane and Bruce Blake (who finally went on the Court in the 1930s), won with Pemberton the support of labor, the granges, and public-power advocates. The stakes were high. Had they all won, the Court would have been captured for progressives for the decade and the influence of a Pemberton magnified. As Sheldon concludes, the "legal establishment had anticipated Pemberton's candidacy and found disfavor with his decisions. . . . They sought a respectable and formidable opponent . . . in order to turn back the threat he represented." Pemberton himself had defeated a former president of the State Bar Association, arousing its animosity. Finally, Bone advocated support for Pemberton, while opponents claimed he was "unfit" because he decided politics, not law.

The form opposition took was determined when George Vanderveer, lawyer for such hated groups as the radical Wobblies, circulated a letter urging support for the three judges "friendly to the cause" and described opponents as "reactionaries defending . . . corruption . . . and sacred privilege . . . controlled by the money interests."

The Seattle Bar Association convened an "emergency" meeting and condemned ". . . the organized attempt to excite class prejudice" and itself organized against Pemberton by associating him with radicals. One paid ad began: "ARE YOU FOR THE VANDERVEER SUPREME COURT TICKET?" The tactic appears to have worked. Pemberton fell 5,000 votes short in the primary. In the general election, the Washington State Bar Association, for the first time as an organization, endorsed a candidate and urged defeat of an incumbent. Ads again appeared: "FINISH THE VANDERVEER SUPREME COURT TICKET BY DEFEATING PEMBERTON." Pemberton lost the general election by over 71,000 votes.

In 1926, the State Bar Association again opposed Pemberton in his bid to return to the Court, now claiming he had shown "unfitness, demonstrated by his

previous service." In all the battle, there was no public examination of Pemberton's actual performance, but merely conclusions drawn from the support for him from Bone and Vanderveer. Much of the Bar was out of sympathy with Pemberton's views but did a disservice in misrepresenting him to the public. The Bar and the "interests" were correct in seeing the Pemberton candidacy as a major battle to be fought, but they used weapons which dishonored them.

Pemberton resumed private practice in Seattle. Between 1926 and 1933, he appeared in over 26 cases before the Supreme Court, aggressively representing typical Pemberton clients in a string of victories which kept him on center stage. In the *KVOS Radio*, *Darwin* and *Austin* cases, he helped his Bellingham allies prevail and continued to bedevil Sefrit and the *Herald*.

His best-known victory came from the U.S. Supreme Court in a case of national importance. In 1931, Darwin was hired as commentator/gadfly by Rogan Jones of KVOS Radio in Bellingham, where he resumed his "vituperative" attacks on Sefrit, the *Herald/Reveille* and their allies. Sefrit had attempted radio in the late 1920s but was unable to make it a success. He was one of those who held the company when Jones purchased it out of bankruptcy and made it a success using Darwin. A series of lawsuits ensued (Jones listed in his autobiography that he had prevailed in over 30 lawsuits). Jones used the judge and his lawyer-son Joseph to prevent Sefrit from obtaining an FCC license to compete. Pemberton had the pleasure of cross-examining Sefrit for five entire days and proving enough inconsistency to deny him the FCC license. Sefrit responded by attacking KVOS' FCC relicensing application. Senator C.C. Dill assisted at the national level, but he turned recalcitrant when Pemberton and Jones, for tactical reasons, attacked one of Dill's station-owning allies. Only when Darwin was forced to resign did Dill push through the FCC renewal. Meanwhile, the AP claimed that Darwin and KVOS had committed a legal wrong when they gathered news from their agents, the *Herald/Reveille*, and read it on the air. The federal district court handed a solid victory to KVOS, publicized across the country as a national precedent:

> Another very important phase of this case is that disclosing the everlasting conflict between private enterprise and public interest. The case occasions restatement of the principle that improved instrumentalities for the advancement of social progress and public convenience, including agencies for improved free speech and free press, must not be discarded for the sake of private enterprise. . . . . the protection of private investment had had to yield to the convenience of the public.

The Supreme Court dismissed the appeal on Pemberton's point — inserted just before oral argument — that the AP failed to allege a jurisdictional amount of damages.

In August 1932, Pemberton filed as a Democrat for Governor. During the campaign, he was introduced in Seattle to presidential candidate Roosevelt as "the fighting judge." His base of support and actual campaign were largely in western Washington, but his chances of victory weakened when Lewis Schwellenbach, later a U.S. Senator, entered the race to split both the liberal and western votes. On primary day, the early returns and Seattle papers reported Pemberton as Governor. He even had an official photograph taken, but woke next morning to find that conservative Democrat Martin of Spokane had defeated him by just 10,000 votes.

Pemberton campaigned for Martin in the general election, and the two became friends. His reward was a bit thin. In 1933, Martin made him Supervisor of the Inheritance and Escheats Division of the Department of Revenue. Pemberton accepted the post as a stepping stone (and a good salary during the Depression. Save when on the Court, Pemberton had always been poor). With typical flair and persistence, he took this obscure post and placed its work in the headlines. Pemberton defended Martin's major tax innovations. His actual appeals record was 29-29, with three cases going to the U.S. Supreme Court. His most notable cases protested high costs of burials and escheated unclaimed accounts from banks. Under him, division receipts more than quadrupled, to over $2 million a year by 1938. Pemberton was an aggressive litigator who, when he lost an issue, usually won it back at the Legislature. Les Darwin left KVOS to become one of his tax collectors.

In 1933, Martin appointed Pemberton as special assistant attorney general to head a gas price-fixing enquiry. Pemberton, carrying badge and gun as he sped about the state, prosecuted Standard Oil and 18 other oil and gas companies. This four-year battle was finally dismissed on technical grounds by the Supreme Court, but it established Pemberton as a major instrument of the Martin administration against "the interests." *The Seattle Times* in 1938 called this "one of the outstanding acts in his work as a state office(r)."

Pemberton later sought, believing he

had been promised it, appointment as a federal judge, but he did not receive the nod. In 1934, despite a Martin rule prohibiting his appointees from seeking other office while holding office under him, Pemberton filed for the U.S. Senate, but in a flurry of publicity he shortly removed himself from the race and announced support for radiospeaker Stevenson, president of the Washington Commonwealth Federation. It was speculated that Pemberton and Senator Dill had had a falling out, probably on the KVOS-relicensing case. Pemberton believed that Dill had prevented his appointment as judge, and announced for the Senate that he might campaign against Dill. When Dill decided not to run, Pemberton debated with State Treasurer Otto Case which of them should run. Against Dill's advice, Pemberton filed at the last moment, whereupon Schwellenbach also filed. After a weekend canvass of his support, and seeing the same dilemma that had killed his gubernatorial race, Pemberton withdrew, urging his supporters to support Stevenson as "the only real progressive."

Pemberton contracted pneumonia and died in 1938, after a day of flyfishing in the Soleduck River. His funeral services were attended by a Who's Who of Washington politics, from students of the Bible class to governors, senators and Supreme Court judges. He is little-remembered today in the state, though his lawyer-son became a pillar of Whatcom County, where the Pemberton name is now respected and considered one of the pioneer families. He represents those progressives who struggled during the century's first decades to find a successful party for politics in Washington, though his national loyalties were Democratic. He proved a witness and standard bearer for principles and interests which would not come into combination and power until the 1930s. For such politicians, the 1920s were a time of exile. When opportunity came with the Democratic landslide of 1932, he had the misfortune of seeing the liberal Democratic vote split.

His career marked the formal involvement of the organized Bar in judicial selection politics, in a moment in 1924 which is not to the honor of the Bar. Given his Quaker background, progressive beliefs, love of battle, respect for plain sense and language and the working man, he was a witness to values for which the times were not yet ready.

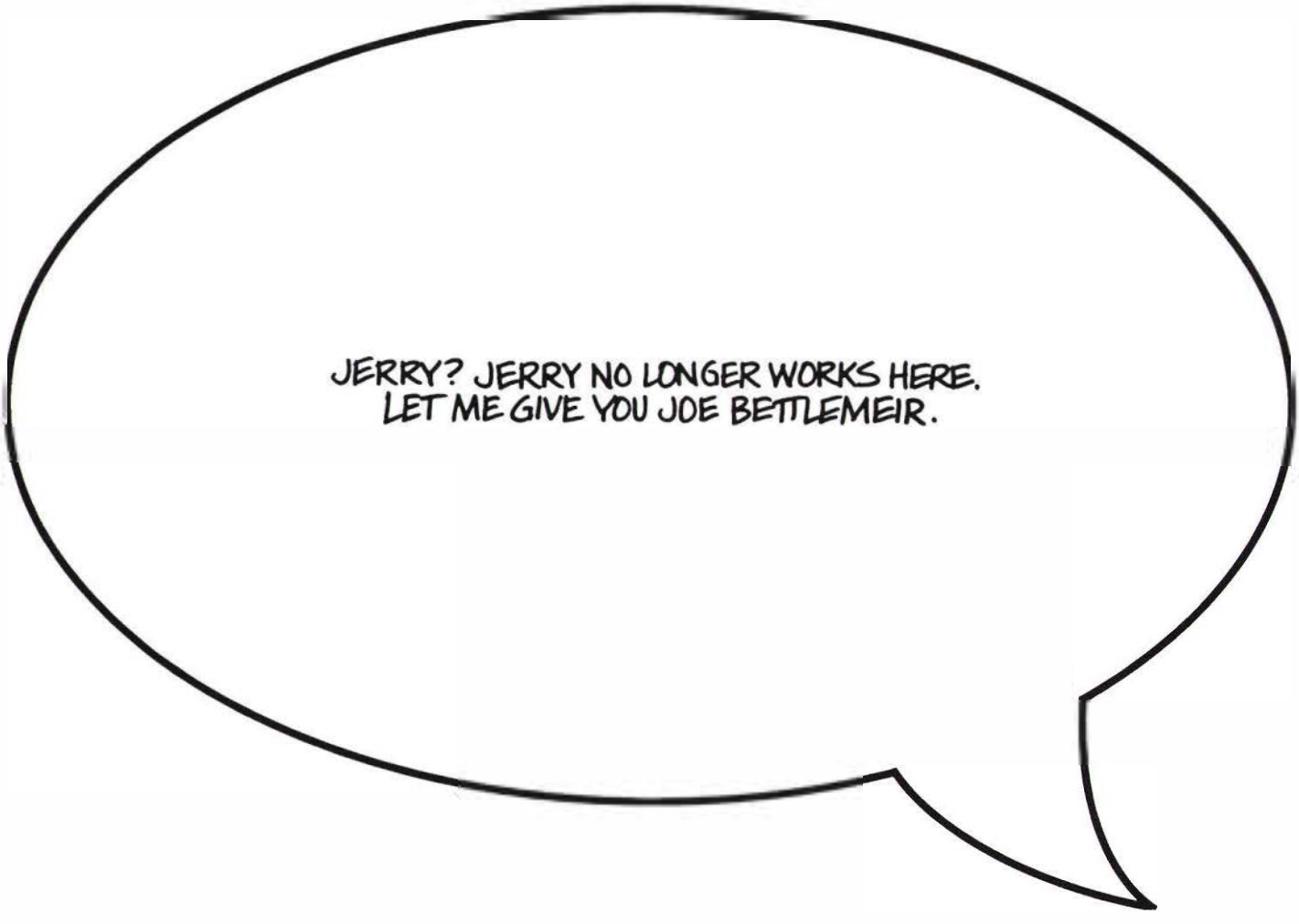
As the most liberal Supreme Court judge in a liberal state, as a nationally known exponent of judicial deference, as an aggressive supporter of labor, the common man and the public interest, as a judicial dissenter, he won national attention and praise. Pemberton had been noticed by U.S. Supreme Court Justices Brandeis and Holmes as an early and effective representative of the principles they espoused of allowing the people and legislatures to make innovative laws without interference from the courts. Washington Supreme Court Judge Hugh Rossellini has said Pemberton was "fifty years ahead of his time."

As Quaker sympathizer Walt Whitman said in *Leaves of Grass*:

> Have you heard it was good to gain the day?
>
> I also say it is good to fall, battles are lost in the same spirit in which they are won.

The Pembertons of the world are worth remembering. □

(*Alan L. Gallagher practices in Stevenson and has written and published widely. His research on Justice Pemberton is for his doctoral degree in history at the University of Washington.*)



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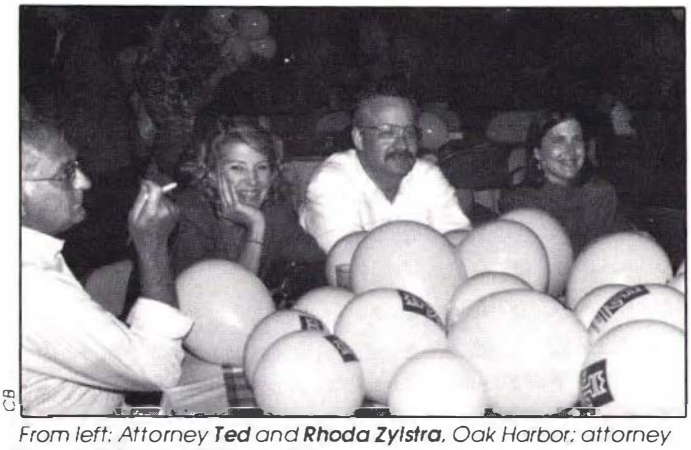
The Annual

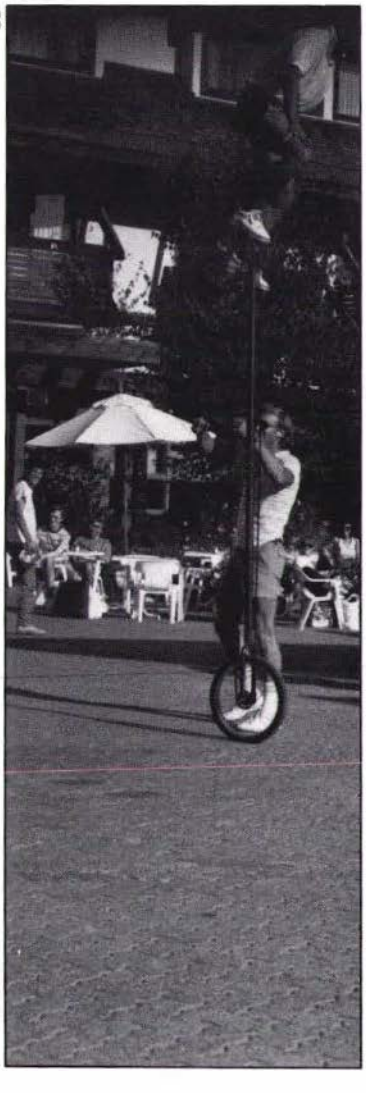


From left: Attorney **Ted** and **Rhoda Zylstra**, Oak Harbor; attorney **Jay** and **Nancy White**, Seattle.

Those who made their way up the winding road along Howe Sound found the September gathering of the State Bar Association well worth the trouble. Whistler, British Columbia, beautiful in all seasons, was sunny and 70-75 degrees every day. Golfers rejoiced, at least at the prospect of hitting the course; many came in somewhat chastened. Hikers headed for the hills. Newly-elected Governor John Schultz proved it really was all downhill from there by piloting a mountain bike through the stream beds and gullies of the mountain fastnesses overlooking the resort. There were picnics at

Bellevue attorney **John Knodell** and Klondike entertainers share the limelight.

Unicyclist, Village Square Buskar Festival.



*Seattle attorney **Tom Loftus** in song.*

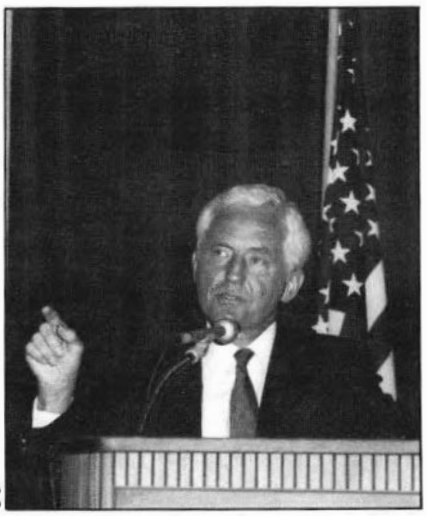
From left: Judge ***John*** and ***Ann-Louise Petrich*** (Tacoma), attorney ***Dave*** and ***Judy Murdach*** (Tacoma), ***Ann*** and attorney ***Ted Watts*** (Bellevue), ***Gloria*** and attorney ***Dick Duggan*** (Olympia).

100th Meeting

the summit of Whistler Mountain; scenic train rides, interesting restaurant fare, and a chance to visit with old friends. Chief Justice Keith Callow even found himself called upon to resolve a dispute of high moment (but little consequence) at the meeting of the Whistler Rotary Club, which welcomed a number of visiting Rotarian/lawyers into their midst. A gold rush party finished the week, during all of which photographer Greg Griffith and WSBA staff member Cheri Brennan were keeping an eye out for photo opportunities. With a nod to McLaughlin at Large, here's what they saw:


GG

Smithmoore Myers *of Spokane, who received the Award of Merit, the WSBA's highest honor.*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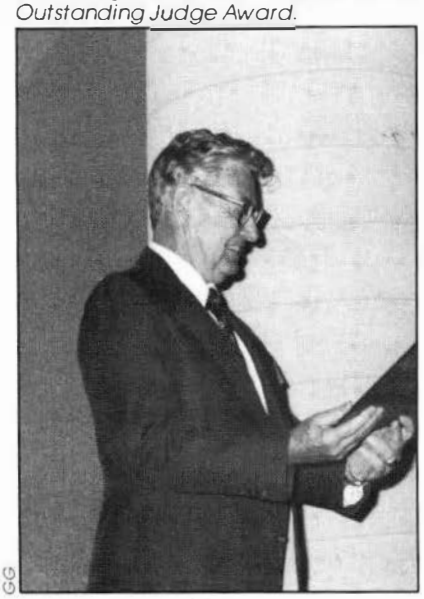
100th Anniversary Luncheon keynote speaker ***Fred Graham.***

Yelm judge ***Tom Huff****, recipient of the Outstanding Judge Award.*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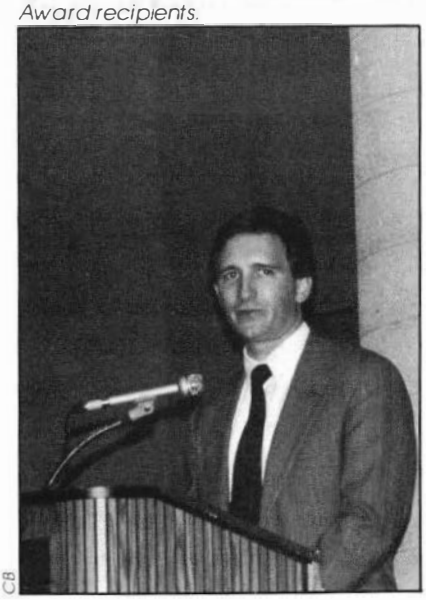
Robin Thompson*, chair, WSBA Task Force on AIDS, one of the President's Award recipients.*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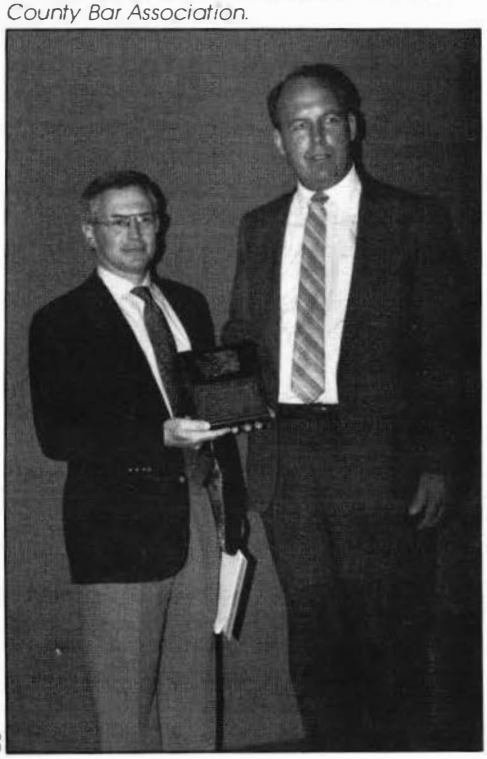
Governor ***Ed Shea*** *(4th District), left, and attorney* ***Harvey Faurholt****, who accepted the Pro Bono Award for the Benton-Franklin County Bar Association.*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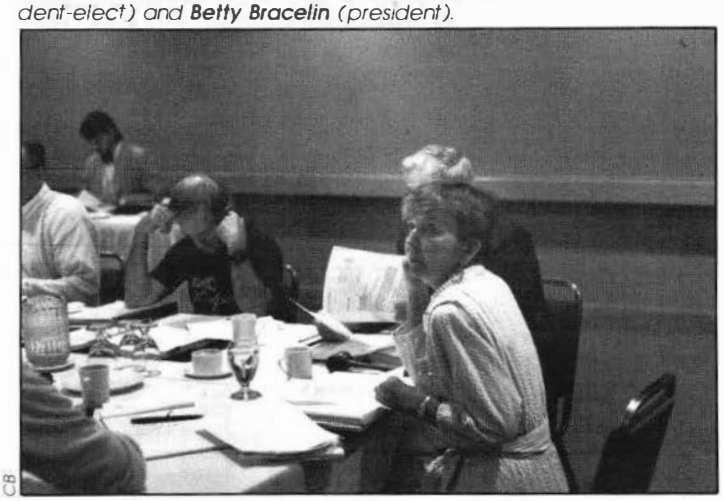
WSBA Board Meeting. From left: ***John Schultz*** *(4th District),* Bar News *editor* ***Lin Thompson, Jim Turner*** *(8th District),* ***Jim Vander Stoep*** *(president-elect) and* ***Betty Bracelin*** *(president).*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WSBA president-elect **Jim Vander Stoep**, left, and Governor **Paul Stritmatter** (3rd District).

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YLD Trustee representative **Don Verfurth** of Spokane.

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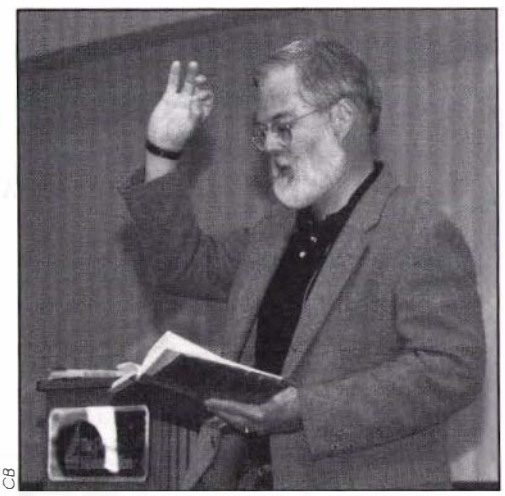
Chief Justice **Keith Callow**, who gave the State of the Judiciary address.



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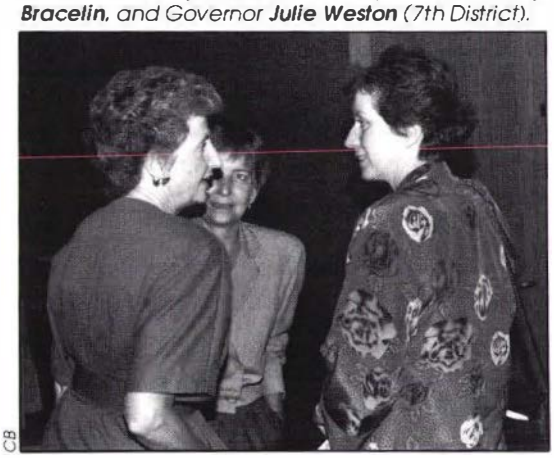
Author **Robert Fulgham** reading from his work.

Mountain top barbecue.

From left: **Mary Gates**, WSBA president **Betty Bracelin**, and Governor **Julie Weston** (7th District).



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From left: **J. Adam Moore** (Yakima), **Mike Frost** (Seattle) and **Mark Vovos** (Spokane) in Criminal Law CLE: a dramatization of "Darrow."

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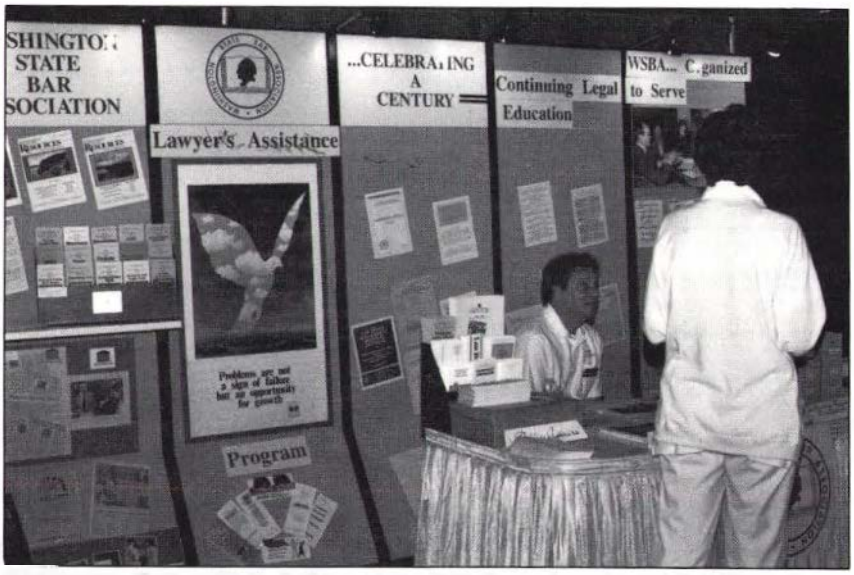

Centennial display. WSBA staff members **John Redenbaugh** and **Serni Reeves**.

Governor **Mike Carlson** (2nd District) presents **John Gray** of Olympia with the Angelo Petruss Award for Lawyers in Public Service (above) and **Scott Holte** of Everett with one of two Pro Bono awards (right).

WSBA executive director **John Michalik** and friend.

CALENDAR

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.

2 Employment law seminar. Seattle. *Sponsored by*: Stoel, Rives et al. *For information*: Megan Corwin, (206) 624-0900.

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.

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. Evening. Everett. *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.

2 Regional Seminar: Jury Instructions. Seattle. *Sponsored by*: Superior Court Judges' Association and the Board for Trial Court Education. Limited to 55 attorneys. *For information*: Maureen Lolly, (206) 753-3365.

1990 MEMBERSHIP DIRECTORY

The 1990 directory of attorneys is presently in its compilation stage. Listings for the directory are being compiled from information contained on 1990 dues statements (mailed to all WSBA members in early December). When sending in your dues to the Bar office, **please note the instructions on the dues statement relative to the address and phone number to be used for your listing in the directory.** Corrections for directory listings must be received by February 1, 1990—the deadline for dues payment.

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.

31 Nominations close for Devitt Distinguished Service to Justice Award (judges). *Sponsored by*: WESTLAW. *For information*: (612) 228-2475.

January 1990

10 Visit by ABA president Stanley Chauvin. Seattle. *For information*: George Scott, (206) 448-0441.

26 Employment Contracts & Deferred Compensation. Seattle. Also in Portland January 19. *Sponsored by*: YLD, WSBA. *For information*: Debbie Kirchhauser, (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.)

Leavenworth, Washington: October 20-21, 1989

Present: President Vander Stoep and the Governors. *Also present*: Harold Clarke (Young Lawyers Division); Judge Robert Dixon (Superior Court Judges' Ass'n.); Frank Edmondson (Government Lawyers); Cheryl Garland (Washington Women Lawyers); Mike Larson (SKCBA Young Lawyers); John J. Michalik (WSBA Executive Director); Doug Shea (Prosecuting Attorneys' Ass'n.); Lindsay Thompson (*Bar News* Editor/Clark County Bar Ass'n.); Judge Tom Warren (District/Municipal Judges Ass'n.); and Robert Welden (WSBA General Counsel).

After an executive session of nearly two hours, the Governors convened in open session and dealt with the following matters:

On the Road Again: President Vander Stoep reported his first month on the job had been a busy one, attending the Oregon State Bar convention, addressing the Lincoln County Bar Association, and speaking to several civic groups. Future engagements include speeches to the Clark, Skagit and Tacoma-Pierce county bar associations.

They're Heeere: Executive Director John Michalik reported that 868 people sat the summer Bar examination; 535 passed. The pass rate on the ethics portion was 80%; on the essay exams, 65.1%, for an overall pass rate of 61.6%. Swearing-in ceremonies begin November 6, after which the new admittees will begin fanning out over the state.

But Do They Still Have A Fool For A Client? The Rules of Professional Conduct Committee, finding itself the recipient of regular queries about the propriety of lawyers representing themselves in trials, or representing other lawyers in their firms, thought a clarification of the scope of RPC 3.7 was in order. So they sent up a proposed formal ethics opinion. The essence of the opinion is that Rule 3.7 deals with a lawyer acting as a lawyer for a client and a witness at the same trial. A lawyer acting as a litigant for him or herself, or a lawyer representing another lawyer as a litigant, will not run afoul of Rule 3.7. On a motion by Governor Jim Turner, the opinion was unanimously approved.

After You Alphonse; Oh, No, Gaston, Hawaii Disagrees With Me: There was an extended discussion about Governors attending the Western States Bar Conference, which will meet in Hawaii in February. For the last few years, there has been an understanding that the third-year Governors attend, though the rules have always been flexible; some years ago, the entire Board went. President Vander Stoep thought the interchange between Bar Association leaders at the conference a highly valuable thing, and one which ought to be viewed on its merits, not as a perk. He also thought the second-year governors should go instead of the third.

A lot of graceful disclaimers of interest followed, in which various members of the Board suggested alternative combinations of attendees, and Governor John Schultz said he opposed meeting out of state any time as sending "the wrong impression" to the membership.

Governor Jim Turner moved that the President, Executive Director, and second-year Governors attend at the Association's expense, and that the Association pay the registration fee for any other Governor who might wish to attend at his own cost. The motion carried, with Governor Jeff Tolman abstaining.

Dealing With Disaster: President Vander Stoep expressed concern that the increasing tendency of "disaster lawyers" to congregate en masse on the scene of air crashes and other catastrophes makes it imperative that the WSBA have a policy on what to do if such a misfortune strikes the state. The matter has begun to be the subject of interest in various states, and in law reviews, and policies adopted or under consideration in Iowa and Texas were considered.

Governor John Schultz told the Board he had represented Tri-Cities area residents involved in several air crashes, and the pressure they were put under by representatives of out-of-state lawyers was both intense and remarkable. He thought a policy urgently needed. Governor Don Curran moved to refer the matter to the Litigation Section of the Association, asking it to prepare a plan after consultation with various potentially interested parties and groups. The motion was approved unanimously.

Computers: They're Everywhere: This report is being typed on an Epson keyboard attached to an Epson Equity II+ computer with an Amdek screen, using Displaywrite 4.0 software. Its author barely knows what he is doing. And that's nothing compared to the complexity of computerization in the law which is threatening to become a monthly agenda item for the Board.

This month there were two computer items on the agenda. The first was a report from the Board's Computerization Committee, which has been looking into a proposal by Jeffrey Bode and Edward Hiskes of the Washington Digital Law Library Foundation. They want to make the Washington statutes and reports available to lawyers on CD-ROM discs at cost — a few dollars, tops — along with a search program they have developed which would make having the disc worthwhile.

The Committee has been looking into how to make something like this happen. Chair Jim Turner proposed the following steps: enter into an agreement with the Digital Law Library Foundation for the use of their search software; then enter into agreements with the Statute Law Committee and the Committee on Supreme Court Reports to gain access to their computer tapes at cost; then arrange for production of the CD-ROM discs and set up an on-line update service in the Bar Association office.

Fine, said Executive Director Michalik, but there are some other considerations. Chief is that there are seven or eight possible computer applications with which the Association may become involved in the short term. There's ABA Net, and two or three competing services. There's the Computer Connectivity Project with the state courts, now in the test phase. SKCBA Young Lawyers have a contract to represent Lexis; the General Practice Section wants to represent ABA Net. "How do these things all fit together? What will be their long-term costs to the Association?" He felt the Governors should review the field of computerization and the Association's role in it as a whole rather than in a piecemeal manner.

There was some discussion of the matter, after which Governor Turner moved the steps described above, plus a study of the "universal" issues raised by Michalik, as the next steps for the Committee to take.

Governor Ron Gould thought the Board should move slowly. "We need a business plan." He preferred waiting a month and taking up something more specific then.

"I couldn't disagree more," countered Governor Lem Howell. "We have volunteers who want to work on this; we have experts. Let's have them start gathering information, now." And the Governors approved the Turner motion unanimously.

Saturday the Board heard from Vancouver lawyers Bill Dunn and Phil Foster, members of the new General Practice Section's Computerization Committee. The Section wants to become the exclusive agent for ABA Net, the American Bar Association-sponsored omnium gatherum of computer programs and research databases. The advantages were described by its proponents, and a demonstration of how it worked put on, hampered by phone line troubles. The Governors referred the question to their computer committee, to have it look at how to make all these ideas fall into a coherent, cost-effective whole.

Title IX CLEs: Governor Ron Gould raised the question of how actively the Association tries to include women and minorities in the roster of continuing legal education course faculties. He said he had had complaints about a CLE in which the entire

panel was male.

CLE Director Terry Foster appeared before the Governors to discuss the department's current activities on the gender/minority fronts. He reported an analysis of 70 CLEs from January 1988 to September 1989 registered an overall participation by women of 18.7%. Foster noted that while the CLE department had been working on the question for years, the problem was that the experience requirements for CLE speakers — that they have a lot of it in their field of presentation — tended to favor the older, more male cohorts of Association membership, which looks bad compared to the nearly 50/50 male/female composition of most entering "classes" of lawyers in Washington today.

After some discussion of the wording of the resolution to avoid what might have been considered racist or sexist undertones, the Board unanimously adopted a policy that in WSBA-sponsored and co-sponsored CLE programs, publications and other projects, women and minority lawyers should be fairly represented, and that the CLE Director be commanded to evaluate the progress of the policy each year and report to the Board on the work in progress.

The Bar Convention: Where To Go? Next year, it's in Spokane. In 1991, it's in San Diego; in 1992, in Vancouver, B.C. Where to have the Bar convention in 1993 was the question at Leavenworth.

Executive Director John Michalik reviewed the options.

• Seattle is out because in 1985 the convention only filled 300 hotel rooms. Net result: no one in Seattle will talk to the WSBA. They can get bigger business elsewhere. Maybe 1994 or 1995, said Michalik.

• Whistler was attractive because the Association just had a successful convention there, Michalik said, and because it is going to be available in 1993 with new and expanded facilities.

• Victoria, B.C. would be available only for the week the convention would need in 1993, and would headquarter at the Empress Hotel, newly refurbished and with a convention center added.

Governor Steve DeForest thought members had voted on Whistler with their feet by not going to the convention. "Whistler was a wonderful convention," he continued, "but I thank goodness it didn't rain all week." It wouldn't have been nearly as pleasant to spend the week indoors in the relatively isolated resort.

In the end, Governor Jim Turner endorsed Victoria as a city where you can do things, irrespective of the weather, and moved that the Association meet there in 1993. The motion carried, Governor Jeff Tolman voting against.

Criminal Defense Standards: The Legislature acted this year to require that cities and counties with public-defender programs adopt standards for defense programs, and held that the WSBA-approved guidelines can serve as a model. Washington Defender Association Executive Director Lynn Thompson and President Robert Boruchowitz presented the Board with an update of the 1985 standards.

However, members of the Board felt they had not had enough time to digest the detailed, 32-page report, and Governor Ron Gould moved to put consideration over a month, while circulating it to interested bar groups for comment. The motion was approved, and the matter will come up again in November.

Attorneys' Professional Insurance: Seattle attorney Milton Smith returned to the Board with the latest reports from his busy committee. They find insufficient support in the Association for the capital and organizing requirements of a captive insurance company, and recommended instead that the Association develop a "preferred" plan of insurance coverage with an existing carrier.

The advantage of this would be that the cost problems of a captive would be avoided, but the Association would have access to the insurance company's information on the program — and a book of business — down the road if a captive company became a more attractive option. Governor Paul Stritmatter queried Smith at some length about why the Committee had abandoned the captive company idea. "Some of us thought it was the way to go," Smith replied, "but I am conscious of not running way ahead of the constituents." Committee member Geoff Revelle added, "The problem I saw was that a captive would take a lot of effort by a lot of people, and a full commitment from the Association. Then the insurance companies would all come out and attack it for several years like they always do. It's just a hard thing to do in a soft market. This way, if you decide to do it down the road, at least you've got the information to make it easier."

Stritmatter thought this was an issue where the Board ought to be out in front of the membership. "If members had all the information we have, I think they'd get a captive up and running." But Governor Jeff Tolman thought the Board couldn't spend money it doesn't have, and the $100,000 startup cost was more than he could endorse. Governor Lem Howell thought the preferred-plan idea okay, but didn't want it to be seen as a salve. "We can't adopt this and then announce we've fixed the problem. I think we need to bite the bullet and go for the captive company."

On a motion to authorize the Committee to proceed with the preferred-program plan, the Governors voted aye, 7-2-1, with Governors Stritmatter and Howell opposed and Governor DeForest abstaining.

Required To Do Good? A polite dust-up occurred Saturday when the Legal Aid Committee presented a proposal designed to raise the level of awareness of and participation in pro bono work by members of the Association for the benefit of the poor. Chief among the Committee's requests was that the Board adopt a resolution requiring members to devote 30 hours a year to pro bono cases referred to them by one of the organized legal service providers in the state. After some discussion, centering around whether a mandatory requirement would work and whether the only way one could satisfy the requirement should be on referrals from legal service groups, the Board voted to table the resolution and try to reword it before taking it up again. Governor Ron Gould voted no. But as discussion continued, Governor Paul Stritmatter moved to reconsider, and the resolution was revived on a vote of 5-4-1, Governor Howell not voting.

A lengthy discussion ensued, after which Governor Bill Bergsten moved to table until next month. This time it was approved unanimously.

Wrap-up in Leavenworth: In other action, the Board:

• heard a report on the Chelan-Douglas County Bar Association from its president, Gay Cordell; appointed Prof. Victor Hanzeli to a vacancy on the State Board of Continuing Legal Education and former Governor Jay White to a term on the Judicial Ethics Advisory Committee; set some standards for circulation of the Association's centennial videotape to ensure maximum distribution; elected Governor Bill Bergsten Treasurer of the Association and appointed Governor Lem Howell to the Budget Committee; heard a report on the work of the Superior Court Judges' Association from Governor Steve DeForest; referred to the Legal Aid Committee a proposal for a public service program in which lawyers trade small bills for some client time working for a charity or public service organization; and set its meeting schedule for the coming year:

November 17-18, 1989, Yakima; **December** 15-16, 1989, Seattle; **January** 12-13, 1990, Olympia; **February** 9-10, 1990, Tacoma; **March** 16-17, 1990, Bellevue; **April** 20-21, 1990, Victoria, B.C.; **May** 18-19, 1990, Walla Walla; **June** 15-16, 1990, Port Ludlow; **July** 20-21, 1990, Moclips; **August** 17-18, 1990, Vancouver, Washington; **September** 11-15, 1990 (the Bar Convention), Spokane.

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

Notices of Interest to Association Members

Disciplinary Notices

Judicial Reprimand: The Commission on Judicial Conduct has reprimanded Judge **James P. Healey** of the Pierce County Superior Court in a letter dated September 8, 1989. The Commission found a violation of Canon 3(A)(5) of the Code of Judicial Conduct for delay in rendering decisions.

Nondisciplinary Notices

Transferred: On July 25, 1989, **Roger G. Clement, Jr.** (admitted 1975) became an inactive member of the Association.

Public Notices

Request for applicants: Potential applicants for membership on the newly-established State Shorthand Reporters Advisory Board are encouraged to contact the Department of Licensing.

As required by the 1989 law, the director of the department must appoint a five-member board. Of these, one must be a court-employed shorthand reporter and two must be freelance shorthand reporters. All three must have been engaged in the continuous practice of shorthand reporting for at least five years. The remaining appointments are for one public member and one member of the State Bar Association or the State Judiciary, and both must be unaffiliated with the shorthand reporter profession.

The new law requiring certification of shorthand reporters went into effect September 1, 1989. The department hopes to call a meeting of the board as soon as its membership can be filled. The sole function of the board is to advise the director of the department. Board members will be compensated at the rate of $50 per meeting day, along with travel expenses at the rate paid state employees. Interested persons should contact Cynthia Jones at (206) 753-2494.

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 October 1989 is 8.36%. The maximum allowable interest permissible for **November 1989** is therefore **12.36%**. 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, the *Bar News*, 7414 N.E. Hazel Dell Avenue, Vancouver, WA 98665.)

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- Guns, stamps and coins
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Representativeness of the Washington Judiciary: Ethnic and Gender Considerations

by **Charles H. Sheldon**
Professor of Political Science
Washington State University

Assuming — as we must — that public officials are to represent the communities they serve and recognizing — as most do — that judges are among these public servants, the question arises, how representative of the community is the Washington judiciary?

It is, of course, entirely possible that judges can reflect the character of their constituents, provide role models, administer fair and just decisions, and remain devoted public servants without representing a microcosm of the social, political and economic makeup of the community. However, the most common means of assuring adequate representation is for the public servants to constitute a cross-section of the community. Certainly, that cross-section would include gender, racial and ethnic factors. How representative of women and minorities is the Washington judiciary? How well do the state benches mirror the presence of women and minorities in the general state population and in the legal profession? If the reflection is not clear, does this signal the need for better representation?

In 1988 the Washington population was 4,565,000, of which 50% were women and 10.6% were minorities (African-Americans/Blacks, Hispanics/Latinos, Native Americans, Asians).[1] Out of 14,750 active attorneys in 1989, approximately 4,130 (28%) are women, and it is estimated that 525 (3.6%) are minorities.[2] Clearly, the numbers of women and minorities in the legal profession fail to reflect their numbers in the general population. Several plausible—if not acceptable—explanations are possible (*e.g.*, availability and costs of and academic pre-requisites for a legal education); in a nation, and certainly a state, that take pride in educational access for all, such a disparity should be a matter of concern.

Three hundred-sixty judges constitute the Washington judiciary, and of these 42 (12%) are women and 15 (4%) are members of minority groups.[3] The number of minorities among the judiciary corresponds with the number among the legal profession. However, with so few minorities among the legal profession generally, the concern for a more representative judiciary should remain. Despite efforts of university and college recruiters, the enrollment of minorities in law schools has recently held steady or actually declined, assuring that the problem will worsen. The low ratio of women judges to women lawyers and to women in the general population should also be a matter of concern. Again, explanations for the disparity are available. In time the situation should improve simply because of the greater number of women enrolled in law schools (in some cases recently as high as 40%), but, in the meantime, greater access to the state's benches should be provided. Does the legal profession view with alarm the lack of adequate gender and ethnic representation on the state's courts?

In 1986, shortly after the September primary, we conducted a survey of 520 attorneys practicing in Cowlitz, Whatcom and Clark counties.[4] A small segment of that survey dealt with questions of representativeness. Each respondent to the survey was asked, "To what extent do you agree that more *women* ought to be selected to Washington courts?" and "To what extent do you agree that more *ethnic and racial minorities* ought to be selected to Washington courts?" Table 1 reports the responses to these two inquiries:

Table 1

Level of Agreement With Statements on Need For More Representativeness

Level	*More Women* n = 299 Percent	*More Minorities* n = 299 Percent
Agree*	32%	30%
Neutral	40%	40%
Disagree**	21%	22%
No Answer	7%	7%

*Agree = "strongly agree" or "agree." ** Disagree = "disagree" and "strongly disagree."

Table 1 indicates that nearly one-third of the legal profession feel a need for better representativeness of women and minorities in the judiciary while approximately one-fifth see no need for an increase on the state courts.[5]

Of course, the interests of minorities and women do not completely overlap. Minorities constitute a number of groups with different cultures, needs and desires. Nonetheless, the solutions to increasing the presence of women on the state benches may be relevant to minorities as well. Actually, the legal profession views the recruitment problems of women and of minorities in much the same manner. The correlation between those who are favorably inclined to more women and to more minorities on the bench is .92 — nearly perfect — indicating that the same persons give nearly the same responses to the gender and the minority questions. This suggests that references to gender issues in our survey can also provide insights into those of minorities.

As Table 2 reports, women lawyers far exceed their male counterparts in their concern for *both* the gender and the minority disparity of the state benches.

Table 2

Male and Female Responses to Representativeness on the State Benches

	More Women		*More Minorities*	
Respondents	**Male**	**Female**	**Male**	**Female**
Level	n = 243	n = 35	n = 243	n = 35
Agree	28%	86%	26%	77%
Neutral	47%	11%	47%	20%
Disagree	26%	3%	27%	3%

Female attorneys, as expected, are much more concerned than male attorneys with placing both more women and more minorities on the bench. Although their concern for minorities declines a bit from 86% to 77%, it far exceeds that of male attorneys.

The disparity between male and female respondents regarding the need for both women and minorities on the bench suggests that despite their different interests and varying prospects, solutions might be better pursued through some cooperative efforts, particularly in the legal profession in Washington.

One obvious explanation for the lack of a representative judiciary is simply that women and members of minorities, although members of the legal profession, do not become candidates for the bench. Why? The respondents to the 1986 survey were asked if they had thought about becoming a candidate for the bench and, if so, why were they reluctant to file for office. Seventy-one of the male attorneys (24%) admitted that they had at some time "seriously contemplated filing for" a judicial office. Seven of the 35 (20%) women had also thought about a judicial career. Several explanations for the unwillingness to become a jurist were indicated by the respondents as reported in Table 3.

Table 3

Reasons For Not Running For the Judicial Position: Male vs. Female

Reasons	**Percent Agreeing Responses by Gender***	
	Male (n = 243)	**Female** (n = 35)
Raising Money for Campaign	78%	88%
Time Lost from Practice	74%	85%
Costs of Campaigning	73%	82%
Personal Effort Needed for Campaign	68%	73%
Problems of Organizing	59%	70%
Insecurity of Short Elected Term	34%	34%
Retaliation by a Challenged Incumbent	30%	60%
Dictates of Canon 7**	11%	16%

* = percent regarding factor as "strong deterrent" or "deterrent."

** = Code of Judicial Conduct which prohibits "inappropriate" political activity.

Financial considerations in running for the bench are the primary concerns for Washington attorneys, both male and female. Raising money, losing time from practice and campaign costs, however, are of greater concern to the potential women candidates. The problems of organizing a campaign and fear of retaliation from an incumbent whom they had challenged in the campaign appear uniquely a concern to women candidates. Again, because of the high correlation between the attitudes regarding gender and minorities, it is most likely that these deterrents to running for the bench apply equally to potential minority candidates.

Perhaps attitudes toward the methods by which judges are selected in the state vary between men and women members of the profession. However, 51% of the male respondents and 53% of the women approved of the present nonpartisan system. Partisan elections were favored by only 4% of the males and none of the females, while gubernatorial appointments garnered the vote of 5% of the males and of 3% of the females. The Missouri Plan was favored by 20% of the men and 14% of the women.[6] Fourteen percent of both men and women would approve any system that gave the Bar a leading role. Little difference exists concerning the formal methods by which judges are selected. The present system apparently is not viewed as contributing to problems of underrepresentativeness of women and minorities.

Of course, because of the small number of attorneys (especially women) involved in the survey, the conclusions we reach are tentative, although intriguing. Women and minorities are underrepresented in the judicial profession in Washington. Obviously, a long-range solution is for more minorities to gain access to a legal education and then, as should also the women attorneys, more should choose a judicial career. One optimistic result is that a significant percentage of the legal profession seems to recognize the need for a more representative bench. The listing of deterrents to filing for judicial office suggests that workshops, seminars, and printed (video) materials should be provided to explain campaign fund-raising, cost-accounting, campaign-organizing and the ins and outs of a public campaign. Of course, a less expensive but nonetheless complicated, appointment process to gain the initial spot on the bench needs to be thoroughly explained by those having succeeded in the process and by those who are responsible for judicial appointments. In any case, without a concerted effort from the Bar, the attentive public and other interested parties, the lack of a representative Washington bench will remain. □

[6] OFM, "1988 Population Trends for Washington State."

[2] *Washington State Minority and Justice Task Force, 1988 Bar Membership Survey Data.* Estimates broke down into the following groups: 181 = Asians; 192 = Black; 60 = Hispanic/Latino; 60 = Native American and Other = 53. See page 3 of the survey data report. In 1987, a visual review of the Bar Directory identified 2,762 females, approximately 20% of the Bar membership that year. See page 4 of the report. The 1988 survey sample had 1,894 female respondents, constituting 28% of the sample. The 28% figure is used here.

[3] Includes municipal, district, superior, appeals and supreme courts. The figures for females are based on a visual review of the list of names of state judges. The number of minorities is the estimate from the staff of the Minority and Justice Task Force.

[4] In each of those counties a contested judicial race was on the primary ballot. The study was conducted by the author and his colleague, Professor Nicholas P. Lovrich, as part of long-range research on judicial recruitment. The return on the questionnaire was 299, constituting a 58% response rate.

[5] As expected, the views of the attorneys in the three counties varied. Whatcom County lawyers were most supportive, with 43% seeing a need for more minorities on the bench and 42% more women. Cowlitz County practitioners supported a need for an increase of women by 18% and more minorities by 16%. More of the attorneys in Clark County viewed the need for both groups on the state benches (35%—women and 30%—minorities) than those who did not favor an increase.

[6] In the Missouri Plan, judges are appointed by the governor from a list submitted by a nominating commission composed of lawyers and laypersons. After a period of probation, the judges run unopposed "on their record." If defeated, the commission again nominates a candidate and the process is repeated. See the "Report on Judicial Selection" by the Young Lawyers Division of the Washington State Bar Association, June 1, 1989.

The Merit Selection of King County Superior Court Judges

by **Richard Prentke**
and **Jane Fantel**

The interest of the Bar and the general public in the selection of trial court judges has recently increased for a number of reasons. The press has devoted considerable space to discussion of judicial conduct and the state Judicial Conduct Commission following the death of Judge Gary Little. The WSBA Young Lawyers Division has floated a proposal to change the system of appointment and election of judges.

A number of new King County Superior Court judges will be appointed in the next year to fill vacancies and new positions. After extensive negotiations between the Bar, the bench, the King County Council, and the King County Executive, facilitated by the King County Prosecutor, four new superior court judgeships were approved early this year as a part of a comprehensive program to reduce the case backlog. Governor Gardner has recently appointed the first of the four, William Downing, and will appoint people to three new positions and at least two vacancies over the next 18 months.

King County has had its current merit selection system in operation for more than five years. It has been used by governors as the exclusive source of superior court appointments. The quality of the appointed candidates has been high. A description of the procedures will help to add factual and experiential information to the discussions that are occurring.

Background

In 1984, a judicial task force was appointed to review the Seattle-King County Bar Association's overall role and involvement in judicial recruiting, endorsement, evaluation of judicial performance, screening of candidates for judicial appointments, and rating of candidates in contested judicial elections. The SKCBA Board of Trustees adopted the recommendations of the Judicial Task Force in June 1985, reconstituted the Judicial Screening Committee, and approved detailed guidelines governing the Committee's procedures.

The Judicial Screening Committee has two primary functions:

- It provides the Governor with recommendations for judicial appointment to the King County Superior Court.
- It rates candidates in contested elections for judicial positions on the King County Superior Court, the Washington Court of Appeals, Division I, and the Washington Supreme Court.

Committee Members

The president and board of trustees of SKCBA appoint a total of 20 King County attorneys and three lay people to the Judicial Screening Committee, generally for staggered three-year terms to provide continuity in the committee. The membership of the Committee ensures representation of the breadth and diversity of the King County Bar in terms of geography, type of practice, size of firm, gender, race, national origin, age, and other things. As a result, it is an extremely diverse, hard-working committee that is committed to the merit selection of judges.

During their tenure on the Committee, members may not endorse, campaign for, or contribute to any candidate running for a position over which the Committee has responsibility. No member of the Committee is eligible for appointment or may seek election to any judicial position over which the Committee has responsibility for one year following his or her resignation from the Committee or the expiration of his or her term. In addition, the members of the Committee sign a written pledge to absolute confidentiality in connection with all matters that come before it. Committee proceedings are kept in strict confidence to encourage candid and open communication of information about prospective judges.

The Process

The Committee places notices from time to time in bar publications to seek applicants for appointment. It also informs candidates running in contested elections of the rating process. When an applicant or candidate contacts the SKCBA office, (s)he is provided with an application form. This questionnaire seeks detailed information about the background, experience, ethics, and disciplinary record of the applicant or candidate. The questionnaire requests a statement of the reasons the judicial position is being sought and requires up to 40 references in various categories, including opposing counsel and judges in recent trials and other nondiscretionary, as well as discretionary, references.

The Committee interviews appointment applicants periodically throughout the year. Election candidates are interviewed about a month before the election. Before the interview, members of the Committee call references and make such further confidential inquiries as they see fit. References are instructed that the fact an applicant is seeking appointment is confidential. To promote candor, references are also assured that their observations will be strictly confidential as well.

Prior to the interview of each candidate, the Committee determines that a satisfactory number of references has been reached and discusses specific areas to be

covered in the interview, based upon information obtained from reference checks, the questionnaire, and other sources. The applicant or candidate is questioned by Committee members in turn for approximately 20 minutes. Although there are recurring areas of questioning (*e.g.*, experience), there are no "stock" questions that are asked every candidate or applicant. Each member asks any question (s)he wishes to ask, and the questions cover the spectrum of the criteria discussed below upon which ratings are based. Immediately after the interview, the Committee discusses the applicant or candidate at length. The discussions are frank and open and are marked by the careful examination and consideration of all opinions expressed. The Committee then votes on the rating by written ballot.

Criteria

The Committee bases its ratings upon the following areas:

a) competence and experience in the trial of contested matters, and, in particular, bench and jury trials;
b) the potential for continued professional development and leadership on the bench;
c) the courage and ability to make difficult decisions under stress;
d) maturity, integrity, and courtesy;
e) intellectual honesty and curiosity;
f) distinction in academic or professional achievements;
g) involvement in community affairs and activities;
h) fairness, open-mindedness and commitment to equal justice under the law; and
i) energy and capacity for hard work.

Appointment

The ratings for appointment consist of two categories: "Exceptionally Well-Qualified" and "Qualified." The Governor receives only these two listings. An applicant who does not receive the required number of votes to be rated "Qualified" receives no rating from the Committee. Only those Committee members present for the interview are permitted to vote on that applicant's rating.

To obtain a rating, an applicant must receive an affirmative vote of three-quarters of the Committee members voting.

An applicant may be rated "Exceptionally Well-Qualified" if three-quarters of the Committee so votes, based upon the standard that the applicant has demonstrated outstanding accomplishment in his or her professional or judicial career, singular accomplishments in professional practice, or excellence in all of the above criterion areas.

An applicant may be rated "Qualified" if three-quarters of the Committee so votes, based on the standard that the applicant has demonstrated a level of skill, expertise, sound judgment and excellence during his or her legal career which will sustain or improve a high-quality judiciary, as demonstrated by the above criterion areas. This rating thus means much more than that the applicant has met minimum qualifications.

The Committee's ratings for appointment are forwarded to the SKCBA trustees, who are empowered only to delete a name. Thus, ratings cannot be changed, and unrated candidates must remain unrated. The list is then sent to the Governor. An applicant's rating remains in effect for a period of two years.

Governor Gardner has made known his

commitment to the merit selection process and his intention, as he and his predecessors have done in the past, to appoint new judges from the SKCBA Judicial Screening Committee's listing of rated applicants.

The Committee estimates that its members spent a total of about 750 hours in the recent rating process that culminated in the listing sent to the Governor in June 1989, and the process is continuing this fall.

Contested Elections

In a contested judicial election, the guidelines provide for four ratings: "Exceptionally Well-Qualified," "Well-Qualified," "Adequate," and "Not Qualified." The two "qualified" ratings must be approved by two-thirds of the Committee members voting; the "Adequate" rating requires a majority. Again, only those Committee members present for the interview are permitted to vote on that candidate's rating.

A candidate is rated "Exceptionally Well-Qualified" if two-thirds of the Committee so votes, based upon the standard that the candidate has consistently demonstrated outstanding accomplishments in his or her professional and/or judicial career, singular accomplishments in professional practice, and excellence in the above criterion areas.

A candidate is rated "Well-Qualified" if two-thirds of the Committee so votes, based upon the standard that the candidate has demonstrated a level of skill, experience, sound judgment, and excellence in his or her legal and/or judicial career which will sustain or improve the judiciary, based upon the above criterion areas.

A candidate is rated "Adequate" if a majority of the Committee so votes, based upon the standard that the candidate has demonstrated the above areas to a degree sufficient to be considered minimally qualified.

A candidate is rated "Not Qualified" if (s)he does not receive the majority vote required for the "Adequate" rating. A candidate may also be placed in the category of "Insufficient Information to Rate" if the Committee concludes that, despite providing a candidate with a full opportunity to provide information, the Committee nonetheless does not have sufficient information to rate the candidate. If, however, a candidate does not submit a timely questionnaire or does not participate in the interview process, the Committee may include as part of any rating the statement: "but failed to cooperate with the background investigation."

The trustees of SKCBA are informed of the ratings but are not empowered to change them. The president of SKCBA then releases to the public the ratings of candidates in contested elections prior to the election. An explanation of the rating process is also made public.

The Future

The Judicial Screening Committee's process is evolutionary. Improvements are discussed and implemented on a continuing basis to assure fair, accurate, impartial, and apolitical judicial recommendations. □

Richard Prentke is a trial lawyer at Perkins Coie, where he is a partner. Jane Fantel is a trial lawyer at Lopez & Fantel, where she is a partner. Both served on the Judicial Screening Committee for at least two years prior to becoming Co-chairs.

Lawyers' Assistance Program (LAP) Second-Year Report: 1988-1989

LAP continues to respond to the needs of lawyers at a remarkable pace. Last year we served one percent of the WSBA's actively practicing lawyers (see *Bar News*, "In The Lap," Feb. 1989). No other bar association's assistance program has come close to this performance level in its first year of operation. In the second year, LAP's caseload increased 41%, and a greater proportion of the cases were self-referred (up from 58% to 65%). In both years combined, LAP served the needs of 347 clients, or 2.3% of WSBA.

What has led to this case-finding success?

First, our discussions with lawyers across the state led to rule changes by the Supreme Court to shield client and referrer confidences. The experience that we *do* maintain them is growing. Many lawyers now call for an evaluation knowing that it will cause no future prejudice.

Second, the prevalence study data provided Washington-lawyer norms which permit the professional staff to provide potential clients with comparison information. Often, those who seek evaluations have acquired elevated symptom levels contrasted to those of their colleagues. This information has been useful in persuading lawyers to become clients and in identifying what services will be most effective in reducing distress.

Third, several people came to LAP because it is a repository for the names of professionals and institutional or self-help programs that work effectively with impaired lawyers.

Fourth, LAP's monthly column in the *Bar News* has continued to attract clients. Each month, several call LAP because they strongly identify with an autobiographic account of how distress led to lawyer impairment and how recovery occurred.

Finally, the aspect most critical to LAP's building its caseload has been our peer counselors. People are discovering that they are involved statewide in evaluating and assisting in the treatment of impaired lawyers. New clients appreciate working with a peer who is often a recovering lawyer experienced with the same type of distress symptoms. This not only attracts new clients but also enhances the recovery of the counselors. All peer counselors participate in special training sessions specifically developed for assisting their impaired colleagues.

Another important program development that arose in the second year was the increase in the percentage of indigent clients who also lacked any health insurance: currently, one quarter of the caseload. Unable to refer these clients, professional staff have provided direct services. In most instances, the pathology has required professional treatment. We have begun a revolving loan fund for indigent lawyer treatment with monies donated to LAP by clients who obtained services at no cost. At this writing, professional staff and peer counselors are treating most cases because the fund is still too small.

The percentage of third-party referrals and legal department referrals has become smaller during the second year; the overall numbers appear to be about the same because of the increase in self referrals. Even though these clients tend to suffer from late-stage chronic disorders, many third-party referrals have yet to commit discipline infractions. If left alone, these lawyers might continue to commit malpractice or do disservice to the public, their clients, their family members, their

colleagues, the courts, and themselves.

A typical case involved a lawyer suffering from profound depression. Two peer counselors followed up two independent verifications about the impairment and talked the lawyer into letting LAP begin treating the depression. It was so serious that the lawyer was significantly disabled. With LAP's assistance, the lawyer withdrew from the practice of law (RLD 10.2) and allowed the WSBA legal department to appoint a custodian lawyer to temporarily take over the practice (RLD 8.7). The custodian lawyer prevented the files from becoming discipline complaints. If the lawyer had gone untreated, discipline counsel had no doubt that the neglect of several of the cases would have resulted in serious client harm. LAP's intervention saved discipline costs for appointed counsel in a disciplinary disability determination and many hours of discipline counsel effort. The lawyer is recovering from the depression and soon will resume the practice of law. The legal department has confidence in LAP's competent monitoring so that it can be assured that relapse does not occur.

This case serves as an example of how an impaired lawyer who worked with LAP avoided substantial costs (*e.g.*, attorney malpractice and the WSBA discipline process).

Other bar associations have estimated that 40%-75% of malpractice and discipline complaints stem from lawyer impairment. Without a doubt, impaired-lawyer conduct contributes to the battered image of the legal profession.

One last area of LAP's efforts deserves mention. Last year, LAP staff gave several education and prevention talks both in Washington and at national ABA events. The WSBA LAP continues to be perceived as one of the most innovative and effective programs in the country. Most of the talks have occurred within the state for law schools, local bar associations and judicial conferences. Data about the prevalence of lawyer distress indicate that significantly fewer lawyers smoke cigarettes than do other normal population members. This suggests that other high-risk health behaviors can be reduced through concerted prevention efforts. During this third year LAP anticipates the granting of CLE credit for attendance at our prevention programs.

LAP Statistical Summary for the Annual Period Beginning August 1, 1988 Ending July 31, 1989: Second Year of LAP Operations

New Cases:

	Self-referred	Third-party	Discipline	Total
Opened, Not In Treatment*	0	37	0	37 (18%)
Opened & In Treatment*	133	28	5	165 (82%)
Total	**133 (65%)**	**65 (32%)**	**5 (3%)**	**203 (100%)**

Case Diagnoses:	
Mental problems (depression, anxiety, old-age impairment)—	114 (56%)
Marital problems	18 (9%)
Alcohol	50 (25%)
Drugs	21 (10%)
Total	**203 (100%)**
Types of Consultations or Treatment:	
Client Treatment*	841 (62%)
Peer Counselor Consultation	240 (18%)
Third-Party Consultation	100 (7%)
Professional Consultation	185 (13%)
Total contacts with clients or those involved with cases	**1,366 (100%)**
Disposition of Cases:	
cases served and closed during first year of operations	57 (16%)
cases served and closed during second year of operations	122 (35%)
cases to whom services are still provided	168 (49%)
Total cases served since LAP's inception	**347 (100%)**

*treatment or being treated includes *either:* evaluation, ongoing peer counseling/staff treatment, and follow-up; *or* evaluation, referral and follow-up.

Now Briefs Are Out-of-Date Even Faster

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West Publishing Company's Westlaw computer-assisted legal research service now carries "quick" opinions and unreported opinions in the Regional Reporter databases. Quick opinions are cases which are online before they're published in the advance sheets, and which are placed online prior to the addition of headnotes, synopses, and other West enhancements. Unreported opinions are those opinions not chosen for publication in a West reporter.

There are seven Regional Reporter databases, corresponding to the West regional reports. The Pacific Reporter contains decisions from Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, and Wyoming.

Rush To Judgment?

A Panacea with Fairness Problems

Federal and state legislatures are rushing to replace traditional court litigation with alternative dispute resolution (ADR) techniques, at the risk of abandoning Constitutional guarantees of fairness and equality.

That is the thesis of James Guill, associate chief administrative law judge with the U.S. Department of Labor, and Ed Slavin, counsel for Constitutional Rights of the Government Accountability Project, in a recent issue of the ABA publication, *The Judges' Journal*.

In "Rush to Unfairness: The Downside of ADR," Guill and Slavin note that 54 bills introduced in the 1987-1988 session of Congress contained ADR proposals, "and Congress's interest in the subject continues to grow."

They contrast ADR mechanics with features of the judicial system, and question "the motives of the special-interest groups that are promoting, and in some instances funding, the ADR campaign."

"A wholesale conversion to the use of ADR" could deny individual plaintiffs the right to trial by judge or jury, they predict. Plaintiffs could be "forced to submit their claims to someone who may be biased... or less than qualified, or unethical, or who for lack of statutory or regulatory control is less accountable and whose decisions may not be subject to judicial review."

Guill and Slavin describe ADR as permitting parties to select a person to resolve their dispute from a list of available arbitrators, mediators or facilitators, and paying the selected person a fee for the service. They say the system "may well be useful" for parties who have adequate financial resources and experience to investigate, research and contemplate the backgrounds, qualifications and prior decisions of the listed choices.

But ADR "may be highly inappropriate" in situations where the parties are of decidedly unequal bargaining power, they argue, quoting a 1983 study by the National Institute for Dispute Resolution.

That study concluded that arbitration, mediation and other settlement methods lacking judges and lawyers are particularly risky for "women, the poor, the elderly, persons for whom English is a second language and other classes of disputants traditionally less-powerful or less-skilled at negotiations than their opponents."

Again citing other research, Guill and Slavin say the dangers are that poor parties might be less able to amass and analyze needed information; might need to settle for an inadequate sum simply to survive; or might be forced to an early settlement through inability to finance litigation.

Guill and Slavin list elements that, they say, are provided by the judicial system but are lacking in ADR: fairness and public scrutiny in selecting and evaluating prospective judges; judicial independence; an enforced code of judicial ethics; better quality and more professional decisions; public access to trials contrasted with secret arbitration and mediation; access to appeal of judicial decisions; and finality of judicial rulings.

Despite the problems, Guill and Slavin say "ADR could soon be incorporated into our federal court rules, claims regarding liability for defective products, fair housing, whistleblower firings, medical malpractice, government contracts and 'negotiated rulemakings,' where government agencies bargain with regulated industries." They catalogue measures pending in Congress in which ADR could be mandatory for litigants in each of those areas.

"A potential danger is that the civil justice system and rulemaking functions in America could become largely secret, while denying due process," the authors argue. "Simply stated, ADR may deny citizens' rights to unbiased adjudicators by denying them due process."

They note that "business is investing heavily in promoting ADR," with grants of millions of dollars to ADR groups and law schools to teach ADR, and suggest that those millions are "an investment as opposed to a charitable contribution for social reform."

"Clearly, alternative dispute resolution is highly appropriate in certain cases," say the authors, but it "should be a method of informed choice rather than the only means available for resolving disputes."

Yes, Comrade Judge...

Soviet Lawyers Coming to U.S.

Under an unprecedented new program, 17 young Soviet lawyers arrived in the U.S. in September to work with American lawyers and to learn, hands-on, about the American and international legal systems.

The Soviet lawyers will work for six months in American law firms, corporations, law schools, and prosecutors' and public defenders' offices as part of the first work-study program for Soviet lawyers sponsored by the American Bar Association Soviet Lawyer Internship Project. The program is funded by the Soros Foundation-Soviet Union in New York, the International Foundation "Cultural Initiative," and the ABA Fund for Justice and Education.

The interns were selected from among 162 who applied in an open competition that featured an extensive written application, English proficiency examinations and personal interviews. Ten thousand applications were distributed throughout the Soviet Union last fall, and articles published in the Soviet popular press encouraged interested Soviet lawyers to apply directly to the ABA or through the Cultural Initiative.

The interns are a diverse group: nine men, eight women; eight from Moscow, nine from other Soviet cities; nine advocates, five legal scholars, two jurisconsults and one prosecutor. They represent a broad array of legal specialties, including business, environmental, criminal, family, international and entertainment law.

More than 100 American law firms, law schools, corporations and other legal organizations applied to host a Soviet lawyer. The host organizations were selected on the basis of their willingness to provide the interns with meaningful work-study experiences, compatibility of interests of each host and intern, the ability to provide individualized attention to the intern, and the willingness, in most cases, to provide a stipend to cover living expenses.

The ABA Soviet Lawyer Internship Project is administered by the ABA's Section of Individual Rights and Responsibilities, under the guidance of an advisory board consisting of representatives of the ABA sections of International Law and Practice, Litigation and Criminal Justice, as well as the Young Lawyers, Judicial Administration, and Senior Lawyers divisions.

Applications are being solicited for Soviet lawyers and American legal organizations interested in participating in the second year of the program during 1990-1991. Law firms, corporations, law schools, public defenders' and prosecutors' offices and other legal entities interested in hosting a Soviet legal intern beginning in September 1990 are encouraged to contact the American Bar Association Soviet Lawyer Internship Project, 1800 M St., N.W., Washington, D.C. 20036; (202) 331-2279.

For further information, contact Steven G. Raikin, American Bar Association, 1800 M Street, N.W., Washington, D.C., 20036, (202) 331-2279; or Anthony Richter, Soros Foundation-Soviet Union, 888 Seventh Avenue, 33rd Floor, New York, NY, 10106, (212) 397-5565.

Dust Off Those Shorthand Skills

Average Corporate Attorney in Washington Makes $76,173

Attorneys working in business/industry/not-for-profit organizations in the state of Washington have a mean income of $76,173—however, 10% have an income of $125,390 or more, and 10% have an annual income of $42,000 or less. These are some of the findings of a recent survey of 58 Washington organizations [*Compensation in Legal & Related Jobs in the State of Washington (Non-Law Firms)*, $150, Abbott, Langer & Associates, 548 First St., Crete, IL 60417].

Attorneys employed by manufacturing/extractive firms make significantly more (a median of $82,144) than those employed by nonmanufacturing organizations ($60,000).

The median income of attorneys rises fairly regularly as the size of the organization increases, from $54,500 in organizations with 1,000 to 2,499 employees to $84,880 in those with 25,000 employees or more. Those in organizations with under 1,000 employees have a slightly higher income than the next size group, having a higher percentage of chief corporate legal officers.

Overall, attorneys holding an MA/MS/MBA have a median income 8.1% higher than those holding only the LLB/JD. However, the additional degree provides a greater financial advantage only to attorneys in supervisory and managerial positions.

Income increases fairly regularly with year of LLB/JD. Attorneys graduating in 1985 and 1986 have a median income of $44,785, vs. $126,300 for those graduating in 1961 to 1965. Much the same pattern was found when income was compared to age of individual and length of experience.

Of the nine areas of concentration studied, the highest-paid functional area for attorneys is patent, copyright and/or trademark law (with a median income of $89,731), followed by administration/management ($84,900), and regulatory law ($83,504). The lowest median incomes are received by those in litigation ($52,500), mergers and acquisitions ($56,376), and real property law ($57,500). The remaining areas of concentration

studied (corporation, banking and/or business law; insurance, negligence and/or compensation law; and labor relations law) yield median incomes ranging from $60,421 to $65,020.

Supervision or management of other attorneys correlates strongly with total compensation. Attorneys who direct the activities of 10 or more attorneys have a median income of $161,008, *173% higher* than those who have little or no supervisory responsibility.

By specific job function, the median total cash compensation of the chief corporate legal officer is $88,483; the mean compensation is $101,608. However, 10% of this group make under $46,670 and 10% make over $165,500. Naturally, income varies within this job function (and all other job functions studied) on the basis of the numerous demographic variables discussed earlier.

The median income of chief divisional/subsidiary legal officers is $75,756; of managing attorneys $69,800.

Nonsupervisory attorneys have a median total compensation of $53,294, but 10% make under $41,700 annually and 10% over $96,648, varying by level of responsibility, type of employer, etc. When divided by level of responsibility, the median incomes are as follows:

Attorney "A" (senior level)	$65,020
Attorney "B" (intermediate level)	$49,116
Attorney "C" (junior level)	$41,750

Legal administrators have a median total income of $31,273. Paralegal assistants have a median total income of $30,720. The median total income of legal secretaries is $23,970 ($25,451 if they use shorthand, $23,480 if they use a dictaphone).

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

Civil procedure. In action to recover unauthorized withdrawal from guardianship account, bank prevailed in mandatory arbitration hearing. Defendant sought trial de novo, but before trial bank prevailed on motion for summary judgment. Held, bank entitled to attorneys' fees under MAR 7.3. For purposes of MAR 7.3, summary judgment was "trial de novo." ***Puget Sound Sav. Bank v. Richardson***, 54 Wn.App. 295, 773 P.2d 429 (5/30/89).

—*K. B. Tegland*

Creditor/debtor law. In ex-husband's bankruptcy case, lien imposed by Washington court on residence awarded to husband in prior dissolution action, to secure $8,000 judgment awarded ex-wife, was "judicial lien" within § 522(f)(1) of Bankruptcy Code. Debtor therefore could avoid lien as lien that impaired homestead exemption, to which he was entitled in bankruptcy. This result is consistent with policy that property settlements should be dischargeable, the same as other debts. Lien created in settlement agreement is not equivalent to consensual security interest but is judicial lien. ***In re Pederson***, 875 F.2d 781 (9th Cir. 5/30/89), *affirming* 78 B.R. 264 (9th Cir. BAP 1987), reported in this column March 1988.

—*M.D. Rombauer*

Evidence. In criminal case, trial court properly refused to allow defendant to impeach witness with letters he had written 21 years earlier, attempting to induce perjured testimony of one witness and threatening life of another witness in unrelated case. Letters were extrinsic evidence of prior misconduct, barred by ER 608. Defendant was not denied right to confront and cross-examine. ***State v. Barnes***, 54 Wn.App. 536, 774 P.2d 547 (6/20/89).

—*K.B. Tegland*

Real property. (Case 1.) Right of first refusal to purchase land is a personal property, not a real property, right. Therefore, assignment of it does not have to comply with statute of frauds for real property. ***Old Nat'l Bank v. Arneson***, 54 Wn.App. 717, 776 P.2d 145 (7/13/89).

(*Case 2.*) In unlawful detainer action, court had jurisdiction to hear tenant's counterclaim for specific performance of purchase option in lease. Some counterclaims are cognizable in unlawful detainer action, and some are not. Test is whether, if successful, they would defeat landlord's claim for possession. Exercisable purchase option would do so. ***Kelly v. Powell***, __ Wn.App. ___, 776 P.2d 996 (8/7/89).

(*Case 3.*) Grantor conveyed land to grantee by deed that said "except" for a roadway that grantor retained. Grantor had fences along both sides of roadway and, after conveyance, made exclusive use of it. In this case trial judge granted summary judgment, holding that deed merely retained easement in road. *Held*, reversed. Word "except" is appropriate for retention of title to part of land conveyed, and word "reserve" is appropriate to easement. Use of word "except," together with fencing and grantor's exclusive use of road, created question of fact whether title or only easement was retained and precluded summary judgment. ***Russell v. Garver***, __ Wn.App. ___, 777 P.2d 12 (8/8/89).

—*W. B. Stoebuck*

Trusts. (*Case 1.*) Brother was trustee for developmentally handicapped sister and also her guardian. She consulted lawyer, complaining that her brother was treating her poorly. After what court determined was inadequate investigation, lawyer moved to have himself appointed to replace brother as guardian, which motion trial court granted. Then lawyer moved to replace brother as trustee. Trial court denied that motion, removed lawyer as guardian, and denied him attorney's fees under Rule 11 because of his inadequate investigation. *Held*, modified. Trial court properly refused to remove brother as trustee, properly removed lawyer as guardian, and properly found lawyer violated Rule 11. But sanction for violation of Rule 11 was inadequate. Remanded for entry of award of $10,000 attorney's fees to trust, against lawyer, for this appeal. ***In re Guardianship of Lasky***, 54 Wn.App. 841, 776 P.2d 695 (7/24/89).

(*Case 2*). Decedent set up umbrella trust, divided into three "duckling trusts" for surviving spouse, for children by former spouse, and for former spouse. Surviving spouse was named co-trustee with a bank and had sole discretion to determine amounts to go into each trust. In this action, former spouse challenged surviving spouse breached fiduciary duty in funding of trusts for former spouse and her children, but court dismissed on summary judgment. *Held*, reversed. There were genuine issues of fact on several questions, including surviving spouse's conflict of interest. ***Waits v. Hamlin***, __ Wn.App. ___, 776 P.2d 1003 (8/10/89).

—*T.R. Andrews*

Wills and estates. (*Case 1.*) Survivor of 22-year meretricious relationship sought widow's benefits under Social Security Act. Her entitlement thereto depended on whether she held same status under state law as wife with respect to intestate devolution. On certification from U.S. District Court for Eastern District of Washington, state Supreme Court answered that she did not. Division of property following termination of relationship of unmarried cohabitation is based on equity, contract, or trust, and not on inheritance. ***Peffley-Warner v. Bowen***, slip opinion in Wash. State Supreme Ct. No. 55674-1 (9/14/89).

(*Case 2.*) Will authorized executor to pay taxes imposed "upon my estate or any beneficiary thereof on account of bequests made herein." Court of appeals determined that, reading will as a whole, this clause limited executor's authority to pay taxes incurred on property that passed under will. As result, $412,000 that passed under a Totten trust bank account outside of probate was required to bear its pro rata share of taxes. ***In re Estate Fleischman***, 54 Wn.App. 795, 776 P.2d 684 (5/30/89).

—*T. R. Andrews*

NEWS FROM HOME

Issaquah lawyer **Tom Chambers** was named trial lawyer of the year by the Washington State Trial Lawyers Association at its convention in Salishan, Oregon in July. The award carries with it a bronze bust of Justice **Louis D. Brandeis**. Chambers has been on the WSTLA board since 1976 and was its president in 1985-1986.

Also elected at the WSTLA conclave were **Mary Ann Ottinger** of Issaquah as vice president for finance, and, completing the Issaquah sweep, **Mark Barber**, who was chosen to fill the eighth congressional district seat on the WSTLA board.

Michael J. Hemovich has been elected to the 1990 Ninth Circuit Judicial Conference Executive Committee. A former president of the Association, he has practiced in Spokane since 1952.

Rick Fancher of Spokane has been elected the east side vice president of the Washington State Trial Lawyers Association.

David Michaud, also from Spokane, is the new WSTLA board member for the fifth congressional district.

Lonny Bauscher has joined Davis, Arneil, Dorsey, Knight & Parlette in Wenatchee. A native of Colfax, he holds degrees from Texas A&M (Ag. Ec., 1983), University of Idaho (J.D., 1988), and Boston University School of Law (LL.M., 1989). He lives in East Wenatchee.

Russell Pike has joined the Vancouver office of Williams, Kastner & Gibbs, handling environmental and commercial litigation. His practice will emphasize state and federal regulatory compliance with hazardous waste and environmental laws.

The Gonzaga Law School moot court team of Anthony Keating and Margaret Archer placed third at the National Appellate Advocacy Competition (NAAC) finals in Washington, D.C., August 11-13. They were among 17 teams competing at the national level that had placed first and second in regional competitions earlier this year.

Gonzaga's moot court teams have been strong national competitors recently. Last year, and in 1986, GU teams placed second in the nation.

In this year's competition, **Margaret Archer**, a native of Spokane, competed as a first-year student, an almost unheard of occurrence in NAAC. She is a Thomas More Scholar and was recently accepted as a *Gonzaga Law Review* member.

Anthony Keating, a second-year law student from Weehawken, New Jersey, also won fifth best speaker at the national competition. Keating is a Thomas More Scholar.

Gonzaga scored decisive victories over the universities of Georgia and South Carolina in preliminary rounds, and over Marshall-Whythe (William and Mary) in quarter-finals. Pepperdine, whom Gonzaga had beaten in regional competition, prevailed over Gonzaga in the semi-finals and went on to win the national competition in the final round.

An organizer for the national competition, **Mary C. Kates**, wrote to **James Vaché**, dean of the Law School, following the event to commend Gonzaga's sportsmanship:

"Gonzaga was defeated in the semi-finals by Pepperdine, which had no coach and no bailiff. **Tari Eitzen** (Gonzaga's coach) and the Gonzaga team took the Pepperdine team under their collective wing and helped them prepare for the final round," the organizer wrote. "It was Gonzaga that took the team to lunch and discussed argument strategy and it was a Gonzaga student that bailiffed the final round. When Pepperdine won the competition, it was Gonzaga that took the team out to celebrate the victory."

Christine Hohman, who accompanied Gonzaga to the nationals as team bailiff, volunteered to bailiff for Pepperdine during the final round. Hohman was a member of another Gonzaga team that placed third at the regional competition.

Gonzaga School of Law's National Appellate Advocacy Team. From left: ***Margaret Archer, Teri Eitzen****, faculty advisor* ***Anthony Keating.***

Karen Phillips Wick, court administrator of the Evergreen District Court, Snohomish County, in Monroe was recently elected president of the National Association of Court Management (NACM) at their 1989 annual meeting in Mt. Crested Butte, Colorado.

Wick has held her current position for more than 18 years. She has served on the NACM board of directors (1985-1986), as secretary-treasurer (1986-1987), as vice president (1987-1988) and president-elect (1988-1989). She is active in the Washington State Association for Court Administration (WSACA) and has held all offices including president (1981-1982). Wick has served on the Board for Trial Court Education (BTCE) (1979-1985), Washington Pattern Forms Committee (1982-1985), Special Task Force on the Justice Court Criminal Rules (1985-1986), and the Special Task Force on Court Infraction Rules (1987-1988).

In June 1988 she became a Fellow of the Institute for Court Management (ICM) of the National Center for State Courts and received ICM's first-ever "Award of Merit" for her thesis. Wick has taught

numerous in-state classes for courts of limited jurisdiction, served this past year as an instructor for the Washington Supreme Court (Washington state jury standards for rural courts), and published an article in the Spring '88 Issue of the *Justice System Journal*.

Karen Phillips Wick

The National Association for Court Management, which represents over 1,500 court managers in the United States and its territories, Canada, Australia, China and New Guinea, is dedicated to improving the administration of state courts by providing educational opportunities for its members.

William H. Neukom, vice president of law and corporate affairs at Microsoft Corporation, recently was elected to the American Judicature Society board of directors. He is among 32 new members who were elected at the Society's August 5 annual meeting in Honolulu.

A graduate of Stanford Law School, Neukom is a member of the SKCBA Long Range Planning Committee; the WSBA Task Force on Professionalism; the ABA Standing Committee on Dispute Resolution and the executive counsel of its Individual Rights and Responsibilities Section; and the Federal Bar Association of the Western District of Washington. Neukom is also a speaker at the Practicing Law Institute's Computer Law Institute and is on the University of Puget Sound Law School's Board of Visitors.

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.

Heller, Ehrman, White & McAuliffe, announced the opening of an office in Anchorage, Alaska in August. "We are delighted to establish a presence in Alaska so that we can best serve the diverse needs of this significant market," said **Curtis Caton**, Heller, Ehrman managing partner.

Leading the Heller, Ehrman Alaska team are **Harold M. Brown**, former Attorney General of the state of Alaska, and **Jerry E. Melcher**, one of Alaska's foremost litigators and commercial law practitioners.

Heller, Ehrman, White & McAuliffe has offices in Seattle, Portland, San Francisco, Palo Alto, Los Angeles and now Anchorage. Founded in 1890, the firm has nearly 300 attorneys.

The Anchorage office of Heller, Ehrman, White & McAuliffe will be located on the 19th floor of the Enserch Building. Because of extensive renovation currently in progress, the firm is operating out of temporary quarters on the 18th floor of the same building. The address is 1900 Enserch Center, 550 West 7th Avenue, Anchorage, AK 99501-3571. The telephone number is (907) 277-1900.

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

Life Styles of the Obscure and Assertive: The local newspaper, *The Columbian*, out-scooped this reporter by rushing to press with the building plans of assertive CCBA attorney **John Meader**. Meader, who is presently unattached, mowed down a few corn fields to construct a $750,000 by 7,200-square-foot cabin known locally as "Meader's playhouse." It features the standard gimmicks: view of the slough, upstairs hot tub and ceiling mirrors with the disclaimer, "Objects in mirror are smaller than they appear." The builder even threw in a set of ginsu knives. When I questioned John's partner, **Vic Devlaemink**, on his thoughts, Vic stated, "Gooooollllly, Mr. Nichols, it sure is *big*." Well put, Vic. Meader was a little more distinct when asked why he built it. "Something just kept telling me, 'If you build it they will come.' So I did and now I'm waiting for 'em." And to think, it all started with name changes.

Travels with Johnny: Each summer, with thanks to the CCBA budget, this reporter travels to other counties in Washington to get a flavor of how our lesser brethren live. Rather than staying in some swank Motel 6, I chose to live like the locals in their own habitat. My first trip was to see the Tri-Cities, more particularly Pasco, and specifically one **Thomas Roach**, known locally as Tom Roach. Tom practices with brothers **Pat** and **Jerry** and some other guy named **Johnson**. Tom concentrates on immigration law. Apparently Pasco is a large point of entry/trade center for all sorts of doodads (Tom's word for widgets), and gets all kinds of business. Tom's new house bespeaks the results of his practice. While no "Meaderville" (see above,

supra), it features all the standard equipment: hard cardboard floors, inflatable pool and entertainment center consisting of a 10-inch black & white TV and a Fisher-Price stereo. Needless to say, I had a very pleasant visit.

My second venture took me to the capital of the Inland Empire, Spokane, and a visit with an old and dear barrister, **Hugh** "Terry" **Lackey**. Terry, after a real tough time in law school, is now the head of a very big firm with branch offices in Seattle, Idaho and — soon — in Ritzville. Unfortunately, my interview with Terry was somewhat skimpy. I was to spend a week at the Lackey estate, but upon my arrival I was informed that the guest house had been remodeled into another garage to house the family "Benzes." The kindly neighbor family took me in, and there I waited for the Lackey family to return from vacation. While Terry never did appear, the neighbors showed me some pictures they had sneaked of the Lackey's at one of their many parties, and they look like they are all doing fine.

Those bar associations who desire future visits should make arrangements now for next summer.

EAST KING COUNTY REPORT
by **RANDOLPH I. GORDON**

These words were written at least six weeks ago: when the calendar revealed it to be early fall, but the thermometer belied belated summer. By the time these words are read, the new season will have established itself, unless the *novus ordo sectorum* ("new cycle of the ages") proclaimed on the reverse of the Great Seal has yielded to a "new cycle of the seasons," courtesy of the "greenhouse effect." In East King County, the fall usually means time to stop picking strawberries and start picking pumpkins, walks through a changing foliage, and ... election of East King County Bar Association trustees.

There are three open positions for the board of trustees: the remaining year on president-elect/vice president **Ken Davidson**'s original trustee term (presently filled by **Diane VanDerbeek**); two three-year terms, currently held by **Jim Trujillo** and **Bruce Gardiner**. **VanDerbeek** will not be seeking election to the post, having already achieved a record of long and effective service both as a trustee and as chair of the Eastside Satellite Task Force and Court Liaison Committee. There will also be elections for secretary, treasurer, and vice president. Nominations will be open until mid-November. Ballots will be mailed between November 25 and November 30, to be returned by December 5.

Elections have already brought changes to the King County Council. **Bill Reams**, the last remaining member of the King County Council as originally constituted, will be replaced by **Brian Derdowski**, whose theme of "sensible growth" evidently struck a chord with voters in East King County witnessing the effects of explosive development on existing communities.

It is expected that Derdowski, among other matters, will be considering County Executive **Tim Hill**'s proposal for an Eastside Law and Justice Facility. Whether such a facility will include a new jail, and whether such a jail will be located in an urban or rural setting, remains to be seen. Certainly, location of a jail may affect plans for expansion of the Eastside Satellite: having a courtroom (and judge) in close proximity to the jail would expedite arraignments for persons held in custody — and reduce security problems, always an issue when jail facilities are proposed. Locating such a facility where it is wanted will probably pose a challenge. Observers of similar public inquiries will note that there are as many bases for objectively determining a site as there are neighborhoods. Curiously, the unique analysis of each neighborhood leads to the same conclusion: elsewhere!

The EKCBA board will officially launch the Eastside Legal Assistance Program (ELAP), the evolution of which program has been previously chronicled in this report, at its November 13 luncheon at the Bellevue Hyatt Regency. The featured speaker will be Chief Justice **Keith Callow**; the honorary guests will be the King County Executive and mayors of the major Eastside cities. Status scores: Speaker and Honorary Guests: Important; Those in Attendance: In; All Others: out.

Last, but not least, your reporter was disappointed to learn that the Eastside office of Lane Powell Moss & Miller has returned to the Westside, evidently resisting the Great Migration east — or failing to observe or afford its charms. Evidently, there is ample office space in the main office to accommodate the Eastside contingent extradited to Seattle.

They will be remembered this Thanksgiving.

LOREN MILLER BAR ASSOCIATION
by **RICHARD JONES**

The 1989 Northwest Minority Job Fair was held on September 22 at the

Participants in the Northwest Minority Job Fair

Four Seasons Olympic Hotel in Seattle. Thirty-six employers interviewed 103 minority second- and third-year law students. The employers were primarily law firms and included a number of public agencies, for example, the FBI, IRS and CIA. The employers were from Seattle, Tacoma, Portland and Washington, D.C. The students were from 15 different law schools across the country, ranging from California to Michigan to Texas. Each student had a minimum of five interviews guaranteed, with a number receiving more than that. Washington State Supreme Court Justice Charles Z. Smith gave an eloquent presentation to the students at the reception and addressed the opportunities for the applicants and their impressive qualifications. This job fair appears to be a tremendous success as the organizers of the event have received calls from several firms in California inquiring about future opportunities to participate. Special thanks are due to the firm of Lane Powell Moss & Miller for their continued support of this annual event. The job fair is sponsored by the Loren Miller Bar Association, the Asian Bar Association, the University of Puget Sound Black Law Student Association and Lane Powell.

Loren Miller Bar Association is also sponsoring its annual Thanksgiving Food Drive, which last year contributed nearly $4,000 in grocery store certificates to pre-identified families with special circumstances. This was due in substantial measure to the combined energies and efforts of the Washington Women Lawyers, King County Chapter, the Asian Bar Association and the LMBA. Contributions are again being solicited and should be made payable to the Loren Miller Bar Association and directed to Richard Jones, LMBA president, 3600 Seafirst Fifth Avenue Plaza, 800 Fifth Avenue, Seattle, WA 98104. (Phone: (206) 442-7970.)

PIERCE COUNTY REPORT

by **GEORGE S. KELLEY**

Reports received from the State Bar Convention at Whistler, B.C. show that Pierce County won most of the golf tournament awards. **Val Honeywell** and **Mike Hitt** won the low-gross award in the best-ball division. **Bill Bergsten**, our representative to the Board of Governors, took time off from his Bar duties to win the low-gross division of the championship tournament. Finally, **Marc Christianson** won low net in the Calloway division while his wife, **Teresa**, who is not even a lawyer, shot low gross in the women's division. It is assumed that all these athletes had time to attend CLE classes and other convention activities.

Kevin Boyle is apparently well-recovered from a bicycle crash. His helmet, which was cracked by the impact, saved him from serious brain damage. His face did not fare so well and Kevin, who may have once been thought to be ruggedly handsome, is now merely rugged. **Neil Hoff** has had a good recovery from an eye problem which left him temporarily vision-impaired. He still has some trouble reading law books, but that should not affect his ability to practice law.

The fall season's first bar dinner held at the Tacoma Club advertised lawyer-legislators **Art Wang** and **Ron Meyers**

as speakers. They were to give a legislative update on the changes made in the most recent meeting of the Legislature. Meyers canceled at the last minute, and Wang winged Ron's portion of the program. The meeting was not well-attended. Perhaps a lecture on golf techniques would be of more relevance to the members of the bar.

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

Office Moves. Preston, Thorgrimson, Ellis & Holman announces that **James K. Doane** has joined the firm as an associate. **Jean Johnson, Christopher Marsh, Donna M. Moniz, Mary S. Petersen** and **Scott C. Wakefield** have become directors at Reed, McClure, Moceri, Thonn & Moriarty. Unigard Security Insurance Company's legal department has moved to 15805 Northeast 24th St. in Bellevue. **Ralph Cassady** and **Raymond M. Klein** have become of counsel to the recently-opened Los Angeles office of Davis, Wright & Jones. **Michael H. Ferring. Robert W. Sargeant** and **John J. Reed, Jr.** have joined Oles, Morrison & Rinker. **Tim Blake** has recently taken a position as Branch Librarian for the United States Courts Library in Phoenix.

Worthy of Note. The Young Lawyers Division of the Seattle-King County Bar Association has elected new officers as follows: **Daniel Gottlieb**, chair; **Michael Larson**, vice chair; **Marc Lampson**, secretary; and **Donna McNamara**, treasurer. **Judith M. Runstad** has been appointed to serve on the Washington State Growth Strategies Commission. **Daniel C. Blom** has been appointed policy coordinator and will serve as liaison to the Union Internationale Des Avocats of the Tort and Insurance Practices Section of the American Bar Association. Graham and Dunn has entered into a preferred-referral association with the international law firm of Jones, Day, Reavis & Pogue.

Would You Buy a Used Car From Me? The award for pro bono service "above and beyond" this month is made to **James L. Vonasch** for accepting the referral of a federal criminal case from this correspondent. Vonasch did not obtain a retainer. Other readers who might be interested in referrals from this office are urged to call or write, and indicate their willingness to accept such lucrative cases.

SPOKANE COUNTY REPORT
by **R.W. KUHLING**
and **BERNIE McNALLEN**

The outpouring from Spokane's senior attorneys flooded over the effort of the young lawyers and gave the seniors needling rights as the old folks totaled up more pints donated in the Count Dracula Blood Drive. **Rocky Daly** officiated over the competition pitting the young lawyers against the seniors. He said the seniors were drained but pleased with their victory over youth. Participants were later treated to a pizza party for serum restoration. Rocky knows who was absent on donor day and is bent on tapping you next year.

Bill Clark, law professor at Gonzaga University and former assistant attorney general, has become associated as of counsel with the Paine-Hamblen firm.

The Washington State Trial Lawyers celebrated the Washington state centennial and 200 years of the Constitution as part of the Eastern Washington State Fair recently held in Spokane. Many members of WSTLA in Spokane "peopled" (rather than "manned") the booth and distributed literature about the Constitution, the People's Law School and generally discussed a variety of topical issues with fairgoers. **David Smith** and **Mary Springer** (WSTLA's representative in Spokane) were instrumental in arranging the program and staffing WSTLA's entry at this year's fair which, incidentally, was awarded a blue ribbon by the fair's governing committee.

WASHINGTON WOMEN LAWYERS

The Seattle-King County Chapter of WWL has elected the following to its board of directors: president: **Janet McKinnon**, Mills & Cogan; secretary: **Jeanne Clavere**, Krutch, Lindell, Judkins & Keller; treasurer: **Lynne Graybeal**, Monroe, Stokes, Eitelbach & Lawrence; VP communications: **Laurie Levin**, Lane Powell Moss & Miller; VP programs: **Rosemary Daszkiewicz**, Perkins Coie; VP public relations: **Jeanne Verville**, Simpson Investment Company; VP continuing legal education: **Lisa Schuchman**, McKisson & Sargent; VP membership: **Janice E. Ellis-Dick**, Lane Powell Moss & Miller. Representatives to state WWL board are **Beth Clark**, Foster Pepper & Shefelman; **Elaine Winters**, Public Defender's Association; and **Alma Kimura**, sole practitioner. Representative to SKCBA Board is **Providence Worley**, Casey & Pruzan. At-large members are **Anne Schindler.** King County Prosecutor's Office, Civil Division; **Sarah Sappington**, Office of the Attorney General, Support Enforcement; and **Donna Wise**, King County Prosecutor's Office, Criminal Appellate Division.

Washington Women Lawyers is dedicated to the advance and support of all women in the legal profession. Its programs and publicity enhance recognition

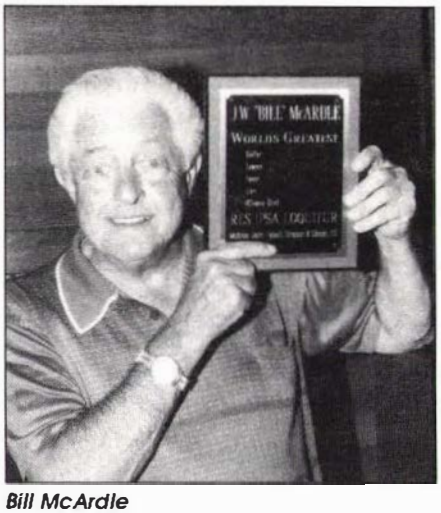
and effectiveness of women lawyers and judges, increase interaction between women lawyers of diverse backgrounds and practices, and provide a forum for informing members in the community about the social and legal issues of concern to women.

YAKIMA COUNTY REPORT
by **JOSEPH D. HAMPTON**

Assigned Counsel Blues. Once again, Yakima County is inundated with criminal cases for which it has inadequate defense counsel. All private practitioners under age 65 are being assigned to represent indigent accused, but this year, cause for some hope exists. The county commissioners have funded a new public defender's office, which will be headed by **Dan Fessler** and staffed by three full-time attorneys. Counsel with PD contracts will continue to work felony cases. The combination of the new office and the regular contractors is hoped to obviate the need for further conscription of attorneys from the local bar.

When the music stops, everybody sit down. Here is a brief list of the many participants in the game of musical offices which began early this year. **Susan Arb**, **Doug Haynes** and **Duane Knittle** have joined the prosecutor's office. **Jim Davis** is the newest partner in Dohn, Talbott, Simpson, Gibson & Davis, and **Ray Gessel** has joined that firm as an associate. **Dorothy Broderick** is now the city of Union Gap attorney. **Dan Johnson** is associated with Almon, Berg & Adams. **Jim Tree** is now an assistant Yakima city attorney. Apologies to anyone omitted.

McArdle retires. Long-time Yakima attorney **J.W. "Bill" McArdle** is going into semi-retirement. Bill returned to his home town of Yakima to practice law in 1950 after an adventurous hiatus which included college, law school, and the military. He served as a crewman on carrier-based bombers in both the Pacific and Atlantic theatres of war in World War II. After graduating from law school at Gonzaga, Bill joined the firm of Olson and Palmer, and through nearly 40 years of practice has handled almost every type of case imaginable, from murder one to water litigation. He was president of the local bar association in 1973-1974, and has served on numerous State Bar committees. The same firm he joined in 1950 evolved into McArdle, Dohn, Talbott, Simpson & Gibson recently. The firm threw a retirement bash and presented him with a plaque that reads "J.W. "Bill" McArdle — world's greatest golfer, lawyer, lover, liar (choose one)." With Bill's retirement and the addition of **Jim Davis**, the firm will henceforth be known as Dohn, Talbott, Simpson, Gibson & Davis. Bill will continue practicing law as a public defender in juvenile and mental cases, as well as an arbitrator in civil cases. Best of luck and happy quasi-retirement.



Bill McArdle

IN MEMORIAM

Robert G. Austin, 64, died August 9, 1989 in Seattle. Born in Wyoming, he moved with his family to Seattle in the 1930s. In World War II he served with the Seabees in the South Pacific. After the war, Austin obtained a degree in sociology from the University of Washington; he then worked for a number of years as a parole officer, then chief parole officer, for the state of Washington.


Robert Austin

In the 1960s Austin returned to the UW, this time graduating from the School of Law. He practiced law for a few years, then turned his hand to lobbying in Olympia in 1968. Austin became known as an institution around the Legislature, an effective advocate who

pressed his clients' interests with perseverance and humor.

WSBA Legislative Liaison John S. Fattorini, Jr., a friend of Austin's, said that "Bob worked as my backup for the last three years and was of immense assistance to the Bar Association's legislative program. He did an outstanding job for the Association and its members and will be missed."

Survivors include four children and four grandchildren.

Elizabeth Shackleford, 94, died September 3, 1989 in Des Moines, Washington. Daughter of the late Pierce County Superior Court judge John Shackleford, Elizabeth Shackleford read law in her father's office and was admitted to the Bar in 1922 without a law degree. She held an undergraduate degree from the University of Puget Sound, and last year, on the seventieth anniversary of her graduation, the University awarded her an honorary law degree.

Shackleford practiced with her father until his death in 1927, then joined the Internal Revenue Service. In the 1950s and '60s, having returned to private practice, she was for many years the only woman lawyer in practice in the area and one of the few who took black clients. In 1954, she was appointed a Pierce County justice court judge, a position she held through the job's title change to district judge, until 1967. From 1963 to 1967 she also served as a justice of the peace. Shackleford practiced until 1981, when she retired at age 85. Her last years were full of honors from groups recalling her singular service to minorities and women over a long career. Survivors include a number of cousins.

Phillip Schwarz, 72, died September 14, 1989 in Seattle. One of the state's last lay district judges, he gained national notice by requiring drunken drivers to display the fact by carrying bumper stickers on their cars.

Schwarz attended the University of Washington, then skippered tugs on Puget Sound for the Army Transportation Service in World War II. After the war, he worked in the dairy business, ran a wholesale grocery in Seattle, then bought an insurance agency on Vashon Island, which he ran until this year.

Appointed a justice of the peace on the island in 1958, Schwarz held the post until 1962. In 1970 he was elected the island's first district court judge. Despite a 1973 law requiring district court judges to be lawyers, Vashon Island voters reelected him by write-in ballots in 1974; the law was repealed in 1975, and Schwarz remained on the bench until his death.

Active in a variety of community organizations, Schwarz is survived by his wife, Doris.

Melissa Landers, Assistant Librarian for Public Services of the Gallagher Law Library, University of Washington, never saw her article on "Computerized Legal Research in Washington" published in the September issue of this magazine, for she died — all too young — following a courageous and inspirational battle with cancer. However, all of us who were touched by her warm, blithe spirit over the years will remember her as a professional in the purest sense of the word. Although she had known the seriousness of her terminal illness during the past year, she not only kept up the struggle to survive, but she also refused to yield to the temptations of self pity or sympathy. To the very end, she insisted on excellence in serving her law school and the legal community. Not only have we lost a colleague, we have lost a close, dear friend.

A memorial fund in her name has been established through the Washington Law School Foundation that will help support aspiring library students who are interested in law librarianship.

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