

Washington State **Bar**
News

Volume 43, No. 12, December 1989



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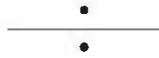


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ANNUAL CHEMICAL DEPENDENCY ISSUE



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Note: A list of state-approved chemical dependency treatment facilities, which the *Bar News* has carried in past years, is available free of charge by telephone or mail request from: *The Green Book, Bureau of Alcohol and Substance Abuse, DSHS Mail Stop OB-21W, Olympia, WA 98504. (206) 753-5866.*

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ART CREDITS

Seattle's night lights sparkle through "Volumetric Space Frame," the 1969 steel sculpture by **Doris Chase**. It was presented as a gift to the city by the Seattle Arts Commission. Photo by **Jennifer Klamm**, Bar staff.

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

About That Survey

Copies of the complete results of the WSBA Membership Survey conducted in the spring of 1989 (see Geoffrey Revelle's letter, page 5 October 1989 *Bar News*) may be requested from George Scott, Director of Public Affairs, 500 Westin Bldg., 2001 Sixth Ave., Seattle, WA 98121-2599.

A Fax Rule is Needed

Editor:

We wish to express our support for the proposed revision to CR 5, which would allow service by facsimile transmission ("fax") machines, reported in "The Board's Work", *Bar News*, September 1989.

To verify the receipt of service, perhaps the sender should file the fax-produced record showing the transmission time, and a copy could be mailed and postmarked on the same date to the receiver. Of course, the time of faxing must be before 5 p.m. to count for that date (although a 4 p.m. cutoff may be better).

The privilege of serving by fax should only be allowed to those attorneys who have a fax machine by which they are willing to receive service. Attorneys desiring to use the fax for service and receipt of pleadings should be required to register at a central location (for instance, a telephone number with the WSBA, which would serve as the registry). Those attorneys would be required to immediately update the registry should their fax number be changed, or should they no longer desire to be served by fax. Then any attorney serving pleadings could simply phone the registry to ascertain whether the recipient attorney has fax service authority. This rule should alleviate the complaint by the recipient at having to pay for the receipt of faxed transmissions: for the privilege of being able to serve by fax, you bear your costs of receipt, whatever they may be. An attorney's option is not to use

his or her fax for service.

Perhaps there would also be a restriction on publishing your fax number on stationery or fax lists unless you are willing to serve and be served by fax, or at least unless you indicate your fax limitations (e.g., "Non-service Fax: (206) 226-0800").

We must move forward with the times and with the state of the art in electronic communications. We can't ignore that fax transmissions and even electronic mail are with us and must be dealt with now. With the escalating costs of litigation, this is one area where utilization of available technology can result in instantaneous service, eliminating delays or misdelivery with transmittal by U.S. mail. Use of fax should prove cost-effective for those practitioners not served by regular delivery routes of LMI/ABC, or who need to effect service on counsel in another city or county. Use of fax should avoid the costs associated with special messengers. If the recipient experiences incomplete or illegible transmission, an immediate telephonic or fax objection can be registered with the original sender. If the problem remains unresolved, the recipient has a "hard copy" record to document his objections to the court.

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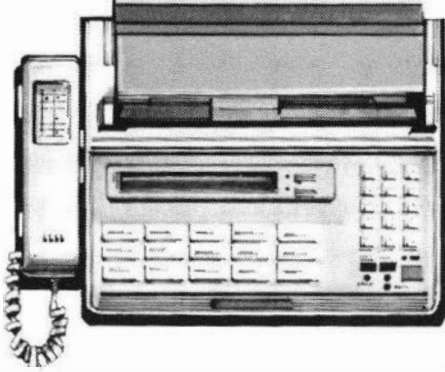
More On Voir Dire

Editor:

After returning from a summer-long sabbatical, I read through my stack of back issues of the *Bar News*. The debate between Paul Luvera and various members of the King County bench, together with comments by Judge Nichols, Ken St. Clair and Jan Peterson was interesting, but it misses the point as pertains to King County.

The problem in King County is not the scope of voir dire, but rather the fact that the typical jury panel in King County is absolutely and totally unrepresentative of the citizens of the county. The press survey printed in the *Seattle P-I*, March 26, 1989, revealed what we all know. In wrongful death cases, King County verdicts are the lowest in the state, while statewide jury verdicts are the

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second lowest in the nation.

Although juror Betty Dean's letter to Judge Shellan ("Letters," *Bar News*, August 1989, p. 11), was interesting, it perhaps reflects a misunderstanding on the part of Dean which possibly could have been addressed by the trial judge. In any case, with an active trial judge properly explaining the role of voir dire, and with a more representative jury panel, the perceived problems of lengthy voir dire in King County would disappear.

PAUL W. WHELAN
Seattle

Voir Dire Department?

Editor:

Just a simple suggestion regarding the voir dire dialogue of recent issues: conduct the jury selection somewhere other than before the trial judge who will hear the case.

Perhaps a separate voir dire department could be created, headed by a commissioner. Extensive voir dire could then be conducted without "wasting" the judge's time or his courtroom. In fact, it might even be possible to conduct multiple-jury selections in close proximity, under the supervision of one commissioner.

ROBERT A. MANDICH
Seattle

Raising Filing Fees Is Not The Answer

Editor:

I read Will Roarty's letter in the September *Bar News* with a mixture of reactions. I agree with Roarty that legal assistance should be available for low-income people in Washington. Some years ago, during a law school internship with Tacoma's legal-aid office, I saw first-hand that these folks need legal advice and representation, but can seldom afford to pay for it.

I disagree, however, with Roarty's proposed funding source. He suggests that the superior court filing fee be raised from \$78 to \$100 and that the increase be earmarked for legal funding. This would address one problem by exacerbating several larger ones.

Local court fees are an important source of revenue to counties and cities who must pay for the courts. Over the last decade, counties have had to commit an ever larger portion of their budgets to fund the criminal justice system, until today most spend between 50% to 75% of their general fund revenues to pay for courts and law enforcement officers and jails. This is not an easy shift to make for many of our local governments, whose finances are tenuous and who must divert funds from other services to pay for this increase. Particularly in the criminal justice area, local revenues have not kept pace with demand and the system is forced to prioritize in order to spread scarce assets still more broadly.

The revenue situation is made still more difficult by virtue of the fact that the state takes 32% of local filing fees and requires the bench to add a 90% surcharge to local fines and penalties as a means of funding state programs.

I have often heard the statement that the courts are constitutionally guaranteed and so they should not be required to exist on a fee-for-service basis. While this is true, it is equally true that there ain't no free lunch and that someone, sometime has got to pay the bills. With the increase in workload, the additional mandates,

albeit for worthy purposes, by the Legislaturc, and the sapping of local government's ability to pay for court services through existing surcharges on local revenues, a substantial additional surcharge on the filing fee for still another program is not in the public interest.

How will local government's funding problems affect the Bar? As it becomes more difficult for counties and cities to pay for adequate court personnel and resources, there may be more criminal trials taking precedence over the civil calendar and fewer clerks at the counter to assist lawyers with their papers. In a larger sense, as local government must commit more general fund money to the criminal justice system, there will be less to pay for things like parks, environmental protection, public works, and the other services that make our communities a worthwhile place to live.

In short, preserving access by low-income folks to legal assistance is a worthy goal. Placing additional surcharges on local court fees, however, is an inadvisable means of achieving that.

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Mandated Pro Bono Work?

In November I testified at a Senate Law & Justice Committee hearing on the subject of state-mandated pro bono work by all lawyers in Washington state. State Sens. Phil Talmadge and Kent Pullen are considering introducing legislation in the 1990 session which, if enacted, would require all lawyers to provide free legal service.

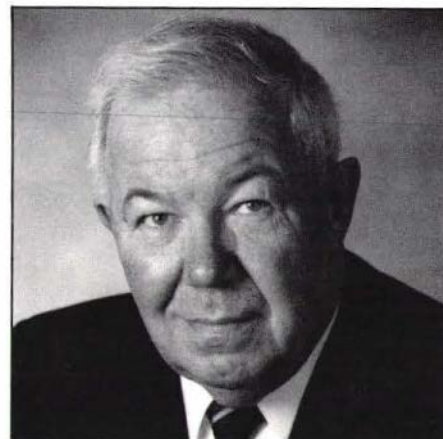
This legislation would not require physicians, architects, dentists or engineers to provide free service. Nobody is proposing that all businesspersons donate a percentage of their work to those in need. Only lawyers are selected in this legislation. Why? Perhaps it is because lawyers are the common focus of denigration in our society.

We have all heard plenty of negative lawyer stories. I want you to know some of the facts that tell another side of the story. You should know what real lawyers are doing to help real people in need. It's what I told the Senate committee.

Today in Washington state 25 of 39 counties offer volunteer lawyer programs for low-income residents. Let me tell you about one program, in my home county of Lewis, which is typical of programs throughout our state. In Lewis County a legal service office was opened in March of this year. The office is open Monday and Tuesday from 9-4 p.m. The office is staffed by one paid employee and three volunteers. Not a nickel of tax revenue is involved. Most of the office furniture and equipment was donated by Lewis County lawyers. When asked, 47 out of 52 county bar members volunteered to provide free service to those who meet the federal poverty level guidelines. Lewis County is just a small part of the bigger picture.

Lawyers in seven counties are offering "do it yourself" dissolution clinics. Benton and Franklin counties have 97% of their 181 lawyers doing free legal work for low-income persons. Joe Pemberton of Whatcom County received an ABA award for his work in the volunteer lawyer program of that county. Over 3,000 lawyers statewide are involved in some type of structured volunteer work. Many more thousands provide unstructured volunteer work for low-income persons and worthy causes. Say what you will about lawyers, I'll match the volunteer efforts of lawyers in Washington state against any other profession or group.

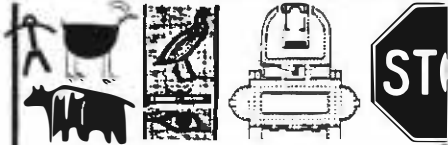
I believe that we have been granted a great privilege by being able to practice law. This privilege is accompanied by a heavy burden of responsibility to those less privileged. We cannot sit back, rest and stop expanding our community service. But our profession can be proud of its record of providing services to those in need. When nonlawyers denigrate the legal profession, you can be pretty sure that people in their occupation do not do as much volunteer work for people who need help in our state.



James A. Vander Stoep

I oppose state-mandated legal services. Lawyers today are volunteering their services, but a state mandate will eliminate a lot of goodwill. Mandating what is currently being done by willing volunteers will not improve the quality of service to low-income persons. Forcing anyone to assist another is not the way to engender goodwill and good service. Also, forcing lawyers to provide service when other occupations are not similarly mandated is simply arbitrary and unfair.

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One Human Being

by Mary LeLoo

There is a great deal of clamor in our society over the "untreated" person who is put back into the community after serving his or her sentence. Rarely do we hear of someone who was thought "unredeemable" and yet, through the proper intervention, has made it to a new place in society. These people become the "exceptions" or "heroes." No one really seems to believe that these success stories are possible for the majority who come through the justice system. They are. Considering the horror stories people tell about their childhoods, it is no surprise that we have so many criminal behaviors in our society. It is, rather, a surprise that people are able to survive and not inflict even more harm upon either themselves or others.

For the justice system to provide the proper intervention, pain must be understood. We must be aware that inside every big human being is a small one, known in recovery circles as the "inner child." This is the part that holds all of the pain, the rage, and the fear of early life. Statistics reveal that at least 75% of all adults were raised in homes which were in some way dysfunctional — where there was alcoholism or other serious addictions, trauma, neglect, mental illness, chronic disease, or physical, emotional or sexual abuse. When children grow up in homes where they do not get the support they need to complete healthy developmental stages, a cycle is begun, one where

unhealthy childhood behaviors are carried into adulthood and acted out in numerous destructive ways. They also carry this unprocessed trauma and grief into their adult lives until active recovery is undertaken. It is out of this unprocessed pain that we hurt ourselves and others.

It is through the healing of this pain that our lives are transformed. Unless we are willing to work with ourselves and with others towards that healing, our society will continue to be victimized by the "wounded" children within us. And we will be helpless to protect ourselves.

Just as we as individuals are not separate bits and pieces, the helping professionals are not separate and distinct. We cannot separate a person's legal needs from his or her emotional or treatment needs. We often read of someone who has committed another in a series of many crimes. The signs were there from an early age; arrests were made, and yet the problem escalated. Clearly, the person repeatedly fell through the cracks. The help (s)he so desperately needed was not given and followed up on. Between the professional parameters lies much that needs to be done. It is time to extend the boundaries. At the least, it is time to connect the services and to be a bridge to a person's healing.

How, as a lawyer, do you address the immediate problems of the client while being aware of the underlying issues? How do you become more aware? How far should you be expected to go in mental health areas without feeling as if you're being turned into a mental health professional? Are we expecting too much?

to Another

Maybe. We're asking lawyers, judges, paralegals, and other legal professionals to be apprised of the many services and programs which may be of benefit to their clients. We're asking you to act as facilitators of your clients' needs — including those not of a primarily legal nature. However, if we look at the high percentage of recidivism, and if we look at the immense burden our judicial system is operating under, then we are not asking too much. At first glance, this is a paradox. We want an already overextended system to take on more responsibility. Yes. But if we accept that much of the same work with clients is done over and over again because we are primarily treating symptoms, then we are talking about short-term overload for long-term advantage — one which continues to accumulate over time with no relief in sight: our overburdened judicial system.

When people in the service professions increase their awareness of the needs of the whole individual — through reading, talking with others, attending workshops, classes, and the many other diverse educational offerings, as well as by making a commitment to their own growth — they are breaking denial that says "I will deal only with this person's legal needs. Any other problems (s)he is having are not my responsibility." The fact is, the rest are someone's responsibility — and they may be yours. When a client returns to your office in a short time with another manifestation of his or her difficulties, you are being asked to respond to issues that weren't adequately addressed the first time.

Part of the awareness I am talking

about comes from breaking down the separation between "us" and "them." As long as we believe that other people are different from us, we will not see them as individuals. If we divide the world into "winners" and "losers," we will not give a "loser" our full time and attention. Our assumptions sometimes keep us from understanding a person's orientation to his or her personal world and motivations. The more we explore our own prejudices, the more we are capable of understanding others clearly. This is crucial in the legal field. We must not categorize people as "throwaways" because they have recurrent difficulties with the law. They are people with problems, problems that may have solutions within our power to help them discover. As long as we see people as the sum of their symptoms, we will continue to respond to those symptoms, and the underlying root causes will go unrecognized.

Lawyers are not themselves expected to be social workers or treatment centers. But lawyers need to facilitate a client's connections with these services and understand the recovery process, the addiction process, and domestic violence well enough to make valid referrals. It may not be a lawyer's job; it may not be a judge's job; but it is the responsibility of one human being to another. □

Mary LeLoo is editor and publisher of Journey, a monthly newspaper for individuals recovering from the effects of growing up in dysfunctional families. She wishes to thank Northeast District Court judge David Admire for help in preparing this article.

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Avoiding the Co-Dependency Trap

by Shiela Gould
and Patricia McCullough

The lawyer/client relationship manifests, in microcosm, much of our society. The lawyer, in fact, personifies some of our favorite cultural tenets: the worth and equality of every individual; the reasonableness of, and right to, justice; the faith in representation by, and guidance from, an expert.

But how the lawyer and client perform their roles doesn't always bring out the best in either of them. Illegal acts often express societal and individual pathologies. You, the lawyer, find yourself dealing with not just legal, but personal, issues that become more complicated due to the dysfunction we now refer to as co-dependency.

This isn't exclusive to criminal defense. It's a potential danger in most counseling situations.

"Leave it to the experts" is a litany that invests power in people with technological competence. It's all too easy for a client to vest the legal expert — the attorney — with the personal authority that is properly the client's. And it's all too easy for an attorney, for the sake of convenience, efficacy or personal satisfaction, to assume that authority.

People in the service professions, including the law, tend to take on re-

sponsibilities beyond their own; the clients they serve are often co-dependent, lacking in self-esteem and viewing a reality distorted to fit their personal needs. A group of experts in the addiction field has defined co-dependency as "a pattern of painful, compulsive behaviors and approval of others in an effort to gain safety, self-worth and identity." Recovery is possible.

The term itself reflects the two necessary parts of the relationship: the dependent and the individual(s) whose approval provides security. Co-dependency is not the same as interdependency, which involves cooperation among people making an equal and proper contribution. The predominant focus for co-dependents is on outside people rather than on the self.

A close look at co-dependents will find people who are often suffering from low self-worth, relationship problems and physical maladies such as colitis, gastritis, migraines, asthma, ulcers and sleep disorders. Low self-worth can manifest as overly compliant or as overly controlling or grandiose. Co-dependents often have addictive behaviors such as drug (including nicotine) addiction, sexual

acting out, caretaking, obsession with green paper (\$), eating disorders and workaholism.

Guilt or Shame

Co-dependents have often been raised in dysfunctional families riddled with shame. John Bradshaw, a leader in the field, has pointed out that guilt comes when you have *made* a mistake, but shame comes when you *are* the mistake. The legal system is concerned with guilt. It must be separated from shame.

At the first national conference on co-dependency held this September, the debate raged on whether childhood trauma and abuse or socialization and the addictive environment of our society are primarily responsible for this coping strategy. Lots of addictions have roots in overt traumas such as sexual/physical abuse and abandonment. The covert causes are much harder to pin down. Two speakers focused on early training — covert as well as overt — that predisposes children to later troubled relationships. Here are some typical "messages" we receive in our youth:

- I'm glad you're here; take care of me.
- [...silence] You're not worthy of

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being talked to.

- What you're doing upsets me; it might even kill me.
- [the threat of abandonment] I'm going to leave you alone.
- Be quiet, or I'll give you something to cry about.
- All those typical inhibitions about sex, eating, evacuating and other basic functions. The underlying theme is, "What you are is unworthy." Repress it; forget it; stop it. Be different or be worthless.

Does any of this sound familiar? We all confront some of these rejections at some point in our lives. The question is, are we still compensating for them? Are your clients still compensating for them?

Is Substance Abuse Involved?

If your practice involves clients who are drunk or high when their legal problems arise; if the need to support a habit is involved; or if they use mind-altering chemicals, you need to become increasingly aware of the pressures and patterns that contribute to these behaviors. Beware of "coming to their rescue," which is not much different from what their families, employers and friends have done in the past. Place responsibility on the client, not on yourself.

Avoiding the Trap

Suppose you are faced with a client who wants you to make all the decisions. How do you avoid this?

Counseling situations almost always present choices for action. Explain the probable ramifications of each, and let the client decide which to take. Don't allow yourself to become the authority, taking control rather than advising. Refuse to make the decisions yourself. Co-dependents can be easy to manipulate, particularly when they're looking for approval. The client's feelings and perceptions of guilt, anger and frustration need to be validated, but not allowed to cloud the alternatives or pull you into the emotional vortex.

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Robin Swailes, Assistant Director

tutions are geared to supporting its addictive aspects — particularly that of money. Personal worth is measured by production or power.

The same symptoms of denial and delusion that we see in chemical addiction apply to co-dependents. Some co-dependent behaviors serve society and are often unrecognized as dysfunctional behaviors.

Workaholism is an example of compulsive, co-dependent behavior. The insidious pressures of the workplace combined with client needs can push a counselor, unawares, further and further into co-dependent relationships. Ann Wilson Schaef, another leader in the addiction field, contends we are contributing to a person's co-dependency when we 1) think we know what is best for the client and 2) interpret client behavior back to the client.

You, the counselor, for example, convince the client that (s)he would be better off plea-bargaining; you could have presented all the options and possible consequences and let the client decide which course to take, based on his or her own motivations. Granted, you are the "expert" with the information the client may not have, yet this should be shared so that the client may make the informed decision.

If your client is unable to take responsibility; if there are symptoms of chemical abuse and/or addiction; if you find yourself being asked to do more than practice law, counseling and treatment *are* available.

Therapy Is Not Magic

The depth, complexity and persistence of destructive behavior make huge demands on the person trying to change. Some people may enter treatment programs again and again. But this doesn't mean they have failed, or that the programs are no good. Personal growth is cumulative, and recovery is a process.

Beyond the Courtroom

As long as people see themselves as victims, be it of another person, a role, or a system, they won't change. Your client may, indeed, be a victim of circumstances — perhaps those

you are litigating. Can (s)he isolate that from adopting wholly the victim role as an individual?

You can encourage the client to look beyond the current issue to the rest of his or her life. You can help keep a realistic perspective on the matters you are handling and be a referral source for counseling and/or treatment. And you can examine your own practice in light of the subtle potential for co-dependency on the part of both lawyer and client. □


Shiela Gould and Patricia McCullough are on the staff of CareUnit. McCullough holds an M.A. in human relations and has been in the chemical dependency field for 20 years. Gould holds an M.S. in counseling psychology and has been in the mental health field for ten years. They wish to thank managing editor Jennifer Klamm for help in preparing this article.

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Sometimes Knowing the Law Just Isn't Enough



by Julie Mitchell

Attorneys are in a unique position to help their clients who are addicted to alcohol or drugs, even while protecting the clients' interests from a purely legal standpoint. Dealing with the legal problem is the simple part. Much more challenging is confronting the fee-paying client with the prospect that the legal problem may have arisen from an alcohol or drug problem.

Clients go to their attorney in a crisis, confused and frightened, trusting the lawyer to take care of them. This personal crisis lays the perfect groundwork to discuss alcohol and drugs as the possible root of the problem.

Attorneys must understand that an addict's whole life is unmanageable. A legal problem is only one symptom of that unmanageability. This person will look to the attorney in his or her desperate situation, to make the problem go away. The caring attorney can intervene and help deal with a debilitating and often deadly disease.

This most obviously applies to the criminal lawyer advising a client charged with a DWI, drinking-related assault, or theft to support a drug habit. But what about the business attorney whose client faces loss of employment due to alcohol or drug use? Or the family lawyer whose client is in a custody battle in which alcohol use is an issue? Alcohol and drug problems are not confined to criminal charges. They may be mani-

festated in almost any legal problem. Once suspicion is aroused, the attorney must approach the subject with compassion, concern, and diplomacy.

From the beginning, the attorney must explain that he can handle the legal aspect of the problem and establish an ally relationship. The client needs assurance that the attorney is there not only to represent, but to help make sure the problem doesn't recur. This does not mean attorneys have to be social workers. They need to know what resources are available, how to refer clients, and understand clearly what to expect, including the attorney's role, when a referral to a treatment program has been made.

The attorney needs to add an alcohol/drug professional to a list of consulting experts. Just as expert witnesses or consulting lawyers assist in technical litigation matters, the lawyer needs the help of a treatment center in appropriate cases. Make one a part of the legal team.

Listen closely to the client's explanation of the current situation. Pay particular attention to minimizing responsibility or blaming others. Always ask about prior alcohol/drug-related incidents. All of these are indicators of a problem.

Reassure the client that your purpose is not to pass judgment, but rather to learn all you can in order to effectively resolve the problem. Explain to the client the need to explore his or her "relationship with alcohol or drugs" or possible "alcohol/drug problems." Avoid the use of

words such as "alcoholic" or "addict"; they will only increase resistance and defensiveness.

Once you establish the need for an evaluation, ask the client for permission and immediately schedule an appointment with the counselor. Always try to discuss the case directly with the evaluating counselor. Briefly describe the client's legal entanglement, stressing your concern about the possibility of an alcohol or drug problem. Establishing this initial three-way communication is extremely important in making it easier and more comfortable for the client to follow through with the evaluation and any recommended treatment.

Without question, this works best when the attorney has taken time to learn about the treatment center, and its counselors, and has established a protocol for referrals. If the client has a history of prior evaluations or treatment, and seems to be less than candid with his counselor, then a second call to the counselor can be made after the client leaves.

This is fair. Whatever can be done to facilitate clarity for the evaluator and assist in breaking through the client's denial is completely acceptable. Individuals with alcohol or drug problems have a well-developed self-delusion system. This delusion or denial is due in part to chemically induced inaccurate recall and in part to the extreme emotional pain of accurate recall.

The evaluation can perhaps best be described as an investigative process. The counselor uses a series of tools

to determine if the client is addicted, knowing that there will be denial, including minimizing, blaming, and a chemically influenced distorted recall of reality. The one- to two-hour session may include written questionnaires; however, the final diagnosis is based on the actual interview. The more the attorney stresses to the client the need to be open and honest, the greater chance there is of the counselor's being able to help. The

counselor is going to be seen as a "threat" or the "bad guy" because he will interfere with the client's drinking or drug use. The attorney can diffuse this idea, again, most effectively when the attorney is personally acquainted with, and trusts, the counselor and treatment.

The client must be informed of the treatment center's vitally important legal requirement and ethical responsibility to the client with regards to

confidentiality. Not only are treatment centers bound to confidentiality by federal laws, requiring the client's written consent to discuss the case, but there is also an ethical responsibility to promote trust by protecting the client's rights in this area.

Upon conclusion of the evaluation, you should expect a call, followed by a letter, from the counselor. If possible, this call should be made while the client is still there. The evaluation outcome, recommendations and the client's intentions as to a date to start treatment are discussed. Once it is determined that treatment is necessary and the client agrees, it is extremely important that the client commit him- or herself to a start date. If the client leaves the treatment center without it, the chances of his or her following through are greatly decreased. In the case of a deferred prosecution, the statute provides a requirement of amenability. Amenability can best be illustrated by a willingness to begin treatment.

When the client is in treatment, is the attorney's part over? Absolutely not. The attorney's continued support and interest in the client's progress can be an instrumental part of the treatment process. Although the decision to enter treatment is a difficult one, it is merely the beginning in a series of difficult attitude and lifestyle changes. The treatment outcome can best be effected if the attorney and the treatment center work together.

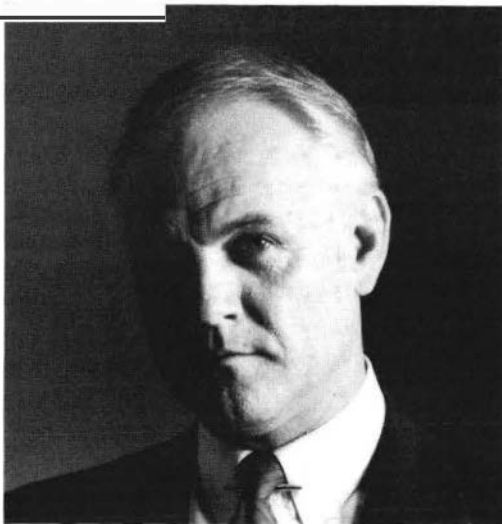
The treatment center must keep the attorney informed. What one should expect from a treatment center in the area of reporting is somewhat dependent on the type of case. A client with a criminal charge, such as a DWI, should be monitored closely and reported on routinely. These statements of progress go not only to the attorney, but also to the court/probation officer involved. An attorney must make sure that the treatment center understands who should receive copies of all correspondence. There are few things worse than being notified by the court of a client in noncompliance scheduled for a hearing, except maybe having a misguided alcohol counselor decide it's a duty to notify the Department of Licensing of a

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client's alcoholism prior to the client being convicted of anything. This is another example of why it's so important to *know* the treatment centers.

In addition to routine statement-of-progress reports, attorneys should expect to be notified immediately by phone the minute there is a problem. Often a simple call to the client from his or her attorney will take care of it, particularly if it's absences from treatment, chronic tardiness, or an attitude change. These seemingly small problems can, however, be symptomatic of a larger problem brewing. The client may be heading for, or be in, a full-blown relapse, drinking or using drugs again. Reporting a relapse is not optional or up to the counselor's discretion.

When a client relapses, whatever course of treatment is involved is not working. The counselor will then recommend a change in the treatment plan: it will likely only be accepted by the client if the attorney is supportive also.

Whether it is real or imagined, treatment centers have from time to time been accused of being self-serving. Concerns about a treatment center's referring only the kind of program that it offers, such as outpatient or inpatient, can be addressed by finding a treatment center that offers a wide range of services to allow for individualized treatment planning.

There are other kinds of unsatisfactory status reports, requiring treatment plan changes, that are not as clear-cut as relapses. It is possible for a client to be in "compliance" to the letter of his treatment plan, but not be in "recovery," which is a more subtle form of noncompliance: The cocaine addict, for example, who continues to be obsessed with the money and status which will inevitably lead to a relapse. Or the alcoholic who refuses to become an active member of the group therapy process and continues to rely on old behaviors to get by. (S)he, too, eventually will relapse, unless the treatment regime is revised.

The attorney can be a part of the recovery process. Or the attorney can "win" the client's case, close the file, and do the client more harm than good. An attorney can only advise the

client with regard to an alcohol or drug problem; ultimately, the choice lies with the client. When a client listens, the attorney's support and follow-through are extremely important. An attorney's advice can influence greatly the outcome of a client's treatment and can determine which door a client enters — the one leading to the path of full recovery or the revolving one.

For those clients who choose to

take advantage of the opportunity, there are few more rewarding paths. The assistance offered by the attorney can salvage a career, keep a family together, and even save a life. □

Julie S. Mitchell is the Outpatient Regional Director of Washington State Lakeside Recovery Centers, Inc. She has worked in the field of addictions for 11 years.



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Why did drinking become a problem? Lawyers are in a tough profession; at least my practice is certainly tough. Drinking was a natural way for me to cope. My carousel was

going faster and faster. Drinking pretended to deal with the stress, frustrations, and headaches.

Drinking, though it seems like a sociable thing to do, isolates people. Stopping isolated me even more, for awhile, since I no longer met my drinking buddies. I began to fill my free time with physical activity and seeing people who weren't dependent on alcohol, the same ones who left earlier than I did at parties, picnics and other social gatherings.

Over the next two years, things changed. I lost weight, and I had a higher energy level. My capacity for work increased. I had greater clarity of thought and a better memory for detail. I read everything I could find

on alcoholism. As a lawyer, I wanted to educate myself on its physiological effects. *Under the Influence* was the most instructive book I read during this time. I came to realize how toxic alcohol is. I became more sensitive and began noticing my feelings more. The longer I did not drink, the more I reacted to the smell, particularly that of wine. More and more, it became clear that it hadn't done my body any good to "give cells an alcohol bath."

I am so glad to be out of the drinking world that, although relapsing is possible, it is more and more unlikely. I am becoming healthier, and I feel better about my life. I am less isolated and want to reach out

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Peer counseling suits both the joiner and nonjoiner, even though the training sessions are done in a group setting. I have come to enjoy

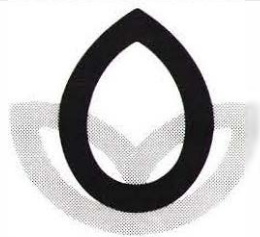
talking about myself and listening to other lawyers as we develop our counseling skills, in part, by talking about various aspects of our lives. My recovery has surpassed the original goal of not drinking any more.

I now place more emphasis on nonphysical pursuits. I am no longer working out or focusing on many projects to keep so busy that I won't think about drinking. But when I do recall, I realize how much time and good health are wasted by people who base their lives around it. This doesn't mean I will crusade against alcohol. I really don't care about it as a political issue. But I do care about other lawyers I see who suffer from that old, familiar confused state, getting on and off the carousel.

I have come to believe that counseling is central to any relationship. It has to do with honesty and listening. I have learned to listen totally, rather than blocking out the client while

preparing for my next line. I was learning this skill before I volunteered to be a peer counselor, but the counseling has sped things up. It is even a place for nonjoiners.

Lawyers reporting a wide range of distress symptoms (*e.g.*, clinical depression, eating disorders, chronic procrastination, alcoholism, anxiety attacks, anger problems, etc.) have sought LAP's assistance. Our peer counselors played an important role in these cases. Because they are sensitive to the pressures of practicing law, they are empathetic to the troubled lawyer. They also are a valuable resource for providing names of counselors and programs that are compatible to lawyer needs. Our program relies on this fine network of people. If you need the support of LAP, do not hesitate to call: (206) 448-0605.



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1. There is no bar in the Rules of Professional Conduct to an attorney representing himself or herself in a legal proceeding. Lawyers, like other litigants, have a right to select their own counsel. Although Rule 3.7 states that a lawyer shall not act both as an advocate at a trial and as a necessary witness, this Rule applies to lawyers testifying *on behalf of a client*. An "advocate" is one who pleads the case of another, while a lawyer in this circumstance pleads only his or her own case. The purposes of the Rule are to avoid confusion in the mind of the trier of fact between the lawyer's role as an advocate and as a witness, to avoid a conflict of interest between the lawyer and client and to avoid prejudicing the opposing party where an attorney also takes the oath as witness. None of these purposes would be thwarted where a lawyer who is a party litigant elects to represent himself or herself.

2. Rule 3.7 prohibits any lawyer from acting as an advocate in a trial in which the lawyer "or another lawyer in the same firm" is likely to be a necessary witness. The exceptions to the Rule are very narrow. The purposes of Rule 3.7, however, are not implicated where the lawyer/witness is a litigant *but is not acting as an advocate* at the trial. In such a case, the litigant does not fulfill the role of a lawyer in the proceedings; thus the litigant who is *not* an advocate can be represented by a lawyer in the same firm who *is* an advocate without creating confusion about the role of the lawyer/advocate and without prejudicing the opposing party. The Rule is not intended to bar a lawyer/litigant from being represented by another lawyer in the same firm as long as the litigant does not also act as advocate in the proceedings. The lawyer/advocate, however, must comply with Rule 1.7(b), as there may be circumstances in which representation of another lawyer in the same firm may be limited by the advocate's own interests.

Business and the War on Drugs: Caught in the Crossfire

As we go to press:

- On Monday, November 6, the FHWA published a regulation deferring until further notice implementation of random and mandatory post-accident testing requirements. 54 Fed. Reg. 46,616.
- Challenges to the FHWA regulations are being consolidated and briefed to the Ninth Circuit and are scheduled for oral argument to be heard the week of December 11, 1989 under the name *Int'l. Brotherhood of Teamsters, et al. v. U.S. Dep't. of Transportation*, No. 89-70165.
- On November 6, the Amalgamated Transit Union filed suit requesting a declaratory judgment that implementation of the UMTA regulations violate the Constitution at the State of Washington, Article 1, §§ 3 and 7. *Amalgamated Transit Union, Local no. 587 v. Municipality of Metropolitan Seattle (METRO)*. UMTA is reserving the right to cut off METRO's more than \$50 million in annual assistance from UMTA if the deadline for implementing the tests is not met. *Seattle Post Intelligencer* (Nov. 7, 1989), p. B-1.

The war on drugs is taking many casualties. Increasingly, businesses may find themselves to be one of them. The prudent counselor will become familiar with three weapons which the government has fashioned to fight this war: (1) the "Zero-Tolerance" policy, (2) Department of Transportation mandatory drug-testing regulations, and (3) the Drug-Free Work Place Act of 1988 ("DFWA"). The former two affect the transportation industry; the latter affects business with federal contracts in excess of \$25,000. Ignorance of these developments could have devastating consequences for the business client. The Executive Branch is acting on the premise, "If you're not part of the solution, you're part of the problem." Businesses are now required to be part of the solution by engaging in the costly drug education, monitoring, and treatment of employees.

Some businesses may be unwilling recruits in the War on Drugs, but statistics show that they have a lot to gain in improved employee morale, increased productivity, reduced absenteeism, reduced injury claims, and reduced transportation casualties.¹ Whether motivated by profit or by altruism, the business community has shown an increasing willingness to help meet some of society's needs in the fields of education and job training.

The purpose of this article is to bring these developments to the attention of business lawyers. It is not a detailed analysis, but a broad overview.

Zero Tolerance

In the spring of election-year 1988, the Reagan Administration rolled out a new anti-drug weapon, the

"Zero-Tolerance" Policy. It was the first indication that the war on drugs waged by the government would directly increase the cost of doing business.

No new zero-tolerance legislation has been enacted or proposed. Federal agencies, however, are directed to pursue all available sanctions against businesses and individuals found in possession of even "personal use" quantities of illegal drugs. The message the Administration seeks to convey is that use or possession of any quantity is intolerable. Besides criminal and civil sanctions against an individual found in possession, federal law provides for the seizure and forfeiture of any conveyances (e.g., trucks, planes, ships) carrying even trace amounts of illegal drugs.²

The Customs Service and Coast Guard application of zero tolerance has serious consequences for international carriers and the marine industry. Since the Customs Service has an absolute right to fully and completely search all vehicles and vessels crossing U.S. borders, and the Coast Guard has complete discretion to board vessels for inspection, the Fourth Amendment offers little protection. Neither agency requires probable cause or a search warrant to conduct these searches.

The target of the Zero-Tolerance Policy is purportedly the user, but innocent carriers and employers frequently find themselves targeted by intensified enforcement efforts. Employers are penalized for employee conduct which, by definition, is outside the employment contract.

Enforcement

Zero Tolerance can be costly even

by Shane Carew

when an employer and its employees are completely innocent. The clearest example of the potential cost of Zero Tolerance involved a brand new \$25 million catcher/factory processing vessel in its first fishing season. Thirty Customs agents, Coast Guard, state and local police, some armed and flak-jacketed, boarded the ship at midnight in Dutch Harbor, Alaska, in the Aleutian chain. The crew of 90 was rousted from workstation and bunk, herded into the galley, and subjected to pat-down search. Customs scoured the vessel for three-and-a-half hours without finding a grain of illegal drugs anywhere. The vessel was out of service for several hours, which cost the owners many thousands of dollars in expenses, wages and lost production.

Seizure without prior hearing and forfeiture of property belonging to an innocent, nonnegligent owner was upheld in *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 40 L. Ed. 2d 452, 94 S. Ct. 2080 (1974). Marijuana was discovered on board, and the vessel was seized and forfeited before the owner discovered it had been arrested or that there had been a violation of the law. It was conceded that the owner was not involved in the criminal enterprise and had no knowledge that the yacht was being so used.

The burden of proof in a forfeiture proceeding is upon the owner of the conveyance to show an innocent unawareness of the wrongful activity and that (s)he has done all that reasonably can be expected to prevent the transportation of any illegal drug.

The Cost of Compliance

To obtain the release of seized

conveyances pending a hearing, owners are required to show Customs that they have made a "diligent effort" to eliminate drug possession and transportation by employees and conveyance users. That effort ideally includes:

- a zero-tolerance notice on board the conveyance;
- a zero-tolerance statement in all advertising;
- zero tolerance as a condition of all contracts of carriage, lease, and charter;
- obtaining signed statements from employees acknowledging and agreeing to abide by the employer's zero-tolerance policy; and
- providing drug education for employees.³

Even absent new legislation or regulation, the policy effectively imposes upon carriers and employers the burden of employee education and drug enforcement.

The cost of the increased enforcement activity under Zero Tolerance to already strained agency budgets has far outweighed the value of drugs seized. But if the benefit is measured in terms of increasing public awareness and getting business to bear the cost of drug education and enforcement, the program is a success.

The good news is that the hubbub

of Zero Tolerance has subsided. Customs seizures and forfeitures in the Pacific Northwest are down dramatically from last year.⁴ After the maritime community raised an uproar, the Coast Guard published a regulation limiting the circumstances in which immediate seizure was allowed.⁵ Finally, it has recently been reported that the Customs Service is considering relaxing the enforcement guidelines and issuing fines on the spot in lieu of conveyance seizures.

One should not be lulled into a false sense of security, however. No statute or regulation allowing forfeiture has been changed. Employers exposed to Customs Service and Coast Guard searches are well-advised to maintain the "diligent effort" described above or risk fines or loss of valuable assets.

Department of Transportation Drug-Testing Regulations

On November 21, 1988, the Department of Transportation published regulations mandating urinalysis tests of millions of workers in the transportation field.⁶ Employers subject to regulation by the Coast Guard,⁷ Urban Mass Transportation Administration (UMTA),⁸ Federal Highway Administration (FHWA),⁹ Resource and Special Projects Ad-

ministration (RSPA),¹⁰ Federal Railroad Administration (FRA),¹¹ and Federal Aviation Administration (FAA)¹² are affected by the new regulations.

There are six instances in which transportation employees can be subjected to urinalysis testing: pre-employment; periodic (license renewal); random; reasonable cause; post-accident; and monitoring of recovering drug users. Employee urine is screened for five categories of drugs: opiates, cocaine and cocaine derivatives, amphetamines, phencyclidine (a.k.a. PCP, Angel Dust), and cannabinoids.

The employer is responsible for collecting the urine samples according to strict guidelines, and is obligated to: maintain a chain of custody between collection of the specimen and the laboratory, send the samples only to laboratories specifically certified by the Department of Health and Human Services, maintain records of the test results, maintain positive samples; discharge employees who provide positive samples, train supervisors in the detection of drug use, educate employees in the dangers of drug use and abuse, and implement anti-drug employment policies. Though it is not absolutely required by regulation, some employers may find a need to institute an assistance program for employees with substance abuse problems if they wish to keep an employee. Compliance with the DOT regulations will be a very considerable expense for each affected employer.

The constitutionality of the DOT program is being challenged. A United States District Court issued a preliminary injunction against implementation of the post-casualty and random tests, holding that the government failed to demonstrate that testing qualified as a reasonable search under the Fourth Amendment.¹³

Liability Arising Out of Compliance

Unfortunately, compliance with the regulations subjects employers to potential legal liability. There is potential for sexual harassment claims in the context of specimen collection.



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Under some circumstances, observed testing is required, which will no doubt give rise to claims for intentional infliction of emotional distress. Employers who require employees to submit to a test based upon reasonable cause face potential wrongful discharge, retaliatory discharge and discrimination claims. Mistakes in transmitting results or publishing test results without an employee's consent give rise to claims for defamation and, perhaps, interference with contract.

There may be adverse consequences in personal injury actions as a result of mandatory post-accident testing. A positive test of an injured employee is a two-edged sword. On the one hand, the test result should be good evidence of an employee's comparative negligence. On the other hand, it may raise the issue that overall business and safety practices were lax. In the case of liability claims of third parties, post-accident testing may be a nightmare for defendant businesses.

An employee who insists that a urine sample will be taken "over my dead body" may get his wish.

An employee who insists that a urine sample will be taken "over my dead body" may get his wish. Under the Coast Guard regulations, a specimen must be taken even from the body of a dead person after a "serious marine incident." Compliance with this ghoulish section may subject an employer to more problems than would noncompliance, difficulties such as dealing with the decedent's survivors and family. Compliance with this section does not make for very pretty testimony in a survival action in the case of an innocent employee. Moreover, the regulation implies a decedent has waived the same right to refuse testing that is enjoyed by the living.

Failure to make a good-faith effort to implement the drug testing regulations could arguably result in forfei-

ture of insurance coverage. As yet, insurance companies have not taken a position on this issue, and there are no reported cases addressing the point. Depending on the agency, there also may be civil or criminal penalties visited upon the employer for noncompliance or loss of certification. Personnel licensed by the respective agencies are required to comply with the drug-testing regulations as a condition of maintaining their license.

The DOT regulations discussed here have not been subjected to Supreme Court scrutiny as yet, but the Court may have indicated its position in two recently published decisions: *Skinner v. Railway Labor Executives Association*, 109 S. Ct. 1402 (1989); and *National Treasury Employees Union v. Von Raab*, 109 S. Ct. 1384 (1989). The primary elements of the DOT regulations have been in place in the railroad industry since 1984. The FRA's regulations mandated testing of employees directly involved in "major" train accidents. The Court in *Railway Labor Executives* concluded that the taking of a urine specimen is a "search" under the Fourth Amendment. The Court balanced the employee's privacy interests against the government's safety needs and concluded, "[I]t is reasonable to conduct such

tests in the absence of a warrant for reasonable suspicion that any particular employee may be impaired." *Skinner*, 109 S. Ct. at ____ . Since similar concerns for public safety are present in the regulation of other modes of transportation, the *Railway Labor Executives* decision is probably dispositive.

In a five-to-four decision in *National Treasury Employees*, the Court

Our state Supreme Court unanimously upheld mandatory urinalysis testing in Avaredo v. WPPS...

upheld a Customs Service mandatory drug-testing program for those involved with drug enforcement, guns, or access to classified material. Justice Scalia wrote a scathing dissent focusing on one point: There was absolutely no evidence that drug use was a problem in the Customs Service. Of 3,600 employees tested, no more than five tested positive for drugs. Scalia questioned whether, in justifying drug tests for employees who carry firearms, drug testing of automobile drivers and school-cross-

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ing guards could be logically excluded from the standard.¹⁴

There is little chance that the Washington Supreme Court will find the DOT-mandated program to be an unlawful search and seizure under Article 1, Section 7 of the Washington Constitution. Our state's constitutional protection against search and seizure is generally thought to be broader than the Fourth Amendment.¹⁵ However, the Washington Supreme Court unanimously upheld mandatory urinalysis testing in *Alverado v. WPPS*, 111 Wn.2d 424 (1988).

The Court held that the federal preemption doctrine precluded application of the Washington Constitution, even though the preemption doctrine was not argued or briefed for the Court. The nuclear industry, it reasoned, was a pervasively regulated industry whose employees' "legitimate expectations of privacy are substantially diminished." *Id.* at 426-27. The Court then ruled that the drug-testing program met Fourth Amendment requirements. One should assume the Court would apply the same reasoning in the transportation field.

Drug-Free Workplace Act of 1988¹⁶

President Reagan signed into law on November 18, 1988, the "Drug-

Free Workplace Act of 1988" (DFWA), which affects both federal contractors and grant recipients. Federal agencies are now barred from awarding grants or contracts in excess of \$25,000 to any individual or company that does not certify that it will provide a drug-free workplace. A contractor/grant recipient is required to: (1) publish a statement advising employees that the unlawful use, manufacture, or possession of controlled substances is prohibited in the workplace and that abiding by the terms of the statement is a condition of continued employment; (2) give each employee working on such contract a copy of the statement; (3) establish a drug-free awareness program; (4) require that employees notify the employer of any criminal conviction for a violation occurring in the workplace; (5) notify the contracting agency within ten days of learning of the convicted employee's conviction; (6) impose a sanction on convicted employees or require participation in an employee assistance program (EAP); (7) make a good-faith effort to maintain a drug-free workplace. The DFWA does not specifically require drug testing of employees.

The penalty for falsely certifying compliance with the Drug-Free Workplace Act may be suspension

of payments, termination or a debarment proceeding which would result in the contractor's being ineligible for federal contracts for up to five years.

The cost of doing business with the federal government has just gone up. Conscientious contractors and grant recipients are given the burden of educating employees about the dangers of drug abuse, the penalties for drug abuse violations, and any available drug counseling, rehabilitation, and employee assistance programs.

The DFWA requirements are now part of the Federal Acquisition Regulations,¹⁷ and the appropriate DFWA language is inserted in all federal contracts and grants. An informal survey of government agencies indicates, however, that the agencies are neither challenging the certifications supplied by contract bidders and grant recipients nor investigating ongoing compliance. The agencies bring the Drug-Free Workplace Act to the attention of contract bidders before the contract is entered into.

Each agency has affirmed it will enforce a "no certification, no contract" policy. Unless clear evidence came to the attention of the contracting officer of an agency, an investigation into DFWA compliance probably would not be instituted. But contractors should nevertheless be careful to comply with the regulation. Large-dollar or otherwise sensitive contracts may be subject to audit, and contractors not in compliance may be subject to default. Discovery of DFWA violations could arise from investigations initiated as a result of information provided by a losing bidder or a disgruntled employee.

Conclusion

Businesses that are in the transportation industry or that contract with the federal government are in the crossfire in the Administration's "War on Drugs." Compliance with these new requirements will undoubtedly increase costs. Those not cooperating in the War on Drugs, however, may lose insurance coverage, government contracts, and even the business itself. A thoughtful and reasoned response to these legal developments is necessary, or a business



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may be subject to liability to its employees for a wide range of torts. We hope that business (and society as a whole) will be rewarded for the effort and risks through a healthier, more productive workforce. □

¹The Alcohol, Drug Abuse and Mental Health Administration estimates that alcohol and drug abuse cost nearly \$100 billion in lost productivity each year. "Drug Abuse in the Workplace," DHHS Publication No. (ADM) 8701477 (1986). Drug abusers in the workplace are absent up to 16 times more often, claim three times as many sickness benefits, and file five times as many workers' compensation claims. "What Works: Workplace Without Drugs." U.S. Department of Labor Circular.

²U.S.C. § 1595(a), 21 U.S.C. § 881, and 49 U.S.C. § 782.

³From the Coast Guard publication "Zero Tolerance — Facts From the Coast Guard."

⁴Fourteen vessels in the Pacific Northwest had been seized by June, 1988. In the first five months of 1989, only six vessels in the entire Pacific Region were seized, and none were forfeited, according to the Public Information Office of the United States Customs Service, Pacific Region.

⁵54 Fed. Reg. 37613 (1989).

⁶"Procedures for Transportation Workplace Drug Testing Programs," 49 C.F.R. Part 40, 53 Fed. Reg. 47000 (1988).

⁷Coast Guard, "Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel," 49 C.F.R., Parts 4, 5 and 16, 53 Fed. Reg. 47063 (1988).

⁸Urban Mass Transportation Administration, "Control of Drug Use in Mass Transportation Operations: Final Rule," 49 C.F.R., Part 653, 53 Fed. Reg. 97155 (1988).

⁹Federal Highway Administration, "Controlled Substances Testing: Final Rule," 49 C.F.R., Parts 391 and 394, 53 Fed. Reg. 47133 (1988).

¹⁰Research and Special Programs Administration, "Control of Drug Use in Natural Gas, Liquefied Natural Gas, and Hazardous Pipeline Operations: Final Rule," 49 C.F.R., Part 199, 53 Fed. Reg. 47083 (1988).

¹¹Federal Railroad Administration, "Random Drug Testing: Amendments to Alcohol/Drug Regulations," 46 C.F.R., Parts 217 and 219, 53 Fed. Reg. 47101 (1988).

¹²Federal Aviation Administration, "Anti-Drug Program for Personnel Engaged in Specified Aviation Activities: Final Rule," 14 C.F.R., Part 61, 53 Fed.

Reg. 47023 (1988).

¹³*Owner-Operators Independent Drivers Ass'n. v. Burnley*, 705 F. Supp. 481 (N.D. Cal. 1989). The Ninth Circuit has granted the government's petition for appeal on jurisdictional issues.

¹⁴Not all decisions on drug testing have concluded the searches were constitutional. Random testing of all Department of Justice prosecutors and workers with access to grand jury proceedings was thrown out in *Harmon v. Thorburgh*, 58 L.W. 2039 (D.C. Dir. 1989).

¹⁵Utter, "Freedom and Diversity in a Federal System: Perspectives on State Constitutions," 7 *U. Puget Sound L. Rev.* 491, 500-01 (1984).

¹⁶41 U.S.C.A. 707, *et seq.* Regulations published by the Office of Management and Budget pursuant to the statute are at 54 Fed. Reg. 4945 (1989).

¹⁷48 C.F.R., subparts 9.4, 23.5, and 52.2.

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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.

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10 ABA president Stanley Chauvin Luncheon, Seattle. *Sponsored by:* SKCBA. *For information:* Monique Gill, (206) 624-9365.

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12-13 WSBA Board of Governors Meeting, Olympia. *For information:* (206) 448-0441.

19 Government Procurement, Seattle. *Sponsored by:* SKCBA. *For information:* Monique Gill, (206) 624-9365.

20-21 Annual Military Law Update, Seattle. *Sponsored by:* Sixth Military Law Center. *For information:* Lester Pound, (206) 281-3002.

26 Basic Bankruptcy, Seattle. *Sponsored by:* SKCBA. *For information:* Monique Gill, (206) 624-9365.

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1-2 Doing Business In Mexico: What The U.S. Lawyer Should Know, Puerto Vallarta, Mexico. *Sponsored by:* Mexican Law Institute. *For information:* (206) 352-9635.

9-10 WSBA Board of Governors Meeting, Tacoma. *For information:* (206) 448-0441.

March 1990

2-3 Doing Business In Mexico: What The U.S. Lawyer Needs To Know, Mazatlán, Mexico. *Sponsored by:* Mexican Law Institute. *For information:* (206) 352-9635.

16-17 WSBA Board of Governors Meeting, Bellevue. *For information:* (206) 448-0441.

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Yakima, November 17-18, 1989

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Travellin' Jim and the Govs: The president reported he'd been much on the road, speaking to the Skagit, Tacoma-Pierce, and Clark County bar associations, testifying before the Senate Law and Justice Committee on mandatory pro bono legislation, and presenting 318 attorneys for swearing in at ceremonies in Seattle. He said he'd told the Senate Committee about the growth of volunteer lawyer programs across the state, the increasing commitment of the Bar Association to encourage and coordinate such projects, and the 3500+ lawyers now regularly providing volunteer service, and suggested the state would get more, better service voluntarily than by requiring it.

Governor Paul Stritmatter, who's been pressing for more swearing-in ceremonies in counties to cut the cost and relative impersonality of the big ballroom swearing-in scene in Seattle, said he'd been drawn out of Hoquiam to Vancouver, where 33 were sworn in; Governor Don Curran reported on the admission of 24 more in Spokane, and Governor Bill Bergsten said the traditional ceremonies in Tacoma had gone well, as well.

Novack, New and Improved: When the Governors wrote to the Supreme Court, telling them, oh so politely, to drop-kick the Novack Commission Report, they sent along a batch of suggestions for alternatives to the report's recommendations. This meeting they took up how to get some of those recommendations into action. First out of the box was a motion to recommend that the Supreme Court amend RPC 1.5 and CR26(b) to provide that contingent fees involving structured settlements be more fully disclosed; it was approved. The other recommendations, mainly advancing various educational efforts by the Bar Association, constituting what the president called "this sprawling subject," were discussed for awhile and then referred to the Bar Association staff for some cost estimates. They'll take it up again next month.

Because the Governors had a lengthy executive session before the public portion of the meeting, the Novack discussion ran 'til lunchtime, when the assembly adjourned down the street to meet with the Yakima County Bar Association.

After lunch, the Governors pulled a surprise on John Michalik, the Association's executive director. Governor Steve DeForest read a resolution noting the arrival of The Michalik Centennial: his 100th consecutive Board of Governors meeting. An elaborate cake and gag "golden parachute" were among the gifts of the day. The flustered Michalik gave a textbook example of ER 803(a) (2) by remarking, "It's the first time I've ever let an agenda item get out of control like this."

And Now, Ripley's Discipline It or Not: Chief disciplinary

counsel Lee Ripley brought up a raft of amendments to the Rules For Lawyer Discipline. He proposed amending RLD 2.3(f) to allow the Board of Governors to issue admonitions when reviewing the Review Board's dismissal of a complaint; RLD 2.5 to permit the reappointment of hearings officers to additional three-year terms; RLD 2.8 to alter the assessment of costs when a lawyer doesn't cooperate; RLD 2.9 as a technical matter; RLD 5.5A to clarify the Board's role in reviewing Review Committee dismissals; RLD 5:5B providing that getting three admonitions in five years will rate a disciplinary sanction; RLD 5.7 to provide for assessment of fees and costs in matters resulting in an admonition and the timing of assessment of such expenses; RLD 10.3 to clarify procedural rules in certain cases; RLD 11.1 to change notice and service requirements relating to information in a case; RLD 12.3 to eliminate the use of legal-sized paper; and RLD 12.8 to clarify when to destroy records after a case has been concluded.

The Governors generally agreed with the changes. Governor John Schultz worried, however, that the three-admonitions rule might be construed to reach backward to people who may have one or two under their belts already. A quick consensus developed that the rule be made prospective. There was concern about raising the fees and costs assessed under the rules being a bit high. But Governor Steve DeForest said it made sense for the subjects of proceedings to pay the costs instead of having everyone else subsidize them.

Governor Lem Howell was concerned about the reappointment of hearings officers for additional three-year terms, noting that it ran contrary to the Board policy of letting people serve on Bar Association Committees for three years, no more. The usual debate over experience versus turnover, with its subtlety that King County ought to be more represented, went on for a while before being resolved by a compromise that hearings officers could be reappointed by the Board of Governors without reference to a length of term. Governor Ron Gould moved that the amendments be taken up one at a time, but the Governors preferred approval in bulk, and passed the lot.

To Tell The Truth (Or Not): In November 1988 the Governors considered a proposed Formal Ethics Opinion on a lawyer's duty when learning of misconduct by a personal representative, guardian or trustee. The Rules of Professional Conduct Committee found that under the present RPC 1.6 a lawyer could not disclose a fiduciary client's misconduct, just urge the client to make things right or, failing that, to withdraw.

The Board heard a considerable debate between attorney Leonard Cockrill and King County Prosecutor Norm Maleng, and sent the Committee back to see if they could find a way to resolve the disclosure dilemma. The Committee came back with a draft which was circulated to the sections.

The Committee's conclusion was that when one represents a public fiduciary—that is, when the court is involved in the proceedings—one may disclose misconduct to the court, but where one is representing a private fiduciary, the old rules still apply. Cockrill agreed with concerns of some members that the approach might injure some persons. But, he said, the RPCs are intended to hew to a narrow path in governing what to disclose. "There's a policy choice at work here to protect client

confidences," he said. "We think expanding the disclosure requirements is not a good idea." He said the rule would make disclosure optional because there might be inadvertent errors, corrected before any harm was done, which could surface and be resolved without the need of disclosure and possible removal of the fiduciary.

Several Governors were troubled by the drawing of the lines in the proposed amendment to RPC 1.6. Bill Bergsten was particularly concerned that within the private sphere criminal acts could be perpetuated. Governor Paul Stritmatter said "This is a public-policy issue in as grey an area as you can get. But I am concerned that the permissive nature of the rule may require lawyers to make choices that could get them sued." But lawyers have to make all sorts of choices, and the Governors approved the proposed amendment, 9-1, Governor Bergsten voting no.

Standards, Standards: Back from last month's agenda was the approval of criminal defense standards approved by the Bar Association to guide cities and counties in letting defense contracts under legislation escaping from Olympia last session. The Washington Defender Association drafted them, and its executive director, Lynn Thompson, and attorney Adam Moore of the Criminal Law Section made the pitch for their immediate adoption by the Bar Association. The Governors thought some additional input from other interested parties would be useful. Acting Prosecuting Attorney Jeff Sullivan of Yakima thought the standards proposed were problematic; Thompson thought prosecutors ought to have no input at all.

A motion to table until January 1990 turned up, and was approved, 6-4.

Legal Aid Again: What, reruns so early in the season? Next up from last month was the Legal Aid Committee's proposal for a Board Resolution requiring WSBA members to put in 30 hours of pro bono work each year.

The Committee came back with some revisions to the old text easing the thrust of the obligation to put in the time, trading it for an urge that lawyers put in time in pro bono work, as well as expanding the definition of what passes for pro bono work. After a little more discussion, the resolution was unanimously approved. The text will appear in the January 1990 issue of the Bar News.

Abandon Shiiiip: The Young Lawyers Division, represented by its chief, Harold Clarke, and attorney Mike Reilly, appeared to seek the support of the Board for further action on their proposal that a merit selection system be adopted for the selection of judges in Washington. Clarke proposed that the Board create a panel to put together such a plan, filling in the broad lines of the YLD report with the crosshatching of detail.

The Governors were not much impressed. Governor Lem Howell said merit selection had reared its head in 1971-1973. "I opposed it then, and see no reason to change my view." He said Governor Gardner had told him King County effectively has a merit selection system, what with all the groups that weigh in with recommendations and reviews, but that he had real problems with judicial appointments in other counties. Howell thought the problems in other counties deserved study, but little else.

Governor Bill Bergsten said things work well in the larger

counties, like his own, Pierce. The president noted that in smaller counties the number of appointments to the bench is too small in number and irregular in time to make a merit selection plan workable. And Court of Appeals judge Ray Munson fired a barrage of torpedoes, telling the Board merit selection had been discussed by the Judicial Conference and was rejected in 1965.

"You're dealing with careers," Munson said. "People don't become judges to put in a little time and return to private practice. If people don't like us, they can turn us out. But don't make us run against ghosts," he said, referring to the merit selection idea of periodic elections on the retention of judges once appointed. Addressing the proponents, he said, "You run for election sometime, and then tell me about electing people. Change for change's sake isn't worth a damn."

The Governors doubted the need for a broad study of how judges get their jobs. Governor Curran was concerned about that, and the cost. Governor Stritmatter said, "The trial balloon has gone up. There has been comment. I'm not sure we have enough of a problem to warrant such a study. Moreover, a study would suggest there is a problem."

Governor Jeff Tolman professed himself a great fan of the Young Lawyers Division and all its works, but declared this time, "We're wasting our time. If there was a problem we'd have heard about it by now from our constituents."

Governor Howell moved to authorize a limited study of judicial selection outside King County; the motion failed 3-7. Governor Gould then moved to thank the YLD for their labors and take no further action on the report. After some shuffling of the deck chairs, the report slipped beneath the waves, and the meeting wound in due course to its close.

Wrap-Up in Yakima: In other action, the Board handled these matters: they appointed Bert Johnson of Tacoma and reappointed Doug Tuffley to the Judicial Council; approved amendments to the bylaws of the Real Property, Probate and Trust Section; approved the creation of a new Health Law Section; approved an increase in the dues of the Tax Section; approved the creation of an annual series of awards for excellence in legal journalism; and supported Legislative Committee recommendations of technical changes to trusts, escheats, and related matters, the 1989 corporations act, and the requisites of foreign wills.

Next Month: The Board meets at the Bar Association offices in Seattle, December 15-16. Thereafter, January 12-13, 1990 in Olympia; February 9-10 in Tacoma; March 16-17 in Bellevue; April 20-21 in Victoria, B.C.; May 18-19 in Walla Walla; June 15-16 in Port Ludlow; July 20-21 in Moclips; August 17-18 in Vancouver; and September 11-15 in Spokane. All Board meetings are open to the public.

by Lindsay Thompson
Editor, *Bar News*



Notices of Interest to Association Members

Disciplinary Notices

Reprimand: Seattle attorney **Malcolm Katz** (admitted 1969) has been ordered reprimanded pursuant to a stipulation for discipline for his conduct in 1981 in advising a client not to attend a hearing to avoid being called to testify, and his conduct in 1982 in making an unauthorized disclosure of client confidences at a time when he was attempting to collect a fee from the client.

Suspension: Spokane attorney **James R. Shively** (admitted 1977) was ordered suspended from the practice of law for thirty days by order of the Supreme Court approving a stipulation for discipline effective October 3, 1989.

The sanction was imposed for neglect of three clients' affairs and misrepresentation to those clients about the status of their matters, and failure to cooperate with the Association's investigation of a complaint. The period of suspension will be followed by probation for one year.

Judicial Reprimand: The Commission on Judicial Conduct has reprimanded Judge **Stephen E. Alexander** of the Kitsap County District Court in a letter dated September 26, 1989. The Commission found a violation of Canon 2 of the Code of Judicial Conduct for communicating on court stationery with legislators urging their support of legislation on specific social issues which might cast doubt on the court's impartiality.

Nondisciplinary Notices

Interim Suspension: Attorney **Chester L. Brown** (admitted 1969) was ordered suspended from the practice of law by Supreme Court order entered September 20, 1989, pending the outcome of disciplinary proceedings based on his conviction for conspiracy and obstruction of justice. Interim suspension is pursuant to RLD Title 3 and is not a disciplinary suspension.

Public Notices

Call for Proposals: The Academy of Family Mediators seeks proposals for the Academy's seventh annual conference, "Expanding Family Mediation: Technique and Beyond," to

be held July 25-28, 1990 in Danvers, Massachusetts. Contact the Academy office in Eugene, Oregon for further information: (503) 345-1205. All proposals must be postmarked by December 15, 1989.

Call for Nominations: Nominations are being sought for the 1989 Devitt Distinguished Service to Justice Award. The annual award carries a \$15,000 honorarium from West Publishing Company and honors Judge Edward J. Devitt, longtime chief judge of the District of Minnesota. Any member of the federal judiciary appointed under Article III is eligible for nomination. Nominations should be in writing and set forth the nominee's accomplishments and professional activities which have contributed to the cause of justice. Nominations should be submitted to P.O. Box 64810, St. Paul, Minnesota 55164-0810 by December 31, 1989.

Comments requested: Effective July 1, 1989, the United States Court of Appeals for the Ninth Circuit adopted revised and expanded circuit rules. Comments and suggestions concerning these rules will be appreciated. Please direct comments or suggestions to any one of the following: Wm. Fremming Nielsen, Paine, Hamblen, Coffin, Brooke & Miller, 1200 Washington Trust Financial

Center, Spokane, WA 99204; Camden M. Hall, Foster Pepper & Shefelman, 1111 Third Avenue Building, Suite 3400, Seattle, WA 98101; or Cathy A. Catterson, Clerk of the Court, United States Court of Appeals for the Ninth Circuit, 7th and Mission Streets, San Francisco, CA 94101.

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 November 1989 is 7.89 percent. The maximum allowable interest permissible for **December 1989** is therefore **12 percent**. 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.

Special Earthquake Notice:

The Clerk's Office for the United States Court of Appeals for the Ninth Circuit is now accepting routine filings. However, since the court does not have sufficient space for a public counter at its temporary headquarters, parties are directed to send in all filings by mail to:

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Briefs that are overdue should be accompanied by a cover letter explaining when the brief was due. Please do not send motions for extensions of time with your brief. The court will not penalize parties for late filings caused by the earthquake.

(Items for inclusion in *Digest* should be sent to Lindsay Thompson, Editor, the *Bar News*, 7414 N.E. Hazel Dell Avenue, Vancouver, Washington 98665, by the 15th of each month for inclusion in the *Bar News* for the second month thereafter.)

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

Community property. In contemplation of marriage, man bought family home for \$500,000 with his separate funds and credit. During marriage, mortgage note payments were made from bank account on which both husband and wife had signature authority; but opinion not clear on character of account. When marriage ended after two years, in dissolution action, wife testified parties intended home to be community property, and trial court so found it to be. Trial court allocated \$150,000 of equity in home to husband and gave wife \$50,000 lien. *Held*, reversed. Wife's testimony insufficient to change character of asset that was otherwise separate property, as a writing was required for that purpose. Remanded for redetermination of division of property in light of decision. *In re Marriage of Shannon*, 55 Wn.App. 137, 777 P.2d 8 (Div. 1, 8/7/89).

— T. R. Andrews

Evidence. (*Case 1.*) In suit to enforce promissory note, parol evidence

held admissible on behalf of payor to show that note was intended to become binding obligation only upon happening of certain event. Court rejected argument by payee that traditional rule of conditional delivery had been changed by Uniform Commercial Code. Payor's offer of evidence to prove conditional delivery raised issue of fact, precluding summary judgment for payee. *Scott v. Wall*, 55 Wn.App. 404, 777 P.2d 581 (Div. 1, 8/21/89).

(*Case 2.*) In prosecution for robbery, in which defendant was identified by victims, trial court properly refused to admit expert's opinion on fallibility of eyewitness identification. Relatively minor discrepancies in eyewitnesses' descriptions "could easily be brought out on cross-examination and argued to the jury"; they did not "cry out for an explanation." *State v. Ward*, 55 Wn.App. 382, 777 P.2d 1066 (Div. 1, 8/21/89).

— K. B. Tegland

Real property. (*Case 1.*) Group

The Washington Wills Library by Attorneys' Computer Network

The programs ask multiple-choice and fill-in-the-blank questions, and then compose tailored documents in minutes. The **Wills Library** (Cat. 4930) prepares simple and complex wills providing for separate dispositions of personal effects and realty, cash bequests, annuities, the granting and exercise of powers of appointment, credit equivalency trusts with QTIP provisions, marital deduction trusts, charitable remainder trusts, and other dispositions. The residuary estate may be divided into equal or unequal shares with each share being given to one or more beneficiaries outright, or in a variety of trusts. Trusts may be terminated or partially distributed at specific ages, or may last for the life of the beneficiary. Alternate and successor beneficiaries may be specified. The program also prepares living will declarations, powers of attorney, family tree affidavits, asset summaries, execution checklists, and

other ancillary documents.

Libraries for **Inter Vivus Trusts** (4931), **House Sales** (4934), **Condo Sales** (4935), **Com'l Real Estate Contracts** (4937), **Office Lease Riders** (4938), **Store Lease Riders** (4939), **Net Leases** (4940), **Limited Partnerships** (4946), **Separation Agreements** (4933), **Business Sales** (4947), and **Shareholders Agreements** (4948), are available for Washington at \$200 each.

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home for developmentally disabled persons is not a facility that is under the Residential Landlord-Tenant Act, RCW Chapter 59.18. See RCW 59.18.040. **Sunrise Group Homes, Inc., v. Ferguson**, 55 Wn.App. 285, 777 P.2d 553 (Div. 1, 8/14/89).

(Case 2.) Plaintiff A. owned Lot 1 and was purchasing, and had possession of, adjoining Lot 7 under real estate contract. He built and used driveway across Lot 7 to reach Lot 1. Lot 1 was conveyed to B. (at foreclosure sale, which is of no legal significance here), who then conveyed Lot 1 to defendant. Defendant claims right to use driveway across Lot 7 under theory of implied easement. One element in that theory is that driveway must have been in use when "common owner" had "unity of title" of both lots. Since plaintiff was only contract purchaser of Lot 7, did he have "title" for purposes of implied easement theory? *Held*, yes. A., as contract purchaser, had substantial incidents of ownership in Lot 7; had right of possession and was regarded as beneficial owner under Washington law. **Haven v. Bays**, 55 Wn.App. 324, 777 P.2d 562 (Div. 2, 8/17/89).

(Case 3.) Defendant's building that

otherwise conformed to law did not become a nuisance because it blocked plaintiff's view, even though defendant might have redesigned or relocated building to save plaintiff's view. (Comment. This appears to be case of first impression in Washington on whether blockage of view may be a nuisance. Court says result is majority position. Prior Washington decisions have recognized, perhaps in dictum, that English doctrine of "ancient lights" does not exist in Washington; *i.e.*, that one may not acquire easement of light, air, and view by prescription. See **Karasek v. Peier**, 22 Wash. 419, 61 P. 33 [1900]. - W.B.S.) **Collinson v. John L. Scott, Inc.**, 55 Wn.App. 481, 778 P.2d 534 (Div. 1, 9/5/89).

(Case 4.) *Held*: (a) Tenant who assigns lease in breach of clause requiring landlord's consent to assignment remains liable to perform repair covenant. (Comment. Tenant generally remains liable after assignment, even with landlord's consent, unless landlord releases tenant. - W.B.S.) (b) Under general repair clause, requiring tenant to "maintain the rental unit in every respect, in a state of good repair," tenant had duty to replace leaky roof. **Wilkening v.**

Watkins Distributors, 55 Wn.App. 526, 778 P.2d 545 (Div. 3, 9/14/89).

— W. B. Stoebuck

Real property security. After debtor's default, holder of senior deed of trust took deed in lieu of foreclosure. At that time there was junior lien. Junior lienor claims that senior now holds the debtor's title subject to junior lien. *I.e.*, junior claims that senior's mortgage lien merged into title senior got from debtor, extinguishing senior's lien and leaving title subject to junior's lien. Trial court so held. *Held*, reversed and remanded. Merger does not happen with draconian finality; it does not happen against the will of the person in whom the merger would occur. If the person's true wishes are not known, the presumption is that there will be no merger if it would be inimical to the interests of that person. Therefore, it was error for the trial court to hold a merger occurred. Remanded to determine whether, as a fact, senior wanted his lien to merge into title (which he surely did not! - W.B.S.). **Altabet v. Monroe Methodist Church**, 54 Wn.App. 695, 777 P.2d 544 (Div. 1, 7/10/89).

— W. B. Stoebuck

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PRO BONO PROJECTS

Manual Labor

The American Bar Association has published a new guide, *The Law Firm Pro Bono Manual*, to help law firms maximize the services provided by their members to disadvantaged persons and nonprofit organizations.

The new manual is aimed at increasing volunteer services by lawyers and at reducing the effort required to plan and implement structured programs at firms.

"Currently, a substantial number of law firms encourage pro bono work but leave it to the individual lawyer to find both pro bono projects and the time to do the work. The result is that firms do not really know how much pro bono is being done, whether the matters are routinely checked for conflicts or whether the work is the same high-quality representation that the firm provides its paying clients," said Laurie D. Zelon of Los Angeles, chair of the ABA Standing Committee on Lawyers'

Public Service Responsibility.

Although ABA surveys indicate that more than 120,000 lawyers perform public service work, "all of these efforts are not sufficient to meet the vast unfilled need. A more extensive involvement of private law firms in the delivery of public service activities is needed," according to Jane Barrett, also of Los Angeles, chair of the ABA Special Committee on the Delivery of Legal Services.

The two ABA committees teamed up to produce the manual, which includes sections on organizing programs within a firm, establishing internal procedures and moving beyond basic structure to launch special projects and to combine with city and state programs.

Profiles of existing programs, including established policies in use in some firms, guidelines and forms, are offered in the manual to help firms launching or improving programs integrate tested and successful approaches in their own plans.

Although the manual is free, the

postage and handling charge is \$2.50 per copy. Orders should be placed with Tishia Jordan on the staff of the ABA Division for Legal Services, at (312) 988-5764, or at 750 N. Lake Shore Dr., Chicago, IL 60611. The Committee also will provide assistance to firms wishing to establish a pro bono project or improve an existing one. For further information, contact Dorothy Jackson, assistant staff director, at (312) 988-5766.

SUBSTANCE ABUSE PROGRAMS

Recognizing Drugged Drivers

It's common knowledge that drunk drivers cause thousands of deaths and injuries each year, but the magnitude of the problem caused by drug-impaired drivers has only recently come to light. Recent studies done by several organizations, including the National Highway Traffic Safety Administration, show that between 40

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and 50 percent of drivers involved in accidents or detained by police test positive for at least one drug other than alcohol, according to an article in the current issue of *Criminal Justice* magazine.

Law enforcement officials are frustrated when they detain a suspected drunk driver who performs poorly on standardized field sobriety tests but who passes a breath alcohol test, says Roberta C. Mayer, author of "Drug Recognition Experts Can Get the Drugged Drivers Off the Roads." Even if they are able to obtain blood or urine samples from the suspect, they must give the laboratory an idea of what substances to test for.

In Los Angeles, officers who had experience dealing with people under the influence of drugs developed, through independent research and with the assistance of several physicians, a series of clinical and psychophysical examinations for suspected drugged drivers.

This "drug evaluation and classification process" (DEC) has made it possible for police officers trained as drug recognition experts (DREs) to obtain compelling evidence that a suspect was impaired while driving and that the nature of the impairment

was consistent with a particular category or subgroup of drugs, which is valuable in providing guidance to the testing lab.

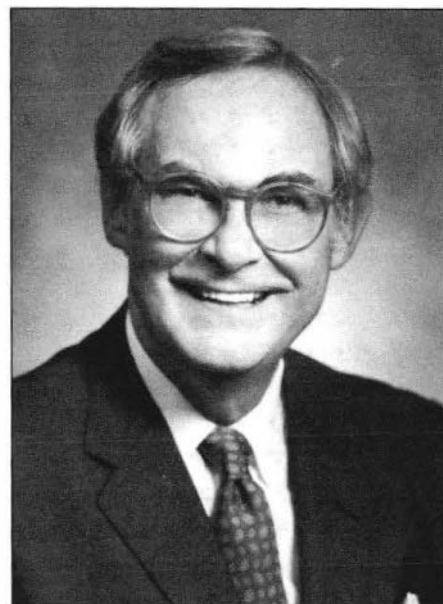
A controlled laboratory evaluation of the DEC process, done by researchers at Johns Hopkins University, showed that DREs were able to classify 98.7 percent of high-dose subjects as "impaired" and identify the category of drugs in 91.7 percent of those cases.

The DEC is not a roadside field test procedure, nor is it a substitute for a chemical test, according to Mayer. But it can be a vital part of law enforcement efforts to curb drug-impaired driving.

Mayer is manager of the National Highway Traffic Safety Administration's evidential breath test program and is responsible for coordinating its alcohol/drug enforcement, prosecution and adjudication programs.

Criminal Justice is published quarterly by the ABA Press for members of the American Bar Association's Section of Criminal Justice.

(EDITOR'S NOTE: A review copy of Criminal Justice is available from Carole Smith, managing editor, at (312) 988-6076.)



Stanley Chauvin

ABA

State Visit

American Bar Association president Stanley Chauvin will visit the Puget Sound area January 10 and 11. The Washington State and Seattle-King County bar associations will give a January 10 luncheon at the Seattle Sheraton Metropolitan Ball-

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room, where Chauvin will speak on "Problem-Solving Through Partnerships: Lawyers Reach Out." On January 11, he will speak in Tacoma at the Rotary Club luncheon-meeting on "Lawyers to Rotarians: How Our Public Service Can Complement Yours."

To make reservations for the Seattle luncheon, call Monique Gill at SKCBA, (206) 624-9365.

LAW-RELATED EDUCATION

Convention II

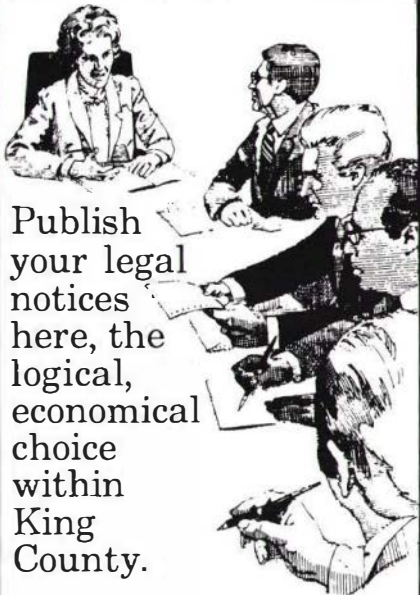
"We must do something now to save this great state for tomorrow." That sentiment became the overriding theme of "Convention II," a four-day event that drew some 400 high school students to Olympia.

When the debates subsided and the

gavel signaled the close of the mock constitutional convention, students had passed 13 amendments from an initial array of 213 proposals. Along with stronger environmental protections, students approved an amendment requiring the state to review and upgrade its educational funding. A measure allowing "everything found in a legal search to be used as evidence" also got the nod.

The state's Constitution was further amended to allow drafting

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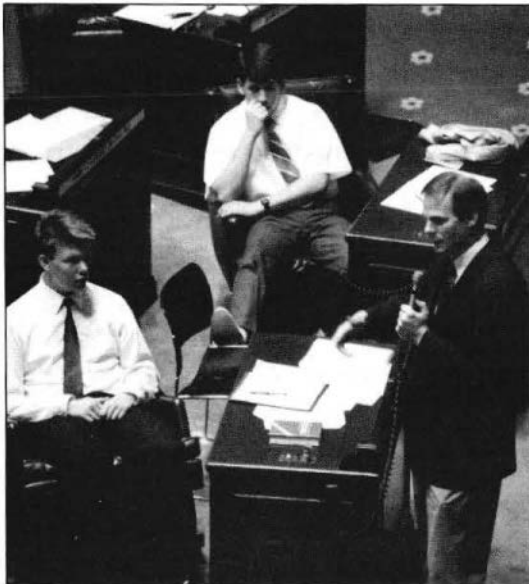
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Convention II photos by Cheri Brennan

women into the state militia and to outlaw discrimination against AIDS patients. Student representatives also voted to eliminate mandatory retirement for judges and to impose mandatory capital punishment sentences on some felons.

Among proposals that were defeated were amendments to legalize marijuana and prostitution, and recommendations to change the state's

name, lower the drinking age and castrate certain sex offenders.

Constitution II, a program of YMCA Youth and Government and Junior Statesmen, was sponsored in part by the Washington Centennial Commission. Among state officials who addressed the students were Chief Justice Keith M. Callow, Justice James M. Dolliver and State Treasurer Dan Grimm.

COMPUTERIZATION

Des Moines Wires Up

The city of Des Moines and King County Library System have announced that a computer-assisted legal research system will be located at the Des Moines Branch. King

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County Library, 21620 - 11th Avenue South in Des Moines. Access to the WESTLAW system is the result of a joint effort by Des Moines and King County library systems and is intended to broaden the range of services available to citizens at the Des Moines Branch Library.

According to attorney Chris Bawn, Western Region group leader for

West Services, Inc., such a cooperative WESTLAW venture is the first of its kind in the state involving two governmental entities.

"Des Moines has always prided itself in the enhanced services it offers to its residents," said city manager Greg Prothman. "This agreement represents a unique achievement in intergovernmental cooperation re-

sulting in increased levels of service to the public with cost-sharing benefits to all parties," Prothman added.

Expanding library services is a high priority of William Ptacek, director of the King County Library System. "Besides legal research, WESTLAW also provides access to numerous electronic databases including Dow Jones News/Retrieval service, McGraw-Hill Encyclopedia of Science and Technology; Dun and Bradstreet on-line credit services; VU/TEXT (over 30 newspapers throughout the U.S.) and State Net (state and federal legislative and administrative information). By co-sponsoring access to WESTLAW, the King County Library System is providing those without a personal computer an opportunity to obtain a wealth of information," according to Ptacek.

James B. Gorham, Des Moines city attorney, is pleased with the prospect of having a computer-assisted legal research system available for his staff as well as citizens who might subscribe to the database. "The ability to access such a large database without having to travel to a law library, or pay proportionately higher search costs by telephone, weighed significantly in our decision to co-sponsor a WESTLAW terminal. Not only will our legal department function more efficiently with access to WESTLAW, the community will also benefit because local attorneys can reduce research costs which are billed to their clients," said Gorham.

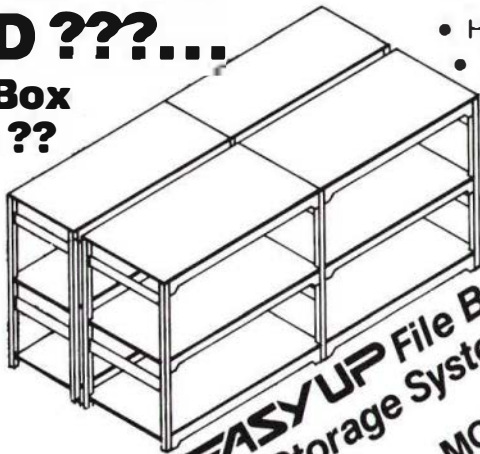
AIDS TASK FORCE

"AIDS & the Law" Wins National Award

The American Society of Association Executives gave the WSBA's communications program on "AIDS & the Law" a Certificate of Achievement in its "Gold Circle Awards" competition. The WSBA was the only Pacific Northwest association to receive an award, which was in the category for public relations campaigns for a single purpose. Nineteen categories drew 795 entries.

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The certificate, the second-highest honor in the competition, recognized the Association's comprehensive information campaign to educate various audiences about AIDS laws and the legal rights of people affected by AIDS. Entries were judged on quality and originality of execution and results.

In other work, the Association's Task Force on AIDS has produced a continuing legal education program on AIDS law, prepared a pattern speech for use in presentations to health care workers, and helped develop case materials for the state's Centennial Mock Trial.

Bar members who serve on the task force are Timothy D. Bradbury (Seattle), Kelly P. Corr (Seattle), Catherine Hendricks (Seattle), Gregory Jalbert (Spokane), Miriam T. Kasperson (Seattle), Jean Magladry (Bellevue), Joseph P. McCarthy (Seattle), Jerry Painter (Federal Way), Robert J. Rohan (Seattle), Harriet Strasberg (Federal Way), and Robin L. Thompson (Seattle).

Earlier this year, the task force received the Puget Sound Chapter of the Public Relations Society of America's Totem Award for the best community service program by a non-profit group. (See p. 35, June 1989 *Bar News*.)

NEWS FROM HOME

White Salmon attorney and Skamania County District Court judge **Ron Reynier** has merged his practice with Parker, Bowe, Blakely & Phillips of Hood River, Oregon. The merger took effect September 15, 1989. Reynier will join **Deborah Phil-**

lips as a firm member practicing in Washington. Reynier will maintain his office in White Salmon.

Edwin Rauzi, who concentrates his practice in health care law, has joined Davis, Wright & Jones in Seattle.

Three lawyers have joined Oles, Morrison & Rinker in Seattle. **Michael Ferring** concentrates in construction litigation. **Robert Sergeant**

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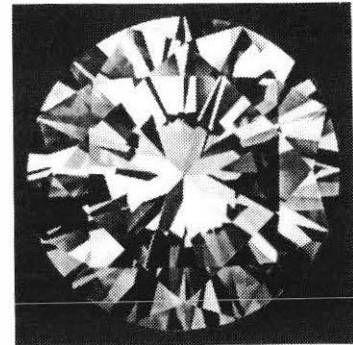
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works in insurance defense, professional liability and real estate litigation, as does new construction claim consultant **John Reed, Jr.**

David A. Middaugh has been elected president of the Washington State Trial Lawyers Association. Hoquiam lawyer **Keith Kessler** has been named president-elect.

In Federal Way, **Tom Lester** has been promoted to managing attorney of Hyatt Legal Services' office. Lester lives in Seattle.

Pao Lin Ball has been named managing attorney at Hyatt's Bellevue office.

The Seattle office of Preston, Thorgrimson, Ellis & Holman has announced that **Craig S. Trueblood**, formerly of State College, has joined the firm as an associate.

Trueblood's practice concentrates on environmental matters. He has served as counsel for a number of public and private clients in eastern Washington, Idaho, Oregon and Montana. Before coming to Preston, Trueblood worked for the Idaho At-

torney General's office in Boise and the Bonneville Power Administration in Portland. A graduate of Pennsylvania State University, he received his J.D. from Northwestern School of Law at Lewis & Clark College.

Jan D. Sokol has been appointed a state chair for the state of Oregon within region VIII of the Public Contract Law Section. Both Trachtenberg and Sokol are partners of the law firm of Stafford Frey Cooper & Stewart and have practiced in the area of construction and surety law for the past ten years. Trachtenberg works in the firm's Seattle office, and Sokol is a resident partner in the Portland office.

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


Great migrations: Manifest Destiny and the American West; South Africa and the trek inland; the creation of Pakistan; the Huns, Vandals, and Avars from the steppes of Cen-

tral Asia; the annual flight of the arctic tern; and, for those of you with dinosaur-crazed children, Littlefoot's search for The Great Valley.

This Report, however, with its easterly monomania, speaks with reverence of yet another: The Great Migration to the Eastside (*i.e.* that paradisiacal region east of Lake Washington, north of Renton to the Snohomish County line) and (so as to exclude Spokane, Dijon, and Ulan Bator) bounded on the east by the Snoqualmie Valley.

Recent evidence supporting the continued vigor of the Migration: IBM Corporation will be relocating Branch 411 with its approximately 250 employees to Kirkland this coming March 1990. Branch 411, presently named Seattle Downtown Branch, will be having a contest among its employees to rename the branch — unless, of course, Metro can be persuaded to extend the Free Zone to Kirkland's Park Place.

Unigard Security Insurance Company relocated its legal department.

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comprised of corporate counsel **Hugh McGough** and attorneys **Thomas Loftus, James Woolston, Christopher Moore, Karen Weaver, and Meredith Lehr** to Unigard Park, 15805 N.E. 24th Street, Bellevue, WA 98008, as of October 16. The downtown Financial Center continues to office the reinsurance department.

Thomas Loftus will be retiring from Unigard after 31 years of service effective November 30, but, we hasten to add, expects to continue to be active, although the precise form of future practice is not settled as of this writing. Whatever the form of this continued activity, we may safely assume based on the past record that this will include major contribution to bar activities: Tom presently serves as vice president of the Washington Insurance Council, member of the House of Delegates of the ABA, and Fellow of the American Bar Foundation, and, in the past, served on the WSBA Board of Governors and Commission on Judicial Conduct.

This reporter continues to be mystified by the apparently insatiable need to disabuse readers of the unfounded and ill-conceived notion that all Eastside lawyers do, when not waxing their BMWs, is have cruises, golf events, and parties. Permit me to speak plainly. Lawyers are generally not your average party animals. Any impression this report may give that Eastside lawyers unduly submit to enjoyment assumes greater variability in the species than, in fact, exists. In light of the continuing misconception, I am loathe to report that EKCBA's Holiday Party has been scheduled for December 13 at 5 p.m. at the Bellevue Hyatt Regency. Please note, in order that no joy remain disentangled from the burdens of our profession, the party will follow EKCBA's CLE on condominium law including explication of the new legislation (by **Gary Ackerman**, who helped draft the language) and case authority (by **Duncan Bayne**, who participated in the appeal in the *Coldwell Banker* case), which begins at 1 p.m. at the same location.

Wordsworth wrote: "The world is too much with us, getting and spending, it lays waste our powers." My

best wishes for the holiday season, hoping you find it an opportunity for reflection, renewal, and joy.

LINCOLN COUNTY REPORT

by L.R. "RUSTY" MCGUIRE

An overwhelming majority of the Lincoln County Bar attended the annual banquet on September 26 at the Harrington Golf and Country Club. The dinner was followed by a speech by new State Bar president, **Jim Vander Stoep**. Jim spoke on three subjects that concern him: the need for more participation by attorneys at the local Board of Gov-

ernors meetings, the need for new attorneys to provide pro bono service (Jim's volunteer lawyer program), and the distribution of the new AIDS pamphlet. This was Jim's first appearance at a county bar meeting in his new capacity as president of the State Bar. We at the Lincoln County Bar Association wish to thank him for his attendance at the meeting and to wish him well in his new job as president.

The Lincoln County Bar has also recently elected new officers. **Mike Kinkley** has been elected president, and **Dennis Wallace** has been elected secretary-treasurer.

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MICRONESIA REPORT
by **STEPHEN A. COHEN**

The summer rainy season ended with a singular event for the Washington legal community in the Northern Mariana Islands. Assistant Attorney General **Gail Geiger** gave birth to a son, **Carl William Brehm**. Mother, dad and baby are doing splendidly. Gail will "enjoy" two months of maternity leave before returning to her legal duties.

Several other new arrivals have swelled the ranks of Washington

lawyers in the Northern Marianas. Island County attorney **Michael Toulouse** has become legal counsel to the Coastal Resources Management Agency. King County attorney **Pamela Brown** has joined the Criminal Division of the Attorney General's Office. And Seattleite **Christine Matson**, legal extern in the Northern Mariana Islands' Attorney General's Office last spring, has returned to the islands in a permanent capacity as Appellate Officer for the Division of Revenue and Taxation. Christine was graduated from the University

of Washington School of Law in June.

There have also been several job changes among the Washington legal contingent in the Northern Marianas. **John Biehl**, Deputy Attorney General, will be moving to the Saipan office of Carlsmith, Wichman, Case, Mukai and Ichiki, the Pacific Basin firm, where he will be a partner. **Patricia Halsell**, Northern Marianas Assistant Attorney General, has transferred from the Criminal Division to the Civil Division. And **Larry Rogers**, legal counsel to the Mariana Islands Housing Authority, has de-

NOTICE TO ATTORNEYS - 1990 DIRECTORY

Changes in names, including firm names, addresses and telephone numbers of Attorneys in King County for the new 1990 King County Lawyers' Directory are now being compiled. If you have changed your address and / or telephone number during 1989 and have not yet given the new information to the Customer Service Section in the office of the Superior Court Clerk please stop by the Customer Service section counter and fill in a new information card. Cards are available there for your convenience. If your information will be the same as your listing in the 1990 Directory it is not necessary to fill in another card.

If you are a new attorney who has started practicing in King County in 1989 please be sure to fill out an information card as mentioned in the Clerk's office.

Below is a print of this information card which you may clip and mail to the clerk's office as an alternative to coming into the Clerk's office.

Deadline for all changes is December 29, 1989

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Are you a member of a multiple attorney firm ? YES <input type="checkbox"/> NO <input type="checkbox"/>			
Return this card immediately to the public access section of the Superior Court Clerk			Date _____

cided to return home to Washington.

Northern Marianas Assistant Attorney General **David Webber** has expanded his professional horizons by taking and passing the Hawaii State Bar examination.

Finally, the father-in-law of Northern Mariana Islands' Public Defender **Robert Naraja** won the Republican nomination for Governor of the Northern Marianas. He will square off against his Democratic rival in the general election.

PIERCE COUNTY REPORT

by **GEORGE S. KELLEY**

Warren Peterson, of Gordon, Thomas, et al. died after a long illness. He combined the best aspects of a lawyer and a gentleman, and we are all better for having known him. His partners advanced the date of the centennial celebration of the firm's founding so that Warren could attend and be honored.

Judge **James Healy** suffered a heart attack during his noontime constitutional. Early reports indicate he is doing well, and he is wished a speedy recovery.

Under the heading of domestic violence, it is reported that **Marv Olsen** sent flowers to his wife on their wedding anniversary. The violent part occurred when Mrs. Olsen accidentally crashed Marv's Avanti sports car into the flower delivery van in the driveway of their home.

One of our larger and more prestigious law firms recently received some bad publicity when one of its paralegals, now ex-paralegal, was charged with smuggling a controlled substance into the county jail. No good purpose would be served by republishing the name of this firm, but maybe we can all learn a moral lesson from this incident — when you care enough to send the very best, fax it.

SEATTLE-KING REPORT

by **JAMES L. VARNELL**

Office Moves. **Clark D. Silliman**, **Robert R. Cole**, **Kenneth J. Kopicki** and **Jonathan S. Solovy** have become

associated with Bradbury, Bliss & Riordan. Ryan, Swanson & Cleveland announces that **Todd R. Tarbert**, **Janet Holste Cheetham**, **Sally Crum Wineman** and **Todd A. Rossi** have become associated with the firm. **Philip A. Talmadge** and **Bernard H. Friedman** have opened their office in the Columbia Seafirst Center. **Mike McKay**, formerly of McKay & Gaitan, has been appointed United States Attorney for the Western Dis-

trict of Washington. McKay & Gaitan has changed its name to Gaitan & Cusack with **Kenneth J. Cusack** becoming a partner; **Michael V. Linabary** and **Mary F. O'Boyle** have become associates, and **Mark H. Sidran** has become of counsel to the firm.

Bauer, Hermann, Fountain and Rhoades has opened a Seattle office in the Columbia Seafirst Center, and is now associated with **Daniel M. Caine**. **Michael R. Thorp** has joined

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Ronald B. Leighton

Heller, Ehrman, White & McAuliffe; **Otto G. Klein III** has been elected administrative partner of the firm; and new partners include: **George Greer, Roberta Katz, Linda Larson, William Maer** and **Donald Percival Diane E. Mitchell** and **Alvern C. Weed** have joined Tipp & Schneider. **Garth A. Schlemlein** has joined Betts, Patterson & Mines as a principal, and **R. Andrew Bergh** and **Steve W. Berman** have joined as counsel. **Paul J. Delay** is a new associate in the Seattle office of Layman, Loft, Arpin and White. **Laura A. Sutkus** is now associated with Neubauer & Hunsinger.

David A. Barbe has become an associate at Taylor & Hintze. New partners at Ulin, Dann & Lambe are **Philip E. Hickey** and **Mark S. Beaufait**; new associates are **Jan Bush, Randall R. Steichen** and **Colin Reid**. **Stan Taylor** has been appointed Deputy Hearing Examiner for the city of Seattle. **Alan S. Donaldson** has become an associate at Windus, Thomas, Calmes & Wiley.

Mark Hough (U.W. School of Law Class of 1971) has joined Reed, McClure, Mocerri, Thonn, & Moriarty as a director. Fellow graduates of Mark will recall that his then-wife unceremoniously rang a cowbell when various members of the graduating class of 1971 (including this correspondent) trooped across the Seattle Center Playhouse stage to receive their (it is respectfully submitted) hard-earned diplomas.

Worthy of Note. **Ronald B. Leighton** has been elected president of the Washington Defense Trial Lawyers. **David Trachtenberg** has been selected as one of the four vice chairs to serve on the American Bar Association Bonds and Sureties Committee. **Susan H. Bragdon** has been awarded a Robert S. McNamara Fellowship by the World Bank to work on environmental law in Kenya.

Alvin J. Ziontz has been named chair of the ABA "Problems of the American Indians" Committee. **Robert Stead** was recently elected to

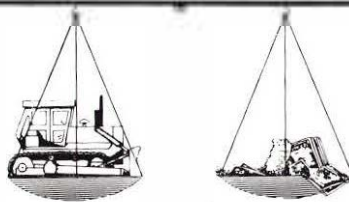
the city council of the newly-incorporated city of Federal Way. Stead has also been named co-chair, along with **Steve Toole**, of the Judicial Screening II Committee (District and Municipal Courts) for the Seattle-King County Bar Association. The Seattle/King County Chapter of Washington Women Lawyers has elected **Janet McKinnon** to serve as its president; also elected to the Board of Directors are **Jeanne Clavere** and **Lynne Graybeal**.

Judicial Appointments. **Mary Ellen Hudgins** has been selected as the new commissioner of the Court of Appeals, Division One. Hudgins replaces **JoAnne L. Tompkins**, who returns as a partner to Williams, Kastner and Gibbs.

Three recent appointees to the King County Superior Court bench include: Family Law Commissioner **Joan DuBuque**, the second University of Puget Sound School of Law graduate named to a superior court judgeship in Washington; **George A. Finkle**, who received the appointment in spite of his limited academic achievement (Harvard Law School), and who is one of a distinguished number of former law clerks to Ninth Circuit Court Judge **Jerome Farris**; and **LeRoy McCullough**, the Chief Hearing Officer for the city of Seattle, who hails originally from Rock Hill, South Carolina, a town popularized in the Chuck Berry hit — "Promised Land."

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SPOKANE COUNTY REPORT by BERNARD W. McNALLEN

The Supreme Court: On October 19 Gonzaga University School of Law had the pleasure of hosting a session of the Washington State Supreme Court as the Justices heard oral arguments in four pending cases while in Spokane. These cases covered a variety of interesting and important issues, including proper venue in an airline disaster case and corporate law issues pertaining to the sexual conduct of a member of a nonprofit religious organization.

Recently retired Division III Appellate Judge **Ben McInturff** served as a Justice Pro Tempore on the Court during these proceedings in Spokane. There were many lawyers, law professors and law students in



Supreme Court Chief Justice **Keith M. Callow** (front right) took a moment during a reception for the Court at Gonzaga School of Law to pose for this picture with (back l to r:) **Mike Pontarolo**, Spokane County Bar president; **C.J. Merritt**, clerk of the Supreme Court; **James M. Vaché**, Gonzaga law school dean; and (bottom left) **Don Curran**, member of the WSBA Board of Governors. Pontarolo, Curran and Merritt all are graduates of Gonzaga Law.

attendance at the sessions as well as the Justices' reception which followed at the law school. The reaction of those in attendance was very positive, especially when the Justices made themselves available to answer questions posed by law students and others as to the role of the Court and related topics.

Expanding: Layman, Loft, Arpin & White is pleased to announce the opening of a Seattle office, located at 4100 First Interstate Center, 999 Third Ave., Seattle, WA 98104. The firm is also pleased to announce that **Paul J. Delay** has become an associate of the firm and is located at the Seattle office. Telephone: (206) 340-1314. The firm's Spokane location is 820 Lincoln Building, Spokane, WA 99210-1907, telephone (509) 455-8883.

Editorial: If you or your activities are not being mentioned herein, please provide information to your columnist for publication in the future.

WHATCOM COUNTY REPORT
by **MICK MOYNIHAN**

November 1 saw the beginning of

a combined Superior Court-District Court Commissioner in Whatcom County. **Chuck Snyder**, the County Hearing Examiner, was appointed to the position from a list of very well-qualified candidates. In the past Chuck has distinguished himself by being active in the Young Lawyers and as club president of the Chuckanut SCCA. Now it is expected that he will distinguish himself by working 10 hours per day.

In the name change department, Denise George-Brennan will henceforth be known as **Denise George**. And Denise, who has nothing good to say about morning sickness, is happily expecting an addition to the family. The question is: If there is a third child, will she drop her name to just plain Denise?

New in town is **Jeff Bodé** (pronounced bow-day to separate himself from the Netherlanders) who is hoping to concentrate on environmental law. **Todd Hathaway**, who also emphasizes environmental law, has recently associated himself with the **Bob Hughes** firm. That should more than double their inventory of ties.

Will Johnson, fresh from tax school, is now a member of Adelstein, Sharpe & Serka and hopes to

concentrate on drawing a regular paycheck.

John Erickson, our beleaguered president, would like to get some use out of his ghost writer. When the letter to WSBA president **Elizabeth Bracelin** appeared, most attorneys in Whatcom County knew that John was not responsible, because he cannot write.

Matt Elich and **Greg Boos** have decided that they can each improve on their individual practices by separating, and so now they have their own offices. Still in the same building, however.

And although **Dave Porter** has only been in town for the past six months, he has fit in quite well. Since he has associated with **George Livesey**, the work load is more evenly spread around, and George has improved his golf game.

IN MEMORIAM

Robert O'Neill, 73, died September 19 in a fishing accident on the Stillaguamish River. Born in Michigan, O'Neill was graduated from the

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U.S. Naval Academy and rose to the rank of carrier squadron commander in the Pacific during World War II. Awarded the Distinguished Flying Cross after the war, he remained active in the Naval Reserve for many years.

O'Neill entered law school at the University of Washington after the war, and upon graduation joined Cartano, Batzer & Chapman, where

he practiced for 32 years. After retirement he continued in the law as a labor arbitrator.

Active in a variety of civic causes and the Republican Party, O'Neill is survived by his wife, nine children, and ten grandchildren.

Warren R. Peterson, 63, died September 28 in Tacoma. A Tacoma native, he took his undergraduate and law degrees from the University

of Washington. After graduation in 1949, Peterson spent two years in the Navy's JAG Corps and as an assistant attorney general of Washington. In 1951 he entered private practice in Tacoma. He was distinguished in his practice and in his service to the Bar and the community. A member of the Tacoma-Pierce County Bar Association, he was its president in 1971-1972; was a Fellow of the American College of Trial Lawyers, was listed in the 1987 edition of *The Best Lawyers in America*, and was the first recipient of the WSBA Professionalism Award in 1989.

Peterson was active on the Board of Pacific Lutheran University and the Lutheran Church in the Northwest. Through a long illness, the *Tacoma News Tribune* observed, "He was one tough, gutsy Norwegian, and it was simply not on his agenda to 'go gentle into that good night'."

Survivors include his wife, five children and seven grandchildren.

Philip J. Weiss, 97, died September 9 in Seattle. One of the longest-practicing members of the Bar, Weiss was graduated from the University of Washington School of Law in 1923, and practiced until retirement in 1983. He spent 55 years of his practice in the Dexter Horton Building in downtown Seattle.

Weiss was one of the last pioneers of the Columbia City area, where he moved with his parents in 1905. He was a member of the Columbia Congregational Church for 85 years, and it was there that a memorial service was held for him September 24. He practiced in wills, estates and probate law, and worked with the same secretary, Orpha Connelly, from 1937 to his retirement. Connelly died in 1988.

Weiss served in the U.S. Navy in World Wars I and II, and had reached the rank of captain by the time he went on inactive duty in 1945. Survivors include two sons and two grandchildren.

Marian Gallagher, Professor of Law and Director of the University of Washington Law Library and the UW Law Librarianship Program for over 37 years, died October 26. Those of you who were her colleagues, who worked for her, and were her students over the years will realize the

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loss we all feel. In recognition of Marian's substantial accomplishments, the law library was named for her upon her retirement in 1981. Her activities with the Bar and the community at large are well known. She was nationally recognized for her show-stealing charm and wit as a public speaker. Do you remember her Mrs. Palsgraf speech? Marian will be remembered for her grasp of things "librarian," her mentoring of herds of lawyers-turned-librarians, her humility, her sparkling wit and sense of humor, her love of life, and her professionalism. She has left us a lifetime of warm and happy memories.

Marian is survived by her brother-in-law, and two nephews. Remembrances can be made to the law library where a special fund has been created in her name. Your check should be made payable to the Washington Law School Foundation and mailed to 1100 N.E. Campus Parkway, JB-20, Seattle, WA 98105.

This past month the Bar lost a great advocate and generous friend. Beginning practice nine years ago in Pullman, **Bruce Charawell's** extraordinary enthusiasm and vast creativity became known far beyond the Palouse. Lead counsel in a number of notable criminal cases, including *State ex rel Heinemann v. Whitman County* and *State v. Gonzales*, Bruce developed a statewide reputation as a courageous advocate for justice.

Those of us on "the Coast" who came to know Bruce well were often amazed at the seemingly endless depth of his intellect and creative genius. We often called him for help on our thorniest cases; for support and encouragement; but, most importantly, for ideas. We mined his fertile imagination for that unique theory, obscure case or esoteric argument, then shamelessly claimed it as our own.

Bruce, sharing unselfishly of his tremendous talents, never seemed to tire of our pleas for help. He was always there and always able to think of a new way of looking at the problem. By comparison, our efforts at practicing law often seemed the dabbling of amateurs. He was a partner in the Pullman firm of Aitken,

Schauble, Patrick, Neill and Charawell.

Bruce's affection for the law was genuine, but far outweighed by his love for his family, friends and community. After the awful ordeal of battling a deadly form of cancer seven years ago, Bruce had his priorities straight. He was a dedicated husband, father and community activist, whose loss is deeply felt by all who knew him. He was cut down so sud-

denly by a fatal stroke at 37 that the loss feels all the more tragic. We miss him, and will never forget his great generosity and enduring friendship. May he rest in peace.

Bruce is survived by his wife, Janis, and two seven-year-old boys, David and Nathan. An educational trust fund has been set up for the boys: The Bruce Charawell Memorial Fund in care of the Bank of Pullman, Post Office Box 607, Pullman, WA 99163.

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MISCELLANEOUS

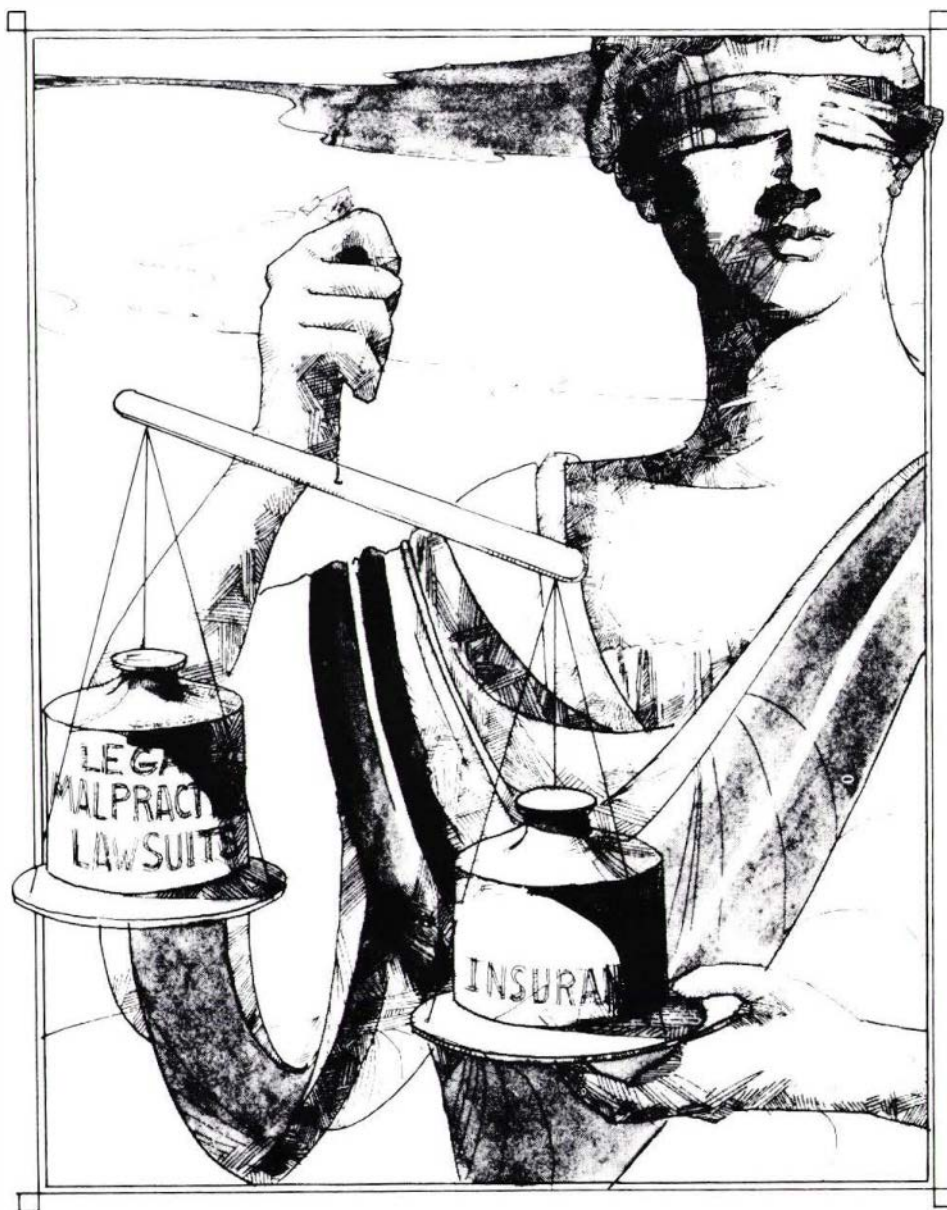
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Seattle, Washington 98146
(206) 935-4347**

**(800) 272-4347
(National WATS Line)**

**Ernest W. Roberts, Sr.
C.E.O.
Special Investigator**

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SERVICES INCLUDE:

- ★ Asset inventories.
- ★ Search for hidden assets.
- ★ Clean up premises.
- ★ Arrange sale of estate assets.
- ★ Arrange postal forwarding.
- ★ Compensation negotiable.

**9016 Wilshire Blvd., Suite 127
Beverly Hills, CA 90211**



**WASHINGTON STATE
BAR ASSOCIATION**

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