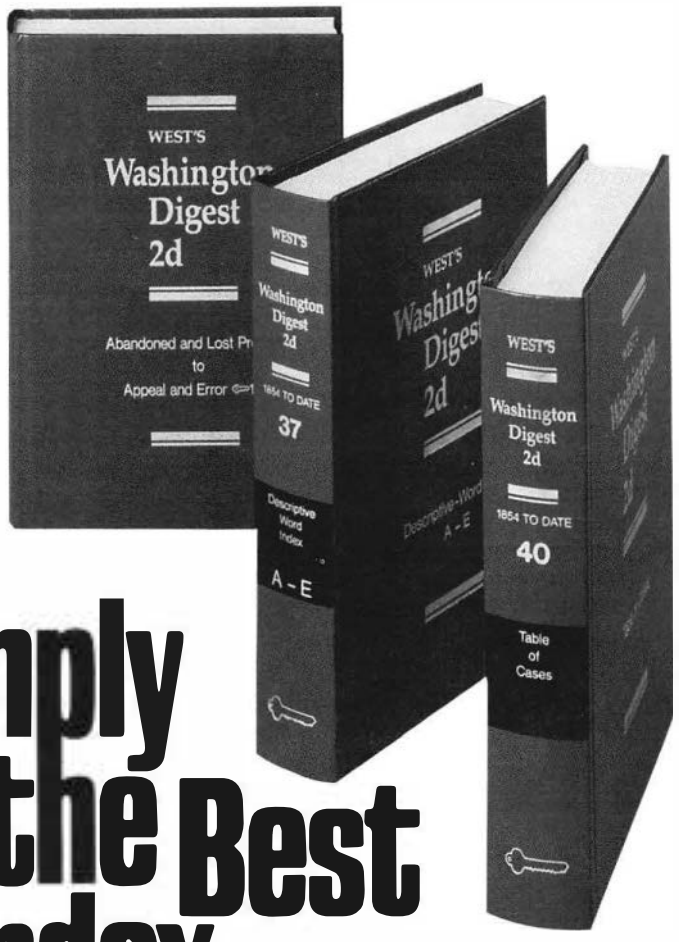
Washington State Bar News
Volume 43, No. 2, February, 1989

Special Probate Issue



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#3
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Phone: 206/938-4673

STEVE C. SCHNEIDER
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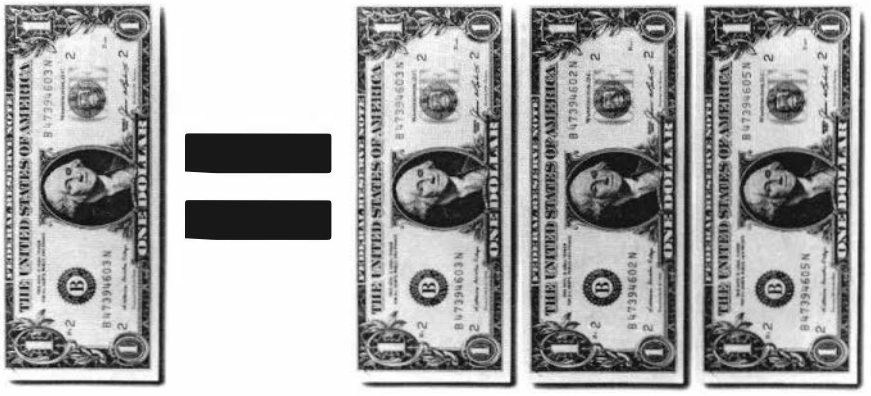

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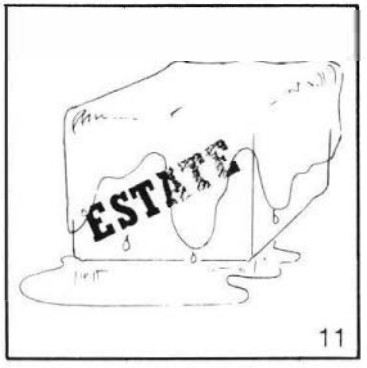
Vol. 43, No. 2, February 1989

FEATURES



DEPARTMENTS

ART CREDITS

Cover: Redmond attorney-photographer **Stan Morse** took this picture of the Columbia County Courthouse located in south central Washington's agriculturally rich wheat and grain country. Opened in 1887, the courthouse is the oldest continuously operating one in the state.

In celebration of the Washington Centennial, Morse, whose feature article appears on page 25, is exhibiting a suite of color courthouse portraits in courts statewide and at the Legislature:

King County . . . . . Jan 5-Feb 17
Washington Legislature . . . Feb 28-Mar 24
Snohomish County . . . . . Mar 24-Apr 21
Yakima County . . . . . Apr 21-May 19
Spokane County . . . . . May 19-Jun 23
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LINDSAY THOMPSON, *Editor*
JENNIFER KLAMM, *Managing Editor*
DENNIS M. EAGAN, *Advertising Director*

JOHN J. MICHALIK, *Executive Director*

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The True Alchemy

For several months now, I have urged the members of the Association to provide input to the members of the Board of Governors about what things they would like the Bar Association to do. I cannot claim that this column has necessarily been the catalyst for greater communication from members, but there has been a good deal of letter-writing going on between Bar members and the Board.

Perhaps the greatest credit belongs to several members of our Board who, at their own expense, send out newsletters to their constituents discussing the work of the Board. In many of the smaller congressional districts, individual Board members are able to mail a newsletter to each attorney member in their district. In larger congressional districts, many of the Board members send such newsletters to several hundred members of the Association and also provide links to local county bar associations. The result has been that many members are now contacting members of the Board with very thoughtful remarks and suggestions for further action by the Board of Governors.

One of the recurring things we have heard from Bar members and others is the apparently increasing lack of civility of lawyers to opposing counsel, witnesses and parties litigant.

Recently I received a letter from a physician who practices in Oregon. He was deposed in a Washington lawsuit. He claimed he was called as a factual witness because he was the plaintiff's treating physician. He felt he had been treated discourteously by both plaintiff and defense counsel and wrote to me expressing his concerns about the alleged mistreatment. In other situations, I have overheard or participated in conversations where the issue of lawyer civility to other lawyers has been discussed.

The size of the Bar Association has dramatically increased, and with the Bar's growth has apparently come an erosion of the respect generally accorded lawyers, witnesses and parties litigant by counsel. Perhaps the sheer size of the Bar has contributed to this problem. When lawyers basically do not know their opposing counsel, the temptation may be to distrust the lawyer and to see all aspects of the case in a purely partisan way.

I am not advocating that lawyers abandon their ethical responsibilities to vigorously defend their client's interests. However, the bulk of communication between members of the Association and the Board of Governors indicates that lawyers may both perform their ethical obligations to their client and behave with civility toward those with whom they are in contact during the course of client representation. It seems to me and to many who talked to me and members of the Board of Governors that simply including a few pleases and thank yous could do much to improve lawyer rapport with other lawyers, professionals and lay people. Who knows? It might even result in speedy resolution of conflict, to the benefit of the lawyer and the client.

Board of Governors Elections Due

Lawyers residing in the Second, Fourth and Seventh congressional districts please note:

Members of the Board of Governors of the State Bar Association to represent those districts, for three-year terms ending in 1992, are due to be elected this year. Expiring in September, 1989 are the current Board terms of Myron J. Carlson (Second District), Edward F. Shea (Fourth District) and Julie W. Weston (Seventh District).

Article III of the Association Bylaws provides that any active member in good standing, except a member previously elected to the Board of Governors, may be nominated for the office of Governor from the district in which he or she resides upon petitions signed by at least 20 but not more than 30 active members also residing in the district.

Nominating petitions may be obtained from the Bar office, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599. The petitions must be filed with the Executive Director at the State Bar office by no later than 5 p.m. on Monday, May 1, 1989.

LETTERS

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

Open Letter from the Bench

Members of the WSBA:

In my remarks to you in my "State of the Judiciary" address at the Bar Association's annual business meeting, I shared with you my gratitude for the time many of you have contributed to improving Washington's judiciary by serving on various court committees. Many of our accomplishments in improving the administration of justice in Washington are due in part to the excellent relationship between our bench and bar.

This open letter to the membership is my way of recognizing and thanking you for your continued support and contribution to Washington's judicial system.

VERNON R. PEARSON
Chief Justice of Washington
Olympia

(Chief Justice Pearson's letter included a list of 135 members of the Washington State Bar Association serving on court committees. We regret space limitations preclude printing all 135 names. — The Editor.)

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Washington's Nonclaim Nonstatute:

The Impact of *Tulsa Professional Collection Services v. Pope Estate* on Probate Creditors' Claims

by **Michael D. Carrico**

One of the principal reasons to probate an estate has always been to strip creditors' claims off the decedent's assets. Current Chapter 11.40 RCW has served Washington attorneys and decedents' families well for decades, requiring only simple publication of a notice to creditors and a four-month waiting period before distributing estate assets. On April 19, 1988, however, all that changed: Under *Tulsa Professional Collection Services, Inc. v. Joanne Pope, Executrix of the Estate of H. Everett Pope, Jr., Deceased,* 485 U.S. ____, 108 Sup. Ct. 1340, 99 L.Ed.2d 565, 56 U.S. Law Week 4302 (1988), it is now clear that "due process" under the United States Constitution requires that *actual* notice be given to all "known or reasonably ascertainable" creditors.

The *Pope Estate* decision almost certainly has invalidated the Washington nonclaim statute, and personal representatives all over the state are wondering whether their estates are still subject to claims. The Bar Association has sponsored remedial legislation, which has been introduced into the current Washington Legislature. That legislation would give clear guidelines on how to comply with the *Pope Estate* notice requirements and would add an 18-month self-executing statute of limitations — even so, personal representatives could be faced with the need to spend a great amount of time on dealing with estate creditors. The *Pope Estate* decision also guarantees that potential creditors' claims will be an even more significant factor in pre-death estate planning.

The main goal of Chapter 11.40 RCW is the expeditious settlement of decedents' estates. The current statute requires only publication of notice to creditors, not actual notice. This approach has been approved several times by the Washington Supreme Court, and by the courts of many other states. *See, e.g., New York Merchandise Co. v. Stout,* 43 Wn.2d 825 (1953); *Baker v. National Bank of Henderson,* 151 Mont. 526, 445 P.2d 574 (1968); *Chalaby v. Driskell,* 237 Or. 245, 390 P.2d 632 (1968). Under RCW 11.40.010, any claim not made within the four-month period is barred absolutely, except for certain claims with respect to casualty or liability insurance proceeds. RCW 11.40.011.

The *Pope Estate* decision involved facts which are all too familiar to estate planning, probate and trust attorneys. The decedent spent his last four months in a Tulsa, Oklahoma hospital. His hospital bill presumably was substantial. Several weeks after his death, his will was admitted to probate and his wife was appointed as personal representative. Under the Oklahoma nonclaim statute she was required only to publish notice in a local newspaper. Under Section 333 of the Oklahoma Probate Code (Okla. Stat., Tit. 58 (1981)), any creditor not filing a claim against the estate within *two* months after the first publication was barred. Neither the hospital nor its subsidiary, Tulsa Professional Collection Services, Inc., filed a timely claim.

Nine years after Mr. Pope's death, the case reached the U.S. Supreme Court. Justice Sandra O'Connor's opinion is required reading for all estate planning, probate and trust attorneys. Relying largely on *Mullane v. Central Hanover Bank and Trust Co.,* 339 U.S. 306 (1950), and *Mennonite Board of Missions v. Adams,* 462 U.S. 791 (1983), the Court held that the nonclaim statute did involve state action, that mere publication violated the "due process" clause, and that, for such a nonclaim statute to be valid, actual notice to "known and reasonably ascertainable" creditors was required. The Court's precise holding is critical and is therefore quoted at length:

> As the Court noted in *Mullane,* "[C]hance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper." [Citation to *Mennonite* omitted.] Creditors, who have a strong interest in maintaining the integrity of their relationship with their debtors, are particularly unlikely to benefit from publication notice. As a class, creditors may not be aware of a debtor's death or of the institution of probate proceedings. Moreover, the executor or executrix will often be, as is the case here, a party with a beneficial interest in the estate. This could diminish an executor's or executrix's inclination to call attention to the potential expiration of a creditor's claim. There is thus a substantial practical need for actual notice in this setting.

At the same time, the State undeniably has a legitimate interest in the expeditious resolution of probate proceedings. . . . Providing actual notice to known or reasonably ascertainable creditors, however, is not inconsistent with the goals reflected in nonclaim statutes. Actual notice need not be inefficient or burdensome. We have repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice. [Citations omitted.] In addition, *Mullane* disavowed any intent to require "impracticable and extended searches . . . in the name of due process." [Citation omitted.] As the Court indicated in *Mennonite*, all that the executor or executrix need do is make "reasonably diligent efforts," [citation omitted] to uncover the identities of creditors. For creditors who are not "reasonably ascertainable," publication notice can suffice. Nor is everyone who may conceivably have a claim properly considered a creditor entitled to actual notice. Here, as in *Mullane*, it is reasonable to dispense with actual notice to those with mere "conjectural" claims. [Citation omitted.]

Justice Sandra O'Connor's opinion is required reading for all estate planning, probate and trust attorneys.

The Court also held that a self-executing statute of limitations would not involve state action, and therefore would not be subject to the same "due process" requirements. But, again, the nonclaim statute was found not to constitute such a statute of limitations.

The only significant difference between current Chapter 11.40 RCW and the Oklahoma statute struck down is the time period within which a creditor's claim must be filed: *four* months instead of *two* months. This two-month difference is probably not significant. It should be assumed that the Washington statute also is unconstitutional.

The U.S. Supreme Court did not rule on whether *Pope Estate* should be applied retroactively; that is, to other probate estates open on the date the decision was handed down, April 19, 1988. Because the *Pope Estate* holding seems to have been clearly foreshadowed by related "due process" cases (*see, e.g., Brower v. Wells*, 103 Wn.2d 96 (1984), invalidating the publication notice statute relating to tax sales of real estate), attorneys probably should assume that *Pope Estate* applies to all probate estates not closed or finally distributed as of April 19. Particularly if the creditor's claim period had not expired prior to April 19, the implication of *Pope Estate* is clear: Actual notice should be provided to all known creditors and the personal representative should inquire as to whether there are any other reasonably ascertainable creditors. The attorney will

presumably devise an inquiry procedure for the personal representative and make sure that it is followed. If disputes arise among estate beneficiaries about whether such notice is required, the personal representative probably should have those disputes resolved in court, under RCW 11.96.070.

If the creditor's claim period expired prior to April 19, 1988, but the estate was not closed, retroactive application of the *Pope Estate* standards is less likely but still quite possible. Obtaining beneficiary consent or an appropriate court order certainly would be appropriate. Finally, it is unlikely that the *Pope Estate* standards would be applied to estates closed or finally distributed prior to April 19, given the obvious hardships that such application would entail. Such personal representatives probably can rest assured that what is closed will remain closed.

One way or the other, probate attorneys should advise all of their personal representatives about whether *Pope Estate* might apply to them and, if so, how to deal with it.

There is little doubt that Chapter 11.40 RCW will be amended in 1989 because of the *Pope Estate* case. In summer 1988, a subcommittee of the Real Property, Probate and Trust Section's "Probate Law Task Force," composed of Stanley S. Pratt of Yakima, Richard A. Klobucher of Bellevue and the author, was appointed to study the *Pope Estate* case and to propose remedial legislation. That legislation was approved by the Board of Governors on December 17, 1988, and it was introduced as House Bill 1173. If enacted, it would amend Chapter 11.40 as follows:

1. Many aspects of the current nonclaim statute would remain the same. For instance, it would still apply only to probate assets; publication would still be required to obtain the statutory bar; and casualty and other liability insurance coverage would still be excluded from the creditor's claim bar. The new statute would require notice to all creditors known to the personal representative at the time of appointment or those who become known to the representative during the four-month period after publication or filing of the notice to creditors. Failure to provide such notice would allow creditors to file claims after the end of that four-month period, subject to the new 18-month statute of limitations discussed below.

2. To have creditors' claims barred after the four-month period, the personal representative would have to exercise reasonable diligence to discover "reasonably ascertainable" creditors within that four-month period and would have to give actual notice to any such discovered creditors. It would establish guidelines for that "reasonably diligent" search:

> The personal representative shall be deemed to have exercised reasonable diligence to ascertain such creditors upon (i) conducting, within the four-month time limitation, a reasonable review of the deceased's correspondence (including correspondence received after the date of death) and financial records (including checkbooks, bank statements, income tax returns, etc.) which are in the possession of or reasonably available to the personal representative, and (ii) having made inquiry of the deceased's heirs, devisees, and legatees.

The legislation goes on to provide three ways for the personal representative to raise a rebuttable presumption of exercising such "reasonable diligence":

(a) The personal representative may simply follow the guidelines and make an appropriate contemporaneous record of the steps taken in the search for creditors;

(b) the personal representative may go further and "evidence such review and such inquiry by filing an affidavit to that effect in the probate proceeding"; or

(c) the personal representative may request an order from the probate court declaring that a "reasonably diligent" search has been made and "that any creditors not known to the personal representative after such review and inquiry are not reasonably ascertainable." This hearing is to be conducted under Chapter 11.96 RCW.

3. Generally, creditors will have to file claims within the four-month period. If a creditor receives actual notice less than 30 days before the end of that period, the creditor may file up to 30 days after the date of service.

4. One of the most important features would be an 18-month self-executing statute of limitations, to backstop the four-month bar. Com-

plying with the new "diligent search" guidelines might involve unnecessary expense and not be appropriate for small estates. Therefore, the legislation provides for a self-executing statute of limitations which would automatically bar all claims 18 months after the date of death, regardless of whether notice is published or actual notice is served or otherwise given. Thus, if a personal representative were not to search at all for creditors, the 18-month statute of limitations would still bar claims and allow the estate to close. Even if an "actually known" creditor were not to receive such notice and were not to file his claim within that 18-month period, that claim would be barred.

5. Finally, the rule of RCW 4.16.200 extending the time for commencement of an action against a decedent's estate to one year would be modified to conform with the rules described above, and the current six-year self-executing statute of limitations of RCW 11.04.270 (applicable when no probate is opened) would be repealed.

While the proposed amendments to the nonclaim statute would give the personal representative and probate attorney far more flexibility in dealing with creditor's claim problems, by themselves those amendments would not solve those problems. In planning the administration of a decedent's estate, it now will be necessary to determine whether substantial creditors' claims might exist; whether, how and when a search for creditors is to be conducted; and how the 18-month self-executing statute of limitations will come into play.

Pre-death planning has suddenly become more challenging. The estate planner now has to be even more careful to discuss significant potential claims with the client. If creditor's claim issues exist, the planner probably should ask the client to make the decision as to what post-death notice "comfort level" would be appropriate; that is, whether to direct the executor to make a search for creditors or simply to wait for the expiration of the new 18-month limitation period. Preliminary work on a list of major creditors probably should be done by the client. Conflict-of-interest issues regarding executors and testamentary trustees also might be examined ahead of time — for example, when a sole proprietor's principal creditor is the bank nominated to serve as his executor.

Further, preliminary analysis of creditors' claims exempt from the nonclaim statute and assets exempt from creditors' claims will have to be performed. Attention will have to be paid to nonprobate assets which pass free of claims, such as life insurance (RCW 48.18.410), interests in employee benefit plans (RCW 6.15.020(2)), and joint tenancies (*Anderson v. Anderson*, 80 Wn.2d 496 (1972)).

These issues certainly could have an effect on how wills and other dispositive instruments will be drawn. They could affect the estate planning of other family members; for instance, the wife of a husband with separate property creditor's claim problems might leave her estate to him via a spendthrift trust.

Finally, if an estate planning client's creditor problems were severe enough, it might even be appropriate to consider use of the federal bankruptcy system. A federal bankruptcy judge has far broader powers to assist the bankrupt client in managing assets and restructuring businesses than does a Washington superior court judge or commissioner.

The days of easy solutions to probate creditor's claim problems are gone. Under *Pope Estate* and current Washington statutes, an absolute bar to creditors' claims requires that all "actually known" and "reasonably ascertainable" creditors receive actual notice. While proposed legislation would clarify what a "reasonably diligent" search for those creditors entails, and would backstop the current system with a new 18-month self-executing statute of limitations, the client's or decedent's creditor problems now must be *solved*. No longer will they simply go away. □

Michael D. Carrico is a Seattle attorney in the firm of Riddell, Williams, Bullitt & Walkinshaw. He practices primarily in the estate planning and probate areas and is a member of the WSBA Probate Law Task Force.

I.R.C. §2036(c):

The New Estate Planning Nemesis

by **Robert H. Blais**

The Revenue Act of 1987 created new I.R.C. § 2036(c). (All section references are to the Internal Revenue Code of 1986, as amended.) In general, § 2036(c) seeks to negate the effect of estate freezes, *i.e.*, those estate planning techniques which have historically allowed future appreciation in a business or other property to be passed to younger generations with nominal gift or estate tax consequences. If a growth interest in property is transferred, while a fixed or frozen interest in the property is retained, § 2036(c) will generally cause the growth interest to be included in the taxpayer's estate under § 2036(a). The essential provision of the new statute is found in § 2036(c)(1) which provides:

> IN GENERAL. — For purposes of subsection (a) [relating to the general estate tax inclusion rule under § 2036], if —
>
> (A) any person holds a substantial interest in an enterprise, and
>
> (B) such person in effect transfers after December 17, 1987, property having a disproportionately large share of the potential appreciation in such person's interest in the enterprise while retaining an interest in the income of, or rights in, the enterprise,
>
> then the retention of the retained interest shall be considered to be a retention of the enjoyment of the transferred property [thus requiring inclusion of the transferred property in the decedent/transferor's estate for federal estate tax purposes under § 2036(a)].

Section 2036(c) is having an enormous impact on estate planning. Most commentators agree that its reach will extend well beyond traditional freezing strategies. Consequently, the application of § 2036(c) will have to be considered in *all* intra-family transactions, including but not limited to joint purchases, sales of remainder interests, private annuities, irrevocable life insurance trusts, split-dollar life insurance agreements, sales, leases, loans, buy/sell agreements, options, grantor-retained income or annuity trusts, employment and consulting agreements, and various corporate and partnership arrangements. Well-informed estate planners will be careful to avoid the reach of §2036(c). For the ill-informed, a rude awakening is in store.

The Basic Test For Estate Tax Inclusion

There are several tests, rules and adjustments contained in § 2036(c) which cannot be discussed in detail here because of space limitations. In general, however, the application of § 2036(c) appears to be dependent upon the satisfaction of the following four conditions, assuming one of the exceptions (discussed below) does not apply:

(i) A person (hereinafter "the decedent/transferor") or his or her family members must own (directly or indirectly) a 10% or more interest in a business or other property which may produce income or gain;

(ii) The decedent/transferor must die after December 31, 1987, having transferred an interest in such business or other property after December 17, 1987 (hereinafter "the appreciation property");

(iii) An effect of the transfer, *regardless of the means or device employed*, is that after the transfer, the decedent/transferor's interest in the potential appreciation in the business or other property is lower, on a proportionate basis, than his or her retained share in the income of, or rights in, the business or other property (sometimes "the retained interest"); *and*

(iv) At the time of death, the decedent/transferor must continue to own all or part of the retained interest.

Condition (iii) listed above is the most troublesome. Unless an exception, an offset or an adjustment applies, the conservative planner should generally assume that § 2036(c) will apply to any transaction where a person transfers an interest in property to another (typically a

family member), while retaining some direct or indirect interest in the "income of or rights in" such property. If § 2036(c) applies, then the transferred appreciation property will be brought back into the decedent/transferor's gross estate at the property's date of death value.

Safe Harbors; GRITS

The Technical and Miscellaneous Revenue Act of 1988 ("TAMRA") created several exceptions, or "safe harbors," to § 2036(c). Section 2036(c)(7) exempts certain retained interests and transactions from application of § 2036(c). The safe harbors are intended to provide taxpayers with some assurance that simple, non-abusive transactions will not fall prey to § 2036(c). These safe harbors are described below.

A. *Qualified debt.* Section 2036(c)(7)(A)(i) provides that § 2036(c) will not apply solely by reason of the fact that the decedent/transferor has retained "qualified debt." Qualified debt is defined in § 2036(c)(7)(C) and generally means "pure" debt. The requirements of qualified debt are relatively easy to satisfy. Accordingly, arm's length, intra-family loans or sales of assets, where the decedent/transferor retains indebtedness meeting the requirements of qualified debt, will not cause § 2036(c) to apply.

B. *Qualified startup debt.* Qualified debt also includes "qualified startup debt." The qualified startup debt safe harbor is defined in § 2036(c)(7)(D)(ii). In some respects, the requirements of qualified startup debt are less stringent than those for qualified debt. This safe harbor is designed to allow for cash to be loaned to family members involved in the active conduct of a trade or business.

C. *Sales, leases and provision of services.* Section 2036(c)(7)(A)(ii) provides, "[E]xcept as provided in regulations, the existence of an agreement for the sale or lease of goods or other property to be used in the enterprise or the providing of services" shall not cause § 2036(c) to apply so long as the agreement is an arm's length agreement for fair market value, and does not otherwise involve any change in interests in the enterprise.

Section 2036(c)(7)(B) places two additional limitations on this safe harbor. In the case of an agreement providing for compensation for services performed by the decedent/transferor after the § 2036(c)(1)(B) transfer, the agreement cannot be for a period greater than three years after the date of the transfer. In this regard, the term of any agreement includes any period for which the agreement may be extended at the option of the decedent/transferor. Furthermore, the amount payable to the decedent/transferor under the agreement referred to in § 2036(c)(7)(A)(ii) cannot be determined (in whole or in part) by reference to gross receipts, income, profits or similar items of the enterprise.

D. *Buy/sell agreements.* The final safe harbor deals with buy/sell agreements and options. Section 2036(c)(7)(A)(iii) provides, "an option or other agreement to buy or sell property at the fair market value of such property as of the time the option is (or the rights under the agreement are) exercised" shall not trigger § 2036(c). Queries: Will pre-December 18, 1987 buy/sell agreements be grandfathered if they fall outside this safe harbor? Will the effective date of the transfer be the date the buy/sell agreement or option agreement is executed or the date options or rights are exercised? In any event, the "pricing" provisions in buy/sell agreements, options and similar agreements will have to be reviewed to make certain they comply with this "fair market value at date of exercise" safe harbor. Otherwise, § 2036(c) may create adverse estate tax consequences.

E. *Grantor-retained income trusts.* TAMRA creates a special exception for grantor-retained income trusts ("GRITs"). A GRIT is a freezing device whereby a grantor establishes a trust, retains an income interest for a term of years and reports a gift for the value of the remainder interest in the year the trust is established. In the pre-§ 2036(c) era, if the grantor survived the trust term, the trust principal passed to the next generation with no additional transfer tax consequences. However, if the grantor dies during the term of the GRIT, the trust property will be included in the grantor's estate. Section 2036(c)(6)(A)provides:

> For purposes of this subsection [§ 2036(c)], any retention of a qualified trust income interest shall be disregarded and the property with respect to which such interest exists shall be treated as held by the transferor while such income interest continues.

A "qualified trust income interest" ("QTII") is defined in § 2036(c)(6)(B) to mean:

> [a]ny right to receive amounts determined solely by reference to the income from property held in trust if—
>
> (i) such right is for a period not exceeding 10 years,
> (ii) the person holding such right transferred the property to the trust, and
> (iii) such person is not a trustee of such trust.

As a result of § 2036(c)(6), GRITs "still work" if they are structured properly. Should the decedent/transferor survive the GRIT term, there should be no "deemed gift" problem (discussed below) and § 2036(c) should not apply.

It would appear a GRIT funded with cash need not meet the requirements of § 2036(c)(6) because cash should not be considered an enterprise under § 2036(c).

Well-informed estate planners will be careful to avoid the reach of 2036(c). For the ill-informed, a rude awakening is in store.

In addition, a GRIT funded with publicly-traded securities of an entity in which the decedent/transferor and his or her family do not hold a 10% or greater interest should be outside the scope of § 2036(c) because of the substantial interest requirement under § 2036(c)(1)(A).

The Consideration Offset

Generally, § 2036(a) does not apply to a bona fide sale for adequate and full consideration in money or money's worth. Under § 2036(c)(2)(A), however, it is provided that the bona fide sale exception of § 2036(a) will not apply to a transfer (sale) described in § 2036(c)(1) (quoted above) to a member of the decedent/transferor's family.

TAMRA introduces a new "consideration offset" where a member of the decedent/transferor's family provides consideration for an interest in the enterprise. In a sense, this consideration offset, if applicable, provides an additional safe harbor. If such consideration consists of "clean money," *i.e.*, the consideration was never received or acquired from the decedent/transferor for less than full and adequate consideration, then a fractional share of the family member's interest in the enterprise will be excluded from the decedent/transferor's gross estate.

The following example is illustrative of how this consideration offset should work: Assume the decedent/transferor owns all the outstanding

common stock (100 shares) and preferred stock (100 shares) of a corporation. The common shares are worth $1,000,000 and the preferred $1,000,000. The decedent/transferor sells the common shares to his or her daughter for $1,000,000. The daughter pays for the shares with "clean money." (Query: How is this to be proved?) On the decedent/transferor's death, the preferred stock is included in his or her estate under § 2033. However, none of the common shares (assume then worth $2,000,000) should be included in his or her estate. This is because the "applicable fraction" determining the amount of the common stock excluded from the decedent/transferor's estate should be 1 ($1,000,000 divided by $1,000,000). The numerator of the applicable fraction is $1,000,000, the consideration paid by the daughter for her interest in the corporation. The denominator of the applicable fraction should be $1,000,000 as well because that is the value of the portion of the enterprise which would (but for § 2036(c)(2)(B)(i)) have been included in the decedent/transferor's gross estate by reason of § 2036(c) (not § 2033) immediately after the transfer described in § 2036(c)(1), *i.e.*, immediately after the sale of the common stock to the daughter.

This example and the meaning of the clean money consideration offset are put into question by a passage and an example contained in the 1988 Conference Report. However, the 1988 Conference Report seems at odds with the language of § 2036(c)(2)(B).

Deemed Gift Rule

As initially enacted, § 2036(c)(4) contained a "3-year rule" which basically required that the appreciation property be included in the decedent/transferor's estate if he or she transferred the retained interest within three years of death. TAMRA eliminated the three-year rule and replaced it with what is known as the "deemed gift rule." Section 2036(c)(4) now provides that the decedent/transferor will be treated as having made a taxable gift of the appreciation property if, during his or her lifetime, the decedent/transferor transfers all or any portion of his or her retained interest or the person to whom the appreciation property was transferred transfers all or any portion of the appreciation property to a person who is not a member of the decedent/transferor's family.

Accordingly, a subsequent transfer of the retained interest or the appreciation property will generally result in the decedent/transferor's being deemed to have made a gift to the person who initially received the appreciation property. Generally, the amount of the gift will be equal to the amount of the appreciation which the appreciation property experiences between the date of the initial § 2036(c) transfer and the date of the deemed gift.

If a deemed gift transfer occurs,

then § 2036(c)(4)(B) provides that neither § 2036(c)(1) nor § 2035(d)(2) shall thereafter require inclusion of the appreciation property in the decedent/transferor's gross estate.

Correction Period

Under the effective-date provisions of TAMRA, there is a "correction period" (between December 17, 1987 and December 31, 1989, inclusive), during which time a transaction can be corrected so that it is not subject to § 2036(c). Section 3031(h)(4) of TAMRA provides:

> If section 2036(c)(1) of the 1986 Code would (but for this paragraph) apply to any interest arising from a transaction entered into during the period beginning after December 17, 1987, and ending before January 1, 1990, such section shall not apply to such interest if —
>
> (A) during such period, such actions are taken as are necessary to have such section 2036(c)(1) not apply to such transaction (and any such interest), or
>
> (B) the original transferor and his spouse on January 1, 1990 (or, if earlier, the date of the original transferor's death), does not hold any interest in the enterprise involved.

The 1988 Conference Report discusses the correction period in connection with the "safe harbors" discussed above. This might lead one to conclude that corrections can be made only so as to fit a transaction within a safe harbor. However, such a limitation does not appear present in § 3031(h)(4).

Conclusion

Under the current state of the law, it is difficult to determine what types of transactions will be covered by § 2036(c), other than those protected by the exceptions discussed above. One should expect the Service to exploit § 2036(c) and apply it to transactions not typically considered to be estate freezes. The Service will likely be given even broader authority to swing its § 2036(c) sword. TAMRA added § 2036(c)(8), which provides:

> The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including such regulations as may be necessary or appropriate to prevent avoidance of the purposes of this subsection through distributions or otherwise.

In any event, the planner must be very careful in structuring family transactions until guidance is provided with respect to those transactions which will not be subject to § 2036(c). Otherwise, § 2036(c) may raise its ugly head to the chagrin of the client of the client's heirs. □

Robert H. Blais, *is a partner in the Seattle-based firm of Bogle & Gates. His practice is concentrated in the estate planning and probate areas.*

Probate Law Revision

by **James K. Treadwell**

The Washington law pertaining to wills, trusts and the administration of estates of deceased or incompetent persons is unique among the 50 jurisdictions in our national judicial system. Historically, the combination of our state's community property and non-intervention administration systems has distinguished its succession law from that of the other states. Yet what so fundamentally sets Washington's succession law apart is its quality, and this quality is a direct function of the continued attention that the members of the State Bar have paid to this area of the law.

The last two decades have witnessed three major revisions to RCW Title 11 and the other statutes that bear upon the state's succession law. In 1967, a major overhaul of Title 11 was made in response to the passage of a statewide initiative several years before providing for joint tenancy with right of survivorship passage of property. In 1974, another major revision was enacted. Finally, the Trust Act of 1984 substantially modernized our laws relating to fiduciary powers, the judicial and nonjudicial resolution of disputes and a host of other substantive and procedural aspects of trusts and estates.

The job of modernizing and improving a body of law is never-ending. Succession law evolves through changes in attitudes, changes in tax policies and through the process of judicial interpretation. Early in 1988, the WSBA Real Property, Probate and Trust Section expanded its standing probate legislative committee into an organization denominated the Probate Law Task Force. The Task Force is now in the midst of what will likely prove to be a three-year project, the desired result of which is a comprehensive set of revisions to the many sections of RCW Title 11 not covered by the 1984 Trust Act and to other sections of the RCW that effect matters of succession.

The Task Force is presently comprised of what, in effect, is a steering committee together with a growing number of subcommittees devoted to specific subject matter areas. Involvement in the project will not be limited to private practitioners. For example, the subcommittee that is being formed to deal with guardianship issues involves Commissioner Stephen Gaddis and Assistant Attorney General Steve Milam amongst a distinguished group of guardianship specialists. It is anticipated that a blue-ribbon advisory panel of senior estate and probate practitioners, academicians and jurists will be formed this spring. This panel will be called upon to periodically review and comment upon the Task Force's work in progress.

The steering committee is presently comprised of 16 members, all of whom have put forth significant effort to date and can be expected to devote considerable time to the project over the next several years. They deserve mention.

Each of the three law schools within the state is well-represented on the Task Force. Professor Thomas R. Andrews, who teaches community property along with trusts and estates at the University of Washington School of Law, sits on the steering committee. Tom's activities over the last several years have included speaking, writing and legislating in the area of quasi-community property. Professor Jan Ellen Rein who instructs in the area of trusts and estates at the Gonzaga University School of Law likewise sits on the steering committee. Jan has recently co-authored West Publishing Company's newest hornbook in the estates and trusts area. The third academician on the steering committee is Professor Mark Reutlinger of the University of Puget Sound School of Law. Mark is the co-author of the widely used *Washington Law of Wills and Intestate Succession.*

The banking community is also well-represented on the Task Force. Roger F. Donahoe, an attorney with Rainier National Bank's trust department and Ivan K. Landreth, Jr., an attorney with Seattle First National Bank's trust department, sit on the steering committee. The balance of the committee's membership is comprised of attorneys in private practice. For logistical reasons these attorneys all practice in either Seattle or Spokane. The much-needed participation of attorneys in other communities within the state is being accomplished at the subcommittee level. Private practitioners on the steering committee include Robert P. Beschell and William D. Eden of Spokane and Robert H. Blais, Michael D. Carrico, Bruce P. Flynn, Alan H. Kane, Richard A. Klobucher, Douglas C. Lawrence, Patricia J. Parks and Evan O. Thomas, III of Seattle.

1988 has been an organizational year for the Task Force. Much of the group's work to date has been in the determination of the scope of the project and in the formulation of an approach to the processing of raw ideas into an integrated legislative package. A preliminary agenda of proposed topics is being developed and will be completed within the next few months.

The Task Force will be going public with its agenda in the spring edition of the Real Property, Probate and Trust Section Newsletter. This will be followed by a presentation and workshop session at the forthcoming sectional midyear meeting which will be held in Coeur d'Alene, Idaho on May 5, 6 and 7. The workshop, which will be held on Sunday, May 7, will be designed specifically for the purpose of facilitating audience participation.

The Uniform Probate Code was approved by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association in 1969. Since then, 11 states have enacted the UPC. The UPC is now in its seventh edition. It is the product of the ongoing effort of a number of the nation's leading practitioners, academicians and jurists. Two Washington attorneys have played prominent roles in the evolution of the UPC: The Honorable Charles Horowitz served as co-chairman of the National Conference's Special Committee on the UPC, and Malcolm Moore serves as the ABA Representative to the Joint Editorial Board for the UPC.

In spite of the influence of these two prominent Washingtonians, our

state has not adopted the UPC. As a matter of fact, the 1974 legislative effort was spiced by a rather heated controversy involving a proposal that the UPC be adopted as this state's succession law. We understand that the widely held preference for Washington's non intervention system over the UPC's simplified administration alternative was a strong influence in the rejection of the UPC proposal at that time.

It is doubtful that the Task Force would seriously consider a wholesale enactment of the UPC. However, virtually every topic that has been considered for inclusion on the preliminary agenda is the subject of specific treatment in the UPC. The National Conference is in the process of overhauling a number of UPC sections. We are keeping close contact with this effort, and it can be anticipated that the Task Force's work product will in many instances reflect a UPC influence.

A discussion of the agenda items thus far developed is beyond the scope of this article. Suffice it to say, for the moment, that the agenda covers a wide array of topics from Abatement to the Dead Man's Statute to Pretermitted Heirs and through Will Substitutes.

It would be nice to think that time would stand still for the next three years so as to enable us to present all ensuing succession law legislation in one neat package. Of course, that simply will not happen. As is discussed in Michael D. Carrico's companion article, the Task Force has proposed legislation in the nature of an immediate response to the U.S. Supreme Court's 1988 decision in *Tulsa Professional Collection Services, Inc. v. Joanne Pope, Executrix Of The Estate Of H. Everett Pope, Jr. Deceased*, 485 U.S.____, 56 U.S.L.W. 4302 (1988), in which a nonclaim statute quite similar to Washington's was determined to violate the "due process" clause of the fourteenth Amendment to the U.S. Constitution.

The Task Force is also considering a legislative response to the Washington State Supreme Court's decision in *The Estate of O'Brien*, 109 Wn.2d 913 (1988). In this case, our Supreme Court ruled that under certain circumstances a real estate deed (not effectively constituting an inter vivos gift) could operate as a testamentary instrument even though not meeting the formal requirements of a will. It is anticipated that this legislation will be presented at the 1990 legislative session.

We encourage all members of the Bar to involve themselves in the Task Force's undertaking. Ideas for agenda items would be appreciated, not to mention subcommittee participation. Please forward any comments or inquiries in this regard to James K. Treadwell, 1201 Third Avenue, Suite 2900, Seattle, WA 98101-3028. □

James K. Treadwell was graduated from the University of Oregon School of Law in 1969. He is a shareholder with the Seattle firm of Karr Tuttle Campbell and chairs the firm's estate planning and probate department. He is a member of the Seattle Estate Planning Council, serves on the Executive Committee of the WSBA Real Property, Probate and Trust Section and chairs the section's Probate Law Task Force.

Copyrights— A Pitfall in Estate Planning

by **Rex B. Stratton**

Estate planning on occasion may entail the disposition of intellectual property rights, which include patents, trademarks and copyrights. In respect to the latter, a recent Federal District Court decision strictly applied the Copyright Act of 1976 frustrating the decedent's testamentary desire. In *Saroyan v. William Saroyan Foundation*, _____ F. Supp. _____, 5 USPQ 2d. 1532 (S.D. N.Y. 1987), Judge MacMahon, applying Section 304(a) of the Copyright Act, 17 U.S.C. § 304(a), held that the children of William Saroyan had the exclusive right to the copyright renewals of his work, *The Cave Dwellers*.

The 1976 Act

Copyright protection subsists under federal law in original works of authorship fixed in any tangible medium of expression and includes the following general categories (17 U.S.C. § 102(a)):

1. Literary works;
2. Musical works, including any accompanying words;
3. Dramatic works, including any accompanying music;
4. Pantomimes and choreographic works;
5. Pictorial, graphic, and sculptural works;
6. Motion pictures and other audio visual works; and
7. Sound recordings.

Under the 1976 Act, which became effective January 1, 1978, any copyright on or after that date endures for the life of the author plus 50 years. (A different rule, which grants a minimum term of 75 years from the date of publication, applies to anonymous, pseudonymous and works made for hire.) The duration of a copyright under the new act is significantly longer than existed under the 1909 Copyright Act.

William Saroyan

Transition

To effect the transition between the 1909 and 1976 laws, Section 304 of the 1976 Copyright Act provides that any registered copyright which existed on January 1, 1978 would endure for 28 years from the date the copyright was originally secured (the duration allowed under the 1909 Copyright Act). The 1909 Act, however, provided for a renewal term of 28 years (for a total duration of 56 years). Section 304(a) continues and provides for the renewal and extension of the pre-January 1, 1978 copyright for a further term of 47 years when an application for renewal and extension is registered with the Copyright Office one year prior to the expiration of the original copyright term. The pitfall is: The 1976 Act specifically sets forth the persons who are entitled to renew and extend the term of a copyright obtained under the 1909 Copyright Act.

The Saroyan Case

While Saroyan had willed certain tangible assets to his children, the rest of his estate, including all of his copyrights, rights to copyrights, and literary property in published or un-

published works was left to the William Saroyan Foundation. In 1986, the Saroyan children renewed the copyright to *The Cave Dwellers* in their names. The Foundation disputed the children's claim to the renewal rights and directed both the authorized publisher and the play's licensing agent to continue to remit royalties to the Foundation. The children sued.

Although the court found that the relationship between the father and his children was stormy, even estranged, the 1976 Copyright Act was express:

> There is nothing in the plain language and structure of § 304(a) to indicate any basis for denying renewal rights to an author's surviving children. The Foundation's novel grounds for attacking plaintiffs' renewal rights run afoul of the uniform treatment of § 304(a)'s clauses as a nondiscretionary order of renewal rights.

* * *

These authorities require the conclusion that the bequest of renewal rights to the Foundation was without effect because the renewal rights never became part of the estate. They also render immaterial allegations by defendant of a stormy relationship between plaintiffs and their father. This result is fortified by court decisions holding that widows who remarry and illegitimate children meet the statutory definition, thereby precluding executors' renewal rights. 5 USPQ 2d at 1534 (citations deleted).

Control

Estate planners need to be aware that state laws do not control most aspects of copyright ownership. By Congressional mandate, Section 301 of the Copyright Act of 1976, preempts after January 1, 1978, virtually all other laws governing copyrights. Thus, the creator of a copyrighted work registered before January 1, 1978 who desires to transfer his or her interests to anyone outside of the persons identified in 17 U.S.C. § 304(a), an assignment of the renewal right must be obtained from each member of the protected class. Without such an assignment, the renewal rights arising by statute may be exercised by a member of the Section 304(a) class, and the gift of the full interest in the copyright will fail.

Fortunately, there is light at the end of the tunnel. Beginning in the year 2006 the pitfall created by the transition rules of 17 U.S.C. § 304(a) will lapse, as all pre-1978 copyrights will have either expired or been renewed. Until that date, however, added care is required in the drafting of any plan involving copyrights registered before January 1, 1978, if the transfer of all rights in a copyright is to be consummated and an indefeasible transfer created. □

Rex B. Stratton *practices with Garrison & Stratton, P.S. in Seattle. He is a graduate of Wabash College (1967) and the University of Montana School of Law (1970), and a member of the Montana and Washington state bar associations.*

BOARD'S WORK

by **Lindsay Thompson**

Olympia, Washington, January 13-14, 1989

Present: President Bracelin and the Governors of the Association. Also Present: C.C. Bridgewater and Pat Sutherland (Prosecutors' Assn.); Alece Cox (Washington Women Lawyers); Ronald Cox (SKCBA Trustees); Judge Robert Doran (Superior Court Judges' Assn.); Frank Edmondson (Government Lawyers); Dan Gottlieb (SKCBA Young Lawyers); Ed Holm (Legal Foundation of Washington); John McKay (WSBA Young Lawyers); John J. Michalik (WSBA Executive Director); Judge Joel Rindal (Magistrates' Assn.); Lindsay Thompson (*Bar News* Editor); Gregg Tinker (WSTLA); and Robert Welden (WSBA General Counsel).

Operations: Executive Director John Michalik and Governor Julie Weston, chair of the Board's Budget and Audit Committee, went over the more or less final figures for the Association's 1987-1988 budget. While most of the budget came in as predicted, or anticipated overruns in one area were offset by savings in others, three areas were singled out for particular scrutiny: WSBA committee expenses, conference and meeting costs, and the Bar convention, each of which came out about 130% of budget.

Michalik said convention attendance has clearly leveled off, causing what used to be a small, acceptable deficit to become a larger and less agreeable one. He told the Governors there would have to be a rethinking of the program and pricing of the convention to recover more costs in the future. For starters, he said he's cut the number of CLE speakers who'll get their convention registration fee waived for doing CLEs. In 1988 the number had reached 96; in 1989 it will be 48.

Weston said committees of the Association are being watched more closely and their chairs are being contacted about keeping within budget, and that cost-cutting measures for Board meetings are already in effect.

Governor Ron Gould stressed that "in seeking to control committee costs, we don't want to discourage committees from being active. We're not a legislature with the power to tax. We have to live within our means."

Remembering Wayne Wilson: On a motion by Governor Steve DeForest, the Governors approved a resolution expressing regret at the death of Wayne Wilson, Public Affairs Director of the Association, on January 10, 1989. A fuller appreciation of Wilson's 15 years with the Association will appear in next month's *Bar News*.

Electing a new president: Several months ago the Board decided to advance the timetable for electing the next president of the Association to give that person more time to get up to speed before taking office in September. Governors Steve DeForest, Ed Shea and Paul Stritmatter, the Presidential Search Committee, recommended — and the Board unanimously elected — Chehalis lawyer and former WSBA Governor James Vander Stoep to the presidency for 1988-1989.

At least it won't be a computer-generated phone call: The Governors spent some time fine-tuning a poll of membership developed by Governors Mike Carlson, Ron Gould and Jeff Tolman. The survey will query WSBA members' views on insurance, member services, where the Bar convention

should be held, what to do about publications, and the gap between committee seats and the number of people who want to serve on them. It's expected to be out in a month or so.

Novack Report called a medical curiosity: Pungently expressing the view that it was nothing but lawyer-bashing, the Governors spent a good while bashing the conclusions of the Novack Commission on Legal Fees. The Commission was created in 1987 in response to the tort reform controversy, and its report will appear for comment in the Supreme Court's *Advance Sheets*.

The Commission found no evidence of patterns of abuse in setting attorney fees, in tort litigation or any other transaction. They reaffirmed the value of contingent fees. They found that when there's a problem about fees, it's usually because of poor communication between lawyers and clients. However, they went on to make a number of important recommendations, including:

- amending RPC 1.5(a) to clarify how a reasonable fee will be evaluated;
- requiring that virtually all clients be given a "Statement of the Lawyer-Client Relationship and Information As To Fees And Costs" when undertaking a project;
- amending RPC 1.5(c) to require that contingent fees be calculated on net recovery after deduction of expenses, not on gross recovery, as well as changing the calculation of contingent fees in structured settlements;
- adding a new RPC 1.5(j) making fee arbitration mandatory when the client wants one.

Governor Paul Stritmatter, an advisor to the Commission, said that the report was a political document, proposing solutions to problems that don't exist.

Governor Ed Shea was even more direct. "This is a cure in search of an illness," he said. "It's a case of powerful people in powerful positions who act on an anecdote and think they know the whole story. It is a push by a couple of politicians to regulate the Bar," Shea continued, "to put themselves between us and our clients. Historically, it's been lawyers who've protected clients from the Legislature. These people think it's the other way around."

Governor Ron Gould was concerned that "the tone of the report is somewhat anti-lawyer. I don't see anything justifying treating lawyers like used car salesmen." He felt that the report displayed an ignorance of the wide variety of attorney fee arrangements now in use and their benefits to clients.

Governor Don Curran said the fee arbitration requirements will encourage disputes with clients, and found the report "demeaning. It's incumbent upon us to take a position on this," he told the Board. "My constituents have criticized the Board for being wimpish in the past on issues of crucial interest to lawyers."

Governor Julie Weston said the report "appears to have been written by academics and judges," not practicing lawyers, and pressed for immediate action on the report. "We were elected to lead."

Several other Governors thought a member of the Commission ought to be invited to appear, and that the views of WSBA members should be sought before a position was taken. That view prevailed on a 6-4 vote, and the matter will be taken up in February. In the meantime, input from members is urgently requested by the Governors.

Legislative report: Don Ericson, chair of the Legislative Committee, and WSBA Legislative Liaison John Fattorini brought up a package of proposals from the Washington Association of Prosecuting Attorneys and proposed revisions of the Trademark Act.

The criminal legislation would tighten the availability of post-conviction bail, limit the grounds and time for filing personal restraint petitions, and change the ways mental defenses can be used. Washington Association of Criminal Defense Counsel Richard Hansen and Prosecutors' Association representative Mike Redman debated the merits of the proposals, after which the Board voted to take no position on them. Both sides have lobbies in Olympia and will slug it out on their own.

After some discussion of an attorney's fee clause, the Board voted to sponsor the proposed revisions of the Trademark Act and referred a proposal to amend the debt collection statutes to the Legislative Committee.

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

- approved amendments to the bylaws of the Corporation, Business & Banking Law Section;
- chose to send the Association's delegation to the ABA midyear meeting without instructions on how to vote;
- met briefly with Governor Booth Gardner;
- received a report from the Legal Aid Committee on the need for civil legal services for the poor; and
- voted a grant of $5,000 for Seattle lawyer Lauren Marshall's play, "Whadda 'Bout My Legal Rights?" in aid of its coming tour of Washington high schools.

Next meeting: February 10-11, 1989 in Tacoma.

ABA Seeking Pro Bono Award Nominees

Nominations are open for the 1989 Pro Bono Publico Awards, which were created in 1984 to recognize the public service contributions of thousands of lawyers across the nation. Eligibility is restricted to lawyers who do not make their living delivering legal services to poor persons, but who either directly provide such services on a volunteer basis, or create or organize systematic improvements that increase access to justice for poor persons. Nominations will be accepted until March 1, 1989. Both individual lawyers and law firms may be nominated. Questions or nominations should be addressed to Dorothy Jackson, Staff Assistant, ABA Standing Committee on Lawyers' Public Service Responsibility, 750 N. Lake Shore Dr., Chicago, IL 60611, (312) 988-5766, ABA/net id: ABA413.

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Lawyer as Photographer: Centennial Courthouse

by **R. Stanley Morse**

The Centennial Courthouse photography project has roots that go back beyond six years ago when I first picked up a camera and tried to take serious pictures. I was living and practicing law in Chelan, and I had developed "attorney stress syndrome." I was unhappy with the progress of my creative side, sometimes overwhelmed by the immensity of my clients' problems, not as socially active as I would have liked, and working too many hours.

I took a hard look at who and what I was and tried to discover what would make me happier. I did what many other attorneys had done: I "ran away" from the practice.

I began to write fiction and magazine articles. I purchased a 35mm camera so I'd have convenient photographs for editors to use, and I began to study photographic basics in books like Ansel Adams's *The Camera*. I closed my law practice for a year and a half, moved to Seattle for a more cosmopolitan lifestyle, and became proficient at both photography and writing.

The problem was, I wasn't making much money.

I wonder how many attorneys stay with, or return to, a law practice because of the income, rather than because they enjoy it. Law, I think many will agree, is a tough way to make a living. When I went back to the practice in the summer of 1984, I started to analyze the stress-induced burnout I had been through. Here are some of my observations:

Most lawyers are creative, intelligent people. A law practice demands both qualities, but seldom provides immediate or significant emotional rewards. Clients rarely give quick or positive feedback, particularly to young attorneys. It may take years to "win" a big case, and then victory is seldom sharp-edged or complete. Most of the time we can't even talk about it.

In comparison: artists' shows are critiqued by the press and viewed by the public; politicians make headlines when they are elected or pass a new law; shipwrights have their creations christened by a bottle of champagne in front of a crowd. Attorneys, on the other hand, walk out of a courtroom, away from a settlement conference, or out of a client meeting with rarely a word of appreciation, and never (we hope) a public accolade. The most we can usually expect is that the client's check will clear the bank! Our daily practice is often a grinding tedium, and developing a vision of the entirety we are creating is sometimes impossible and never certain. So, despite the fact that law provides many avenues for the creative mind, it rarely rewards the ego.

We are always fighting. Even if the battles are intellectual, we are combatants, opposing colleagues who are equally intelligent or creative — or are just plain mean and hard to deal with. Sometimes, the greatest opponent turns out to be our client, because (s)he is less than honest, is argumentative or is distrustful.

And there is always that enemy within — the critical eye that observes and records every mistake and miscalculation. A creative mind is just that because its owner constantly looks in the mirror to critique and reworks his way of perceiving the world. For an attorney, this often results in a hard reflection of even the slightest imperfection — we are all imperfect to some degree in what we do. Unlike the sculptor or painter who discards sketches and workups upon achieving the final work, we attorneys are forced to accept the quick-cast work of our pressure cooker environment; the client cannot afford to pay for multiple efforts, and the chance to redo something (say, a trial or a deposition) rarely exists. This conflict within ourselves — between the need for perfection and the need for speed — is often the most likely cause of attorney stress syndrome.

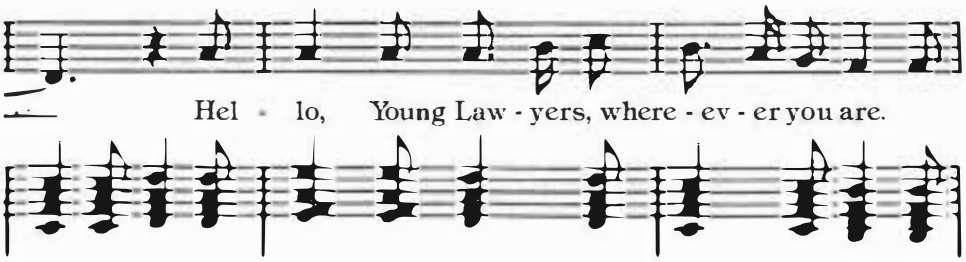
Which brings me to my point. To survive and thrive in my law practice I've split off a portion of my creativity and focused it on what I most enjoy: photography, singing, writing, and whatever else takes my fancy. A segment of my creative energy is still devoted to the law, but I recognize it to be only a part — I do not allow the practice to engulf me.

I pay a price. Seldom do I "work" a fifty- or sixty-hour week. As a result, I probably make less money than I might. But I believe that the quality of my legal work has improved, and that has further reduced the imperfection-stress factor. Plus, when I do need to invest extra hours to respond to a motion or prepare for a trial, I have the time. I'm not even fully convinced I make less money. I've streamlined my practice. I take only those cases that meet three criteria: interesting, financially rewarding and brought to me by a sane client. The fewer hours I bill are more likely to deliver a satisfying financial return. I can afford time to help the client understand my role in the resolution of his or her problem — clients who know what to expect tend to be pleasurable to deal with.

So, on the whole, my law practice is a satisfying, financially rewarding part of my life. It supports my other creative activities — like "Centennial Courthouse" — which yield frequent and direct emotional rewards and give me the feeling of contributing something more to The Cause than being just another functionary. This symbiotic approach has improved my attitude towards my law practice and towards life. Law may be the "root" which anchors me in place, but I've encouraged other "organisms" — like photography — to provide emotional nourishment. □

***Stanley Morse** currently practices in Redmond.*

CLE CLEARINGHOUSE



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

Make plans now to attend the 1989 Young Lawyers Division Mid-Year Meeting and Seminar "The Tools of Our Trade" and one or more of the seminars from the April "Essentials of Evidence" series.

"The Tools of Our Trade" will be held in Leavenworth at the Enzian Motor Inn from March 31 to April 2. Act now to register if you haven't yet done so; space is limited to the first 125 registrants!

The Honorable **James M. Dolliver**, Washington State Supreme Court Justice, is the featured keynote speaker on Saturday and will address the group following the luncheon and the first annual presentation of the WYLD awards. All seminar registrants may bring one (adult) guest to the luncheon.

The Mid-Year features members of both the bar and bench. Program topics include: "Developing the Theory of the Case"; "Negotiations Techniques"; "A Workshop on Negotiations"; "Persuasive Writing"; "Persuasive Speaking"; "Reputation, Professionalism and Credibility"; "The Office and the Client"; and "A Workshop on Persuasive Speaking."

Program chair **Michele Hurley** (Carney, Stephenson, Badley, Smith, Mueller & Spellman, Seattle), co-chair **Gregory S. Morrison** (Attorney-at-Law, Spokane), and WYLD president **John McKay** (Lane Powell Moss & Miller, Seattle) will be joined by the following faculty members: **Daniel Gandara** (Graham & Dunn, Seattle), **Paul Luvera** (Attorney-at-Law, Mount Vernon), **Tom Chapman** (Office of the Washington State Attorney General, Spokane), the Honorable **Barbara Johnson** (Superior Court of Clark County, Vancouver), **G. Scott Greenburg** (Shidler McBroom Gates and Lucas, Seattle), **Terry Wright** (Willamette Legal Clinic, Salem, Oregon), **Edward M. Shea** (Attorney-at-Law, Pasco, member of the WSBA Board of Governors), and **William Gates, Sr.** (Shidler McBroom Gates & Lucas, Seattle, 1987-1988 president of the WSBA). For futher information about this program, please contact Program Coordinator Karla Ellison at (206) 448-0433.

The "Essentials of Evidence" seminar series will be held in April, and you won't want to miss the opportunity to sign up for at least one — if not all three — of the programs! They

are cosponsored by the Young Lawyers Division and will be held in Seattle during three consecutive weeks. Each seminar features remarks from members of both the bench and the bar.

"The Fundamentals of Evidence" is on Saturday, April 8. The faculty includes: Program chair **Ronald D. Gordon** (Law Offices of Eaton & Gordon, P.S., Friday Harbor), the Honorable **J. Dean Morgan** (Clark County Superior Court, Vancouver), **Kathy Ann Cochran** (Wilson Smith & Cochran, Seattle), **James Perkins** (Bogle & Gates, Yakima), **Thomas W. Huber** (Helsell, Fetterman, Martin, Todd & Hokanson, Seattle), **Stuart D. Heath** (Lane Powell Moss & Miller, Seattle), and **Michael Thomas Watkins** (Tewell, Thorpe & Findlay, Seattle).

"Using Evidence Effectively" is on Friday, April 14. The faculty includes: Program chair **Ronald D. Gordon** (Law Offices of Eaton & Gordon, P.S., Friday Harbor), the Honorable **William L. Dwyer** (United States District Court, Western Washington, Seattle), **P. Stephen DiJulio** (Foster Pepper & Shefelman, Seattle), **L. William Houger** (Houger, Miller & Stein, Seattle), **Ruth Nielsen** (Carney, Stephenson, Badley, Smith, Mueller & Spellman, Seattle), **F. Ross Boundy** (Shidler McBroom Gates & Lucas, Seattle), and **Susan J. Noonan** (King County Prosecuting Attorney's Office, Seattle).

"Special Problems in Evidence and How to Solve Them" is on Friday, April 21. The faculty includes Program chair **Ronald D. Gordon** (Law Offices of Eaton & Gordon, P.S., Friday Harbor), the Honorable **Robert F. Brachtenbach** (Washington State Supreme Court, Olympia), the Honorable **John N. Skimas** (Clark County Superior Court, Vancouver), **Mabry Chambliss DeBuys** (Shidler McBroom Gates & Lucas, Seattle), **Bruce E. Larson** (Karr Tuttle Campbell, Seattle), **Mark Nels Thorsrud** (Thorsrud, Cane & Paulich, Seattle), and **Robert M. Stein** (Houger, Miller & Stein, Seattle), with special appearances by **Ted L. Rothstein**, M.D. (Seattle) and **Marsha A. Hedrick** (Seattle Psychological Services, Seattle).

For further information about these three seminars, please contact Program Coordinator Karla Ellison at (206) 448-0433.

APPROVED COURSES
Washington State Bar Association

Introducing the Washington Motor Vehicle Accident Insurance Deskbook
6.00 credits

FEB 2	Olympia (Westwater Inn)
FEB 9	Seattle (Westin Hotel)
FEB 16	Spokane (Cavanaugh's Inn at the Park)
FEB 23	Bellevue (Holiday Inn)

Real Estate Loan Defaults and Workouts
6.75 credits

FEB 10	Spokane (Cavanaugh's Inn at the Park)
FEB 15	Richland (Hanford House)
FEB 24	Seattle (Stouffer Madison Hotel)

Introducing the Family Law Deskbook
7.00 credits

MAR 2	Spokane (Cavanaugh's Inn at the Park)
MAR 9	Seattle (Stouffer Madison Hotel)
MAR 16	Olympia (Tyee Hotel)
MAR 23	Fife (Executive Inn)

Land Use In the Age of Gridlock
6.25 credits

MAR 3	Seattle (Stouffer Madison Hotel)

WALS Annual Education Seminar

Red Lion Inn	Nendels
18740 Pacific Hwy S.	1300 North First St.
Seattle	Yakima
Mar. 11; 9 a.m.-3 p.m.	Mar. 18; 9 a.m.-3 p.m.

Resumés and interviewing; setting depositions; the attorney/paralegal/secretary team (panel). Register by Feb. 18.

Contact: Bonnie Gerber/Dolack Hansler
950 Pacific Avenue; 11th Floor
Tacoma, WA 98402 Tel: (206) 383-2051

University of Washington School of Law
Continuing Education

WINTER/SPRING 1989 SCHEDULE

Date	Course#	Location	Title
2/25	8901	Law School	***MAKING AND MEETING OBJECTIONS — PART II*** 8:30-4:15 — 6.75 CLE credits — $135 (REPEAT OF NOVEMBER, 1988 PROGRAM)
3/11	8902	Law School	***COMPUTER-ASSISTED LEGAL RESEARCH*** 9:00-5:00 — 7 CLE credits — $135
3/24	8903	Washington Athletic Club	***ORIGINS OF THE CONSTITUTION*** 1:00-4:40 — 3.5 CLE credits — $75
4/1	8904	Law School	***CURRENT DEVELOPMENTS IN REAL ESTATE FINANCE LAW*** 8:45-4:30 — 6.75 CLE credits — $135
4/8	8905	Law School	***BASIC ESTATE PLANNING*** 9:00-4:30 — 6.5 CLE credits — $135
4/22	8906	Law School	***THIRD ANNUAL FAMILY LAW INSTITUTE*** 9:00-4:30 — 6.5 CLE credits — $135
4/29	8907	Law School	***NONPROFIT CORPORATIONS: LEGAL ISSUES AND DEVELOPMENTS*** 9:00-4:30 — 6.5 CLE credits — $135
5/6	8908	Law School	***EFFECTIVE SOLO AND SMALL FIRM PRACTICE: PLANNING, MARKETING, PSYCHOLOGY, AND COMPUTERIZED LEGAL RESEARCH/PRACTICE*** 8:30-4:30 — 7 CLE credits — $135
5/12	8909	Washington Athletic Club	***DEVELOPMENTS IN CIVIL PROCEDURE*** 1:00-4:30 — 3.5 CLE credits — $75
5/20	8910	Law School	***CRIMINAL EVIDENCE: RECENT CHANGES IN SEARCH AND SEIZURE, CONFRONTATION AND RULES GOVERNING CHARACTER EVIDENCE*** 9:00-4:30 — 6.5 CLE credits — $135
5/26	8911	Coeur d'Alene	***TAX PLANNING WITH PARTNERSHIPS AND S CORPORATIONS*** 9:00-4:30 — 6.5 CLE credits — $135 (REPEAT OF NOVEMBER, 1988 PROGRAM)

For information, or registration by phone, call 543-0059

Registration Form

Name _____ Phone _____
Firm _____
Address _____

Please mail this form and your check, made payable to the **WASHINGTON LAW SCHOOL FOUNDATION,** to:

Continuing Education
University of Washington School of Law
1100 N.E. Campus Parkway, 430 Condon Hall,
Seattle, WA 98105

Course# _____
Brief Title _____
Amount enclosed _____
Bill my firm _____

Lawyers' Assistance Program First-Year Report: 1987-1988

LAP's doors opened for service in August 1987. During its first year of operation, 144 lawyers and judges received assistance from the program. (More than one percent of all Washington lawyers, an accomplishment that no other similar program has produced by first year's end.) Such success is due to a number of factors. Probably the most important determinants are first, Supreme Court rules which guarantee unprecedented confidentiality protections and second, an outstanding group of volunteers who serve as peer counselors and as steering and advisory group members.

Fifty-eight percent of our clients are lawyers who have self-referred. They tend to be in the beginning stages of impairment. Early identification of the need has usually resulted in successful treatment. Many clients reported that they would not have sought any treatment but for the fact that LAP's confidential services would never lead to involvement with the discipline authority unless the client provided expressed consent. The availability of peer counselors and other effective resources who work well with lawyers also has attracted self-referrals. Many lawyers have come in after reading this monthly *Bar News* column. The articles helped convince them that LAP services are confidential, readily available, and germane to their particular form of distress.

Services also have been delivered to lawyers referred by third parties, including the WSBA Legal Department. If untreated, these lawyers might have continued to commit malpractice or perform disservices to their clients, their family members, their colleagues, the courts, and themselves. This type of client only enters treatment if (s)he consents to treatment recommendations.

Peer-counselor-training and ongoing supervision occurs on a regular basis throughout the state. Peer counselor groups already exist in the Seattle/Tacoma area, Bellingham, Olympia, Wenatchee, Spokane, and Pasco. The program has recruited 70

volunteer lawyers, who have received training at 38 different events. Their support of LAP has provided an additional medium through which other lawyers learn about LAP.

Finally, LAP staff have provided educational or preventive talks in 15 separate presentations; most were held for lawyers or judges within the state. Some of these presentations occurred across the nation for other bar associations and the ABA. Our combination of providing comprehensive services through professional and peer counselor evaluation and treatment is viewed "as the most promising prototype" for assisting impaired lawyers (see Margolick's "At the Bar," 6/24/88, *New York Times* column). This has led to LAP's consulting with nine other state bar associations as they establish or alter their lawyer assistance programs.

Already into the first six months of our second year of operation, LAP staff and peer counselors have been even busier than during the first. Yet we are ready and able to see new clients, so give us a call if there is any need that we may serve. Call (206) 448-0605.

LAP Statistical Summary for the Twelve-Month Period Beginning August 1, 1987 Ending July 31, 1988

Disposition of Cases:	Self-referred	Third-party	Discipline	Total
Opened & Not In Treatment*	0	27	0	27 (19%)
Opened & in Treatment*	46	11	3	60 (42%)
Treated* & Closed	37	20	0	57 (39%)
Total	**83 (58%)**	**58 (40%)**	**3 (2%)**	**144 (100%)**

Case Diagnoses:	
Mental problems (depression, anxiety, old-age impairment)	64 (44%)
Marital problems	11 (8%)
Alcohol	60 (42%)
Drugs	9 (6%)
Total	**144 (100%)**

Types of Consultations or Treatment:		
Total Inquiries about LAP, no treatment* service to caller		121
Total Services to clients (144) or those involved with cases		927
Client Treatment*	430 (46%)	
Peer Counselor Consultation	306 (33%)	
Third-Party Consultation	109 (12%)	
Professional Consultation	82 (9%)	
Total		**1048**

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

NEWS FROM HOME

Lynnwood lawyer **Edward Hansen** has been honored for outstanding community service. Hansen was awarded the Dean Echelbarger Community Service Award by Snohomish County Executive Willis Tucker in October.

Hansen chairs the Snohomish County Committee for Improved Transportation, and is vice chair of the county Economic Development Council. He chaired the Paine Field Task Force Study on the airport's role, served on the county charter review commission, and was head of the county Democratic Party organization for eight years.

Williams, Kastner & Gibbs has added a former Oregon lawyer to its Vancouver, Washington office. **Greg Bessert**, a 1985 Gonzaga law graduate with an LL.M. from the University of Florida, will concentrate on tax and estate planning.

The Young Lawyers Division of the Tacoma-Pierce County Bar Association has received national recognition for its members' work as mediators in small claims cases in Pierce County District Court.

The group placed second in the ABA public service awards, says **Mark Dyson**, a Tacoma lawyer who coordinates the project. The program seeks to promote settlements and help litigants better organize their cases. It began in March.

Seattle lawyer **Linda G. Moore** has joined the law department of BetaWest Properties, Inc. of Denver. Formerly assistant general counsel to the Rouse Company, a national real estate development company, Moore was in private practice for eight years prior to joining BetaWest. A member of the District of Columbia, Washington and Colorado bar associations, Moore is also a member of the ABA Committee on Real Property and Probate Law and has lectured for the American Law Institute.

BetaWest is a commercial real estate developer with assets of $950 million.

Vancouver, Washington lawyer **Alfred A. "Art" Bennett** has left the Dan Marsh law firm and set up his own practice. Bennett has been in public and private practice in Vancouver since 1976 and is president of the Domestic Relations Section of the Clark County Bar Association.

Seattle attorney **Charles A. Kimbrough** has been elected vice president of the Northwest Kidney Center. The first dialysis outpatient center in the world, in 1962, the NKC is the second-largest freestanding dialysis organization in the United States.

Kimbrough, a graduate of Washington State University and the University of Washington School of Law, is a partner in the Seattle law firm of Karr Tuttle Campbell.

Seattle lawyer **Margaret McKeown** has been elected president of the Legal Foundation of Washington. A partner in the firm of Perkins Coie, McKeown joins **Paul Bastine** of Spokane (vice president); **Ed Holm** of

Partners **Michael Garvey** *(left) and* **Ken Schubert** *(right) present University of Washington School of Law Dean* **John Price** *with a check.*

Olympia (secretary); and Tacoma businessman **William Wade** (treasurer) as officers of the Foundation, which administers the Interest on Lawyers' Trust Accounts (IOLTA) program for the state and grants some $2.5 million annually to law-related programs.

Also joining the Foundation are three new trustees, serving terms ending in 1990: Court of Appeals judge **Rosselle Pekelis** joins the board by appointment of the Washington Supreme Court; Spokane attorney **Frank Hayes Johnson** was appointed by the Washington State Bar Association; and **Beverly A. Freeman**, of Citibank North America, is the appointee of Washington Governor Booth Gardner.

The Seattle law firm of Garvey, Schubert & Barer has pledged $300,000 to the University of Washington School of Law to establish an endowed professorship in the name of the firm. This is the law school's second permanent professorship and the first to be funded by a single law firm. Garvey, Schubert & Barer employs 67 attorneys and has offices in Seattle, Portland and Washington, D.C.

Ken Schubert, one of the firm's senior partners, said the gift was intended to "help maintain the UW law school as the premier center for legal education in the Northwest." He and senior partners **Michael Garvey** and **Stanley Barer** are all UW alums, as are one-third of the firm's other partners. He said the firm chose to designate its contribution for a professorship partly because of its own experience: every other summer, a visiting professor from the UW law school comes and works with the firm's attorneys, offering seminars and otherwise sharing knowledge.

Michael F. Fitch, currently head of the Legal Assistant Program at Edmonds Community College, was recently elected as 1988-1989 national president of the American Association for Paralegal Education (AAfPE) at the organization's 13th national conference, "Matching Tradition and New Technology," held in Orlando, Florida.

Fitch, who has been a member of the faculty at Edmonds Community College since 1976, is a member of the Illinois and Washington bars. He is also a member of the American Bar Association and the Seattle-King

County Bar Association and has been a board member of the AAfPE organization since 1985.

The American Association for Paralegal Education is a national organization which serves paralegal educators and institutions such as Edmonds Community College offering paralegal education programs. Currently 142 educational institutions are members of the association.

Seattle attorney **Peter H. Haller** has been appointed to head an American Bar Association subcommittee that will organize a 1990 environmental law conference for Pacific Rim nations. The site of the conference is as yet undetermined.

According to Haller, "Pacific Rim nations face a growing number of environmental concerns, and more active trading relationships will require international cooperation on these issues." Haller is one of ten members of the ABA Standing Committee on Environmental Law.

Daniel E. McKelvey Jr., a partner in the law firm of McKelvey, Nelson & Fennessy, has been elected a fellow of the International Society of Barristers. McKelvey, a member of the Washington State Bar Association since 1973, is listed in the 1987 edition of "The Best Lawyers in America."

Riddell, Williams, Bullitt & Walkinshaw, a Seattle law firm since 1906, has opened an Eastside office in downtown Bellevue, according to **Douglass A. Raff**, managing partner.

The office is on the 21st floor of the Rainier Bank Plaza, at 777 108th Ave. N.E. **David Hoff**, a resident of Issaquah, is the partner in charge of the Bellevue office. He is joined by other resident partners, **Thomas G. Hamerlinck** and **Karen F. Jones**, and associates **Morris G. Kremen** and **Howard A. Coleman**.

Attorney **Madeline A. Renkens**, who worked for the United States Department of Justice in New York and was previously associated with Barokas & Martin in Seattle, has opened her own law practice at 329 Avenue C in Snohomish, (206) 568-6687.

MICRONESIA REPORT
by **STEPHEN A. COHEN**

The Micronesian beat goes on.

On the island of Saipan, capital of the Commonwealth of the Northern Mariana Islands, three more Washintron Bar members have joined the Attorney General's Office. The new lawyers, all hailing from King County, are **Gail Geiger, Mimi Buescher** and **Craig Platt.** Gail is in the Solicitor's Division while Mimi and Craig are in the Criminal Division. Other Washington Bar members in the Attorney General's Office who have been previously profiled in this column are **John F. Biehl, Richard Weil, Stephen A. Cohen, David A. Webber, Ron Hammet, Martin Lovinger, John F. Cool, Larry V. Rogers** and **Maile Huvar Bruce.** In toto, 12 of the 18 lawyers in the Attorney General's Office — 66.7% — belong to the Washington Bar. It is hard to imagine a greater single concentra-

tion of Washington Bar members in any other office outside of the state of Washington.

Washington law schools have also figured prominently in the legal externs used in the Attorney General's Office. Student **Doug Ogden** of the University of Washington School of Law is currently attached to the office. He was preceded by **Lee Nelson** and **Sheryll Bonilla** of the University of Washington School of Law and **James Hawk** of the University of Puget Sound School of Law.

The kudos for this recruiting feat go primarily to **John Biehl**, the Deputy Attorney General, who engineered it, and **Alexandro C. Castro**, the Attorney General, who has suffered it to happen.

Elsewhere in the Pacific Basin, Washington Bar members **Caroline Crenna** and **Enere Levi** are in the Attorney General's Office of American Samoa, located in the city of Pago Pago. Although the Samoan islands are part of Polynesia and not Micronesia, the two regions have an affinity for each other.

PACIFIC COUNTY REPORT
by **ELIZABETH PENOYAR**

Pacific County has not reported for 15 years. That is because nothing has happened in 15 years. However, since July 1988 a few changes have occurred, prompting this report:

Herbert E. Wieland retired from the superior court bench. Friends and members of the bar gave him a very "dignified" retirement party. **Guy Glenn** was appointed to the superior court bench in July. **Doug Goelz**, Deputy Prosecuting Attorney, was elected to the South District Court bench. **August Hahn**, South District Court judge, returned to private law practice and public defender work. **Joel Penoyar**, North District Court judge, was elected in November to the superior court bench. **Andrew Monson** was appointed to the North District Court bench. **Elizabeth Penoyar**, public defender for many years, is now a sole practitioner doing civil work.

Attorneys abroad: WSBA members serve in Micronesia.

Now repeat after me:

The North District Court judge is now the superior court judge. The public defender is now in private civil practice. The deputy prosecuting attorney is now South District Court judge. The South District Court judge is doing public defense work. A civil attorney is now North District Court judge.

Jim Finlay and **John Wolfe** remain in private practice and do not need new letterhead, new offices, new secretaries, or new anything. **Mike Sullivan** remains the Prosecutor. Congratulations and/or condolences to everyone.

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

A fire extensively damaged the offices of **Ron Hendry** and **Ken Kessler**. Rumors are that burglars started the fire having returned to steal what they had missed in an earlier burglary. Fuel for the fire may have been provided by stacks of unreturned phone messages in Kessler's office and by mounds of judicial campaign debts in Hendry's.

Jim Caraher sold his restored 1949 Jaguar XK120 for a substantial

amount of money. We are being vague as to actual sale price to protect Jim from the I.R.S. audit, which is sure to come. We can disclose that the sale price was a lot more than your average judge grosses in a year. Jim claims to have paid $300 for the car more than ten years ago and has been working on it ever since. He also says he has kept accurate time and financial records on its restoration for use in the audit. One hopes that no comparison is made between his office time records and his car time records which, when added together, may reveal Jim put in a lot of 30-hour days.

John VanBuskirk is merging his offices with McCormick, Hoffman and Reese. **Brian Moran** is an associate in the offices of **Robert D. Reinhard**. **Stan Rumbaugh** is moving his office to the Washington Building in revitalized downtown Tacoma. Finally **James Helbling** and **James Marshall** are now partners in the law firm of Rovai, Miller, et al. taking the place of **Meagan Foley**, who was recently appointed to a court commissioner position.

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

Office Moves. Culp, Guterson & Grader announces that **Andrew P. Hall**, **Bern A. Johnson**, **Janet A. McDonald**, **Gregory C. Narver** and **Cyrus R. Vance, Jr.** ("the man with the command" of Civil Rules 26-37) have become associated with the firm, and that **Ann R. Truxal** is now of counsel. **Jill E. Bliss** has joined Treece, Richdale, Malone, Corning & Abbott as an associate. **Robert P. Williamson, Catherine A. Johnson** and **Patrick R. Lamb** have associated with Carney, Stephenson, Badley, Smith, Mueller & Spellman. **Kathy A. Cochran**, **Robert C. Dickerson, II**, **David M. Jacobi**, **Dennis Smith**, **Gary A. Western** and **John D. Wilson, Jr.** have formed Wilson, Smith, Cochran & Dickerson with offices in the Financial Center.

Shidler, McBroom, Gates & Lucas announces that the following have joined the firm as associates: **Matthew J. Coe**, **Jesse Owen Franklin, IV**, **Hillary G. Kaplan**, **Douglas M. Love**, **Mary Megan McLemore**, **Mark G. Olson** and **Daniel P. Thompson**. **Timothy K. Ford** has become a director of MacDonald, Hoague & Bayless; **Paul W. Oden**, **Ira S. Rubinstein** and **Virginia L. Faller** have become associates; and **Robert C. Randolph** has left the firm to become managing director of Chloride Eastern Industries, Ltd. in Singapore. Montgomery, Purdue, Blankinship & Austin announces that **Walter J. Yund, Jr.** has joined the firm as of counsel, and that **Stuart P. Kastner** and **Joseph C. Brown, Jr.** have joined as associates. The newly-named firm of Chemnick, Moen & Greenstreet has moved to Market Place Two.

Betty L. Drumheller has become a principal in Hanson, Baker, Ludlow & Drumheller. **David M. Shank** and **Mark J.** ("Mr. Receivership") **Phelps** have become partners, and **Shelley Hickey** has become an associate at Revelle, Ries & Hawkins. Ryan, Swanson & Cleveland annouces that **Lauren K. Goldenberg**, **John P. Mele**, **Sharon J. Bitcon**, **Richard P. Lentini** and **David L. Tift** have become associated with the firm, which has moved to 1201 Third Avenue. **Barbara J. Gazeley** has joined Garvey, Schubert & Barer as a principal, and **Meg M. Carman** has joined as an associate. Foster Pepper & Shefelman announces that **Dan D. Dixon** has joined as international counsel, and that **Bruce A. Coffey**, **Joseph E. Delaney**, **Tim J. Filer**, **John V. Helmick**, **Gailon W. McGowen**, **Mary Beth Neraas** and **Paul D. Reese** have joined as associates. **Constance V. Lind** is now an associate at Lucas & Whetsel.

Of Note. The Federal Bar Association of the Western District of Washington honored U.S. District Court judges **Donald S. Voorhees** and **Thomas J. Zilly** at its fifth annual recognition dinner. **Abraham A. Arditi** was presented with a special award for his significant *pro bono* representation in federal court. Special appreciation was also expressed for the work of **Barbara Miener** as editor of the *Federal Bar News*. (Lindsay Thompson, editor of this *Bar News* should be so fortunate!) **M. Margaret McKeown** is current president of the Federal Bar Association, and **Edward W. Pettigrew** is the immediate past president.

Rodney J. Waldbaum has been elected a Fellow of the American College of Tax Counsel. **Alan H. Kane** has been elected chair of the Taxation Section of the Washington State Bar Association. **Kevin J. Collette** has been elected president of the board of directors of Northwest Venture Group. **Elizabeth Fitzhugh** has been elected chair of the Puget Sound Chapter/National Multiple Sclerosis Society. **William J. Leedom** has been elected president of the Washington Defense Trial Lawyers.

Peter H. Haller has been appointed to head an American Bar Association subcommittee that will organize a 1990 environmental law conference for Pacific Rim nations. **David L. Garrison** has been appointed chair of the Intellectual and Industrial Property Law Section committee on alternate dispute resolution techniques, and chair of the American Bar Association Patent, Trademark and Copyright Section subcommittee on standardization of terminology for certain patent applications.

WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

by **TERESA MATHIS**

Lynnwood attorney **Kathryn Lund Ross** was selected as the winner of the first *William O. Douglas Award*, the highest award WACDL presents, in recognition of her outstanding dedication and service to the criminal defense, demonstrated through her involvement in death penalty and other extremely difficult cases. Ross has represented Willi Mak, Charles Robert Bingham, and Darrin Hutchinson. The award, a bust of former U.S. Supreme Court Justice William O. Douglas created by Oregon artist **Steve Parks**, was presented at WACDL's December 9 holiday party.

WACDL also presented two *Distinguished Service* awards, one to a public defender and one to an attorney in private practice. The recipient of the public defender award was **Dick Cease**, Spokane's head public defender for more than 20 years and a devoted criminal defense lawyer dedicated to the rights of indigent defendants. **Tony Savage** of Seattle, perhaps the most dedicated criminal defense lawyer in the state—and one who regularly handles some of the most difficult cases — received the second distinguished service award.

Seattle attorney **Richard Hansen** was presented a special award recognizing his outstanding contribution to WACDL as its president in its first two years. He was given a replica of a writing desk that had been used by William O. Douglas.

Three individuals received *Appreciation* awards, recognizing their outstanding contributions to WACDL: **Steve Hayne**, Bellevue attorney, for organizing WACDL's first auction, raising funds, and chairing an excellent seminar about the practice of criminal law; **Rick Troberman**, Seattle attorney, for his tireless efforts as treasurer during WACDL's first years; and **Marilyn Sweeney**, who, as a member of **Rick Troberman**'s staff, provided outstanding support to WACDL in its first year.

In addition, *Certificates* of appreciation for their service to WACDL were awarded: **Paul Bernstein**, Seattle attorney, for his work as co-chair of WACDL's Publications Committee; **Maria Downing**, Mountlake Terrace, for her efforts in organizing the WACDL holiday party; **Mike Frost**, Seattle attorney, for his tireless efforts and ideas that led to the formation of WACDL and contributed to its success; **Carole Grayson**, Seattle attorney, for her work as co-chair of WACDL's Publications Committee; **Karen Klein**, Seattle attorney, who as co-chair of the Annual Meeting Committee, made WACDL's 1988 annual meeting in Chelan a tremendous success; **Mike Lambo**, Seattle attorney, for his work on the WACDL auction and holiday party; **David S. Marshall**, Seattle attorney, for his work as chair of WACDL's Continuing Legal Education Committee; **Teresa Mathis**, Seattle, for her work as WACDL's executive director; **Adam Moore**, Yakima attorney, for his outstanding contribution as a board member and for making the William O. Douglas Award a reality; **Katrina Pflaumer**, Seattle attorney, for her service as chair of WACDL's white collar crime seminar; **Irwin Schwartz**, Seattle attorney, for his work on WACDL continuing legal education seminars; **Nancy Talner**, Bothell attorney, for single-handedly organizing the WACDL brief bank; **Mike Trickey**, Seattle attorney, for his work as chair of the WACDL Amicus Committee, which included drafting several amicus briefs; **Mark Vovos**, Spokane attorney, for organizing two successful WACDL seminars in Spokane; **Jim Walker**, Seattle attorney, for his work on the holiday party; **Bob Wayne**, Seattle attorney, for his efforts as chair of WACDL's Strike Force Committee; **Charlie Williams**, Olympia attorney, for two years of dedicated work as chair of WACDL's Legislative Committee; and **John Wolfe**, Seattle attorney, who, as co-chair of the Annual Meeting Committee, made WACDL's 1988 annual meeting in Chelan a tremendous success.

The Washington Association of Criminal Defense Lawyers was organized in 1986 to improve the quality and administration of justice by supporting and representing criminal defense lawyers.

YAKIMA COUNTY REPORT

by **JOSEPH D. HAMPTON**

Here Come Da Judge: In mid-December 1988, Governor Gardner appointed **Mike Leavitt** to serve as superior court judge in the newly-created department. Attorneys expressed happy surprise and some disbelief at the appointment of Leavitt, whom they recommended highly. Evidently the good Governor is capable of reading a bar poll after all.

Familiar Faces, New Places: **Phillip W. Wagner** has joined the Yakima office of Bogle & Gates, heading the firm's litigation department and concentrating on insurance defense and civil litigation cases. Yakima institution **Harry Hazel**, attorney and former superior court commissioner, is moving out of his office and into retirement with the bar's best wishes.

Holiday Festivities: The annual bar Christmas party, held December 2, at the Yakima Convention Center, drew over 300 people. The John Heath Players, a troupe of lawyers, judges and others from Spokane, entertained the crowd with musical and Thespian offerings on a legal theme. Congratulations and thanks to **Dave Elofson** for his fine work in arranging the party.

Tax Break Nuptial: As we go to press, **Debbie Daley** still plans to marry local attorney **Douglas Haynes**. Haynes, after consulting his accountant, decided to advance the ceremony to the afternoon of December 31, 1988. Questions as to the sanity of the betrothed parties abound, as the ceremony will take place at 1 p.m. outdoors, at the Arboretum in the midst of what is likely to be a snowy, sub-freezing day. The Honorable **F. James Gavin** of the superior court will officiate. It is hoped by all that Judge Gavin's words can be heard over the wailing of the hundreds of broken-hearted single women of Yakima who are expected to be present in tearful assemblage. Cheers to the happy couple.

BRIEFLY NOTED

IN MEMORIAM

(The following remembrance was contributed by Bellevue attorney John Peick)

Until recently, **Linda Bailey** was an insurance defense lawyer working for Lee, Smart, Cook & Patterson. She was a young, hardworking and honest lawyer finding her way into the labyrinths of this profession. She did her homework, represented her clients well; but balanced that adversarial drive with a sense of humor and professional courtesy. She beat the hell out of me in a jury trial about a year ago, and I had the dubious pleasure of facing her again in a slip and fall case.

She was also a woman struggling with cancer. I knew about her struggle not by any complaint she ever made, but because she was a friend and high school classmate of my youngest brother Pat. From her demeanor one would never guess that cancer stalked her; and although I can only imagine the fear she must have fought, she managed a brave smile on every occasion we ever met.

Linda Bailey died in November at the age of 29. She very much wanted to make it to the other side of 30. I wish she had made it. I am going to miss her.

ET ALIA

Model Law Firm Partnership Agreements Available On Diskettes

Law firms interested in the issues raised by Richard Monroe's articles on partnership agreements (*Bar News*, November and December 1988) will be interested to learn such agreements can be prepared in minutes with a word processing diskette produced by the American Bar Association Economics of Law Practice Section (ABA/ELPS). The diskette is based on the best-selling monograph "Model Partnership Agreement for the Small Law Firm."

The model agreement, geared specifically for small firms, contains provisions for profit distribution based on a formula keyed to business origination and work production. Also included are sections on organization and administration; withdrawal, retirement, expulsion, disability or death of a partner; and capital and drawing accounts.

The diskette packet includes both a five-and-one-quarter-inch floppy disc and a three-and-one-half-inch floppy disc. Each disc includes five formats — MultiMate, WordStar, ASCII, WordPerfect and Microsoft Word.

The diskettes can be purchased separately or with the accompanying monograph. Diskettes alone are available to ABA/ELPS members for $29.95, and to nonmembers for $34.95. The charge for the diskettes

NOTICES

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Professional: WSBA members only. $40 per inch. Billed at publication. **Classified:** Members — $25 for 25 words, each add'l 25¢. Non members— $35 for 25 words, each add'l 75¢. Box number service — add'l $6. *Advance payment required.*

Deadline 25th of each month for second issue following. No cancellations after deadline.

Submit double-spaced, typed copy on plain paper (no phone orders) to Attn: Ave Leavy, Classifieds, *Bar News*, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

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Police Misconduct

Theodore Spearman, who has fifteen years' experience in governmental torts and related constitutional litigation under Title 42 § 1983, is available for consultation, referral or association.

Theodore Spearman
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Announce their availability for referral, association or consultation in maritime, Federal Tort Claims Act and other federal court personal injury matters.

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Attorney at Law
Salazar Law Offices
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and the monograph is $39.95 (ABA/ELPS members) or $49.95 (nonmembers). The "Model Partnership Agreement" monograph costs $14.95 for ABA/ELPS members, or $19.95 for nonmembers. An additional $2.50 for postage and handling is charged for all orders. To order, write: ABA Order Fulfillment, Dept. 511, 750 N. Lake Shore Drive, Chicago, IL 60611; or call (312) 988-5555.

Interim Suspension

Wenatchee attorney **William M. Hamilton** (admitted 1954) was ordered suspended from the practice of law pending the outcome of disciplinary/disability proceedings by Supreme Court order entered November 23, 1988.

Interim suspension is pursuant to RLD title 3 and is not a disciplinary sanction.

In Re: RCW 19.52.020(1)

Interest Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in January is 8.86 percent. The maximum allowable interest permissible for **February 1989 is thus 12.86 percent**. For further details and past rates, see the October 1987 *Bar News*, page 39.

MILLER, NASH, WIENER, HAGER & CARLSEN

is pleased to announce that

Sally Carman
formerly of Culp, Guterson & Grader
and a 1986 graduate of the University of Chicago Law School
and
James R. Dixon
Boalt Hall School of Law of the
University of California at Berkeley,
J.D., 1988
have become associates
of the firm resident in
the Seattle office
January, 1989

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Announces his availability for consultation, association or referral of substantial claims of legal malpractice.

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For sale: Pacific Reporter — Wash. cases, 290 P.2d (1955) — 749 P.2d (current), $1,800. Will deliver in Seattle/Tacoma area. (509) 963-2204 or (509) 925-6375 (eves.). Ellensburg.

SPACE AVAILABLE/WANTED

Office sharing space: Two individuals sharing space in a newly renovated law office in Sequim seek a third attorney to also share space. Rent will be $275 per month with possibilities of deferring some of these costs.

Sequim is a rural but growing community on the beautiful north Olympic Peninsula and is considered the "sun belt" of Washington. Two hours from Seattle, it is surrounded by mountains and sea. Port Angeles, the county seat, is 18 miles away.

Please direct all inquiries to Chris Shea or Linn Rogers at (206) 683-7705.

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To apply, please send a cover letter, resume, self-edited writing sample and law school transcript to Peggy Nagae Lum, Director of Hiring, 800 Financial Center, 1215 Fourth Avenue, Seattle, WA 98161-1090. Telephone: (206) 292-9988.

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Legal assistant, $26,600-$39,900. Northwest communications company is seeking a legal assistant. Must have knowledge of legal terminology and procedures, emphasis on civil litigation; court procedures; business; garnishment; bankruptcy and labor law; technical knowledge of computer systems, including word processing, computerized legal research, DOS, and RBase. The ability to analyze legal documents, state and federal statutes and administrative codes also required. Comprehensive benefits package. Send resumé to: Legal Assistant, Department L-1, P.O. Box 2554, Seattle, WA 98111. EOE.

Fuller & Fuller (Olympia and Shelton), a four-lawyer firm with personal injury and domestic-relations practice, seeks associate with one or more years of experience. Please contact Herbert H. Fuller, 209 Clark Place S.E., Olympia, WA 98501. (206) 352-2000.

Attorney jobs — National and Federal Legal Employment Report: highly regarded monthly detailed listing of hundreds of attorney and law-related jobs with U.S. Government, other public/private employers in Washington, D.C., throughout U.S., and abroad. $30 - 3 months; $53 - 6 months. *Federal Reports*, 1010 Vermont Ave., N.W., #408-WB, Washington, D.C. 20005. (202) 393-3311. Visa/MC.

Attorney referral: Attorneys needed for referral of insurance company subrogation and premium collection cases through a national association. For information call (800) 237-3405, or write I.A.S. Co.s, P.O. Box 769, Wilmington, DE 19899.

Two land use attorneys. Ferguson & Burdell's seven-member land use department needs two attorneys to concentrate in land use; one with at least three-five years' experience, capable of handling hearings with minimum supervision; one entry level with high academics. Both for Bellevue office. Send resumés to Richard Chapin, Ferguson & Burdell, 2100 Koll Center, 500-108th N.E., Bellevue, WA 98004.

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Puget Sound Legal Assistance Foundation seeks applications for two full-time, permanent staff attorney positions. Must have commitment to serving low-income people.

Position in Olympia office: family law attorney to represent victims of domestic violence and parents in contested custody actions. Prefer also experience or background in foster care and juvenile matters.

Position in Tacoma office: prefer experience or background in family law or other poverty law area. Resumé to P.S.L.A.F., 813 South K Street, Tacoma, WA 98405. Minorities, women, and handicapped persons are encouraged to apply for these positions. Puget Sound Legal Assistance Foundation is an equal opportunity employer.

The Hillhaven Corporation, a national leader in long-term care, is seeking an attorney with at least three years' experience in health care for its Tacoma corporate office.

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WILL SEARCH

Emil Alfred Arndt: Anyone having knowledge of a will of Emil Alfred Arndt who lived at the John Alden Apartments, Seattle, until his death on November 1, 1988, please contact Robert A. Stewart, attorney, (206) 682-5151 (Seattle).

Lost will: Jesselyn Roehr. Looking for the lost will of Jesselyn Roehr. Please contact: James D. McBride, Attorney at Law, 3701 - 1001 Fourth Avenue Plaza, Seattle, WA 98154. (206) 622-3720.

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