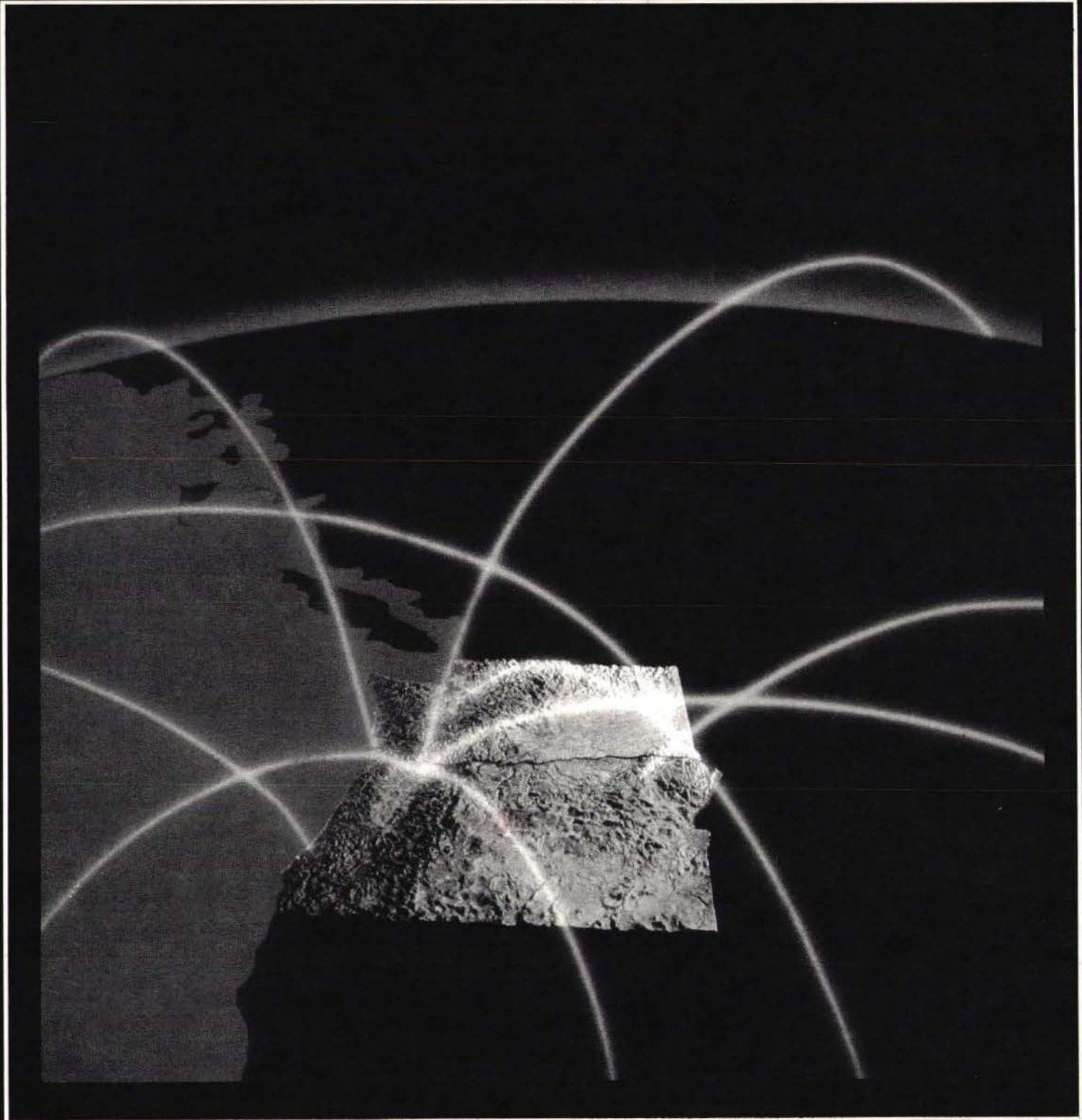


Washington State **Bar**  
**News**

Volume 43, No. 3, March, 1989



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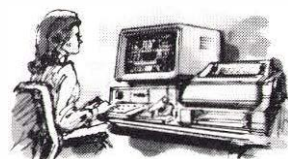
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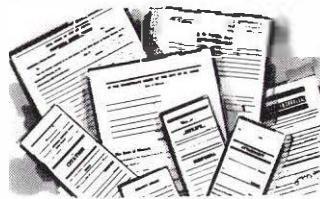


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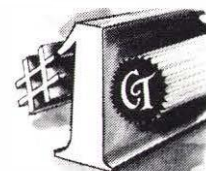


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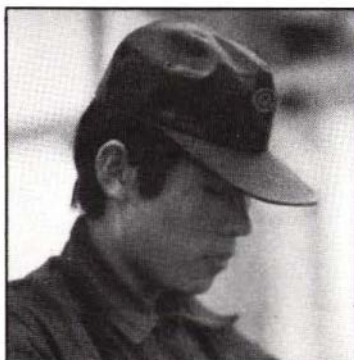
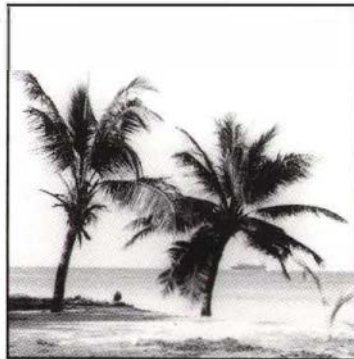
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Vol. 43, No. 2, February 1989

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This month's cover reproduces a poster developed by **George Champlin** and **Skip Enge** of the Oregon Historical Society for their 1984 exhibit, *Frontiers of Trade*. The photo, by Champlin, is a composite, integrated from several negatives. The process, known as a "matte shot," took several weeks to complete.

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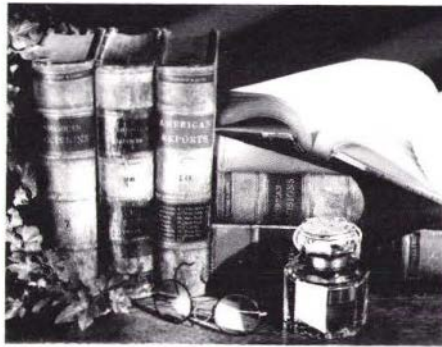
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## A Valedictory From the Bench

Editor:

I have been a superior court judge for 21 years and a lawyer for nearly 40.

I have read the various reports, observations and criticism involving the late Judge Gary Little. I receive a publication from the Office of the Administrator for the Courts entitled "Judicial Clippings." That publication has included statewide observations, letters and editorials from throughout the state concerning this situation.

What happened is tragic. This situation occurred, in my opinion, because the Seattle-King County press and bar association allowed Little to be elected without ever informing the public about the candidate's background. I don't think this could have occurred in any other county in this state. Therefore, to shift the blame for this situation is unfair, in my opinion.

Certainly we have all seen instances at every level of government when a candidate's behavior has been accurately conveyed to the public, and the reaction of that public has caused a candidate to withdraw from further efforts for election. I am personally satisfied that if the press and the bar of Seattle had taken the appropriate steps, this tragedy would never have happened.

I have been interested as to what the public's reaction is to this incident and the wide publicity given to it. I try jury cases practically nonstop. I have made it a practice, since this matter has arisen, to ask jurors, after they have completed their service, whether or not their confidence in the judicial branch of government has been affected by this development. They have informed me that they have not lost any confidence in the judicial branch of government, nor the judges; they have frankly told me it was Seattle's problem, and it should end there. I share their opinion and observation.

I leave the bench after 21 years of service, proud of my association with the Washington Superior Court Judges' Association and its present members. It is my opinion that they

are fine, dedicated men and women and entitled to the respect and confidence the public accords to us at this time.

W.L. BROWN, JR.  
Pierce County Superior Court  
Tacoma

## Bad Writing, Worse Prejudice

Editor:

Regarding your note in the January issue requesting examples of "particularly tortured legal writing" to add humor to the *Bar News*:

When not busy teaching Basic Legal Skills at the University of Washington School of Law, I represent some pro bono clients. A week before the date of her marriage, a pro bono client of mine was asked by her husband-to-be to sign a prenuptial agreement that included the following one-sentence paragraph —

Each of the parties forever waives, releases and relinquishes any right or claim of any kind, character or nature whatsoever that either may have or shall have in and to the estate, property, assets, or other effects of the other under any present or future will of the state of Washington or any other state of the United States, except as otherwise specifically provided in this Agreement or any subsequent agreement executed by the parties, and each of the parties forever waives, or releases or relinquishes any right or claim that he or she now has, may have, or shall have pursuant to the provisions of the Washington Revised Statutes that such sections are now in effect or may hereafter be amended, or to any present or future law of any state of the United States to elect to take in contravention of any last will now executed or which may be executed hereafter, or any disposition of property made by the other during his or her lifetime or otherwise.

Where, may I ask, is the humor in that?

This passage, among its other

flaws, inserts 129 words between telling us that the parties "waive" something and telling us what they waive. Not coincidentally, this passage, prepared by a practicing Seattle attorney, also suffers from a crucial typographical mistake: the word "will" in the ninth line should, presumably, be "law." One can hardly fault the author; after a certain amount of mush, one word seems as

good as another. (If you caught the error, give yourself a bonus CLE point in family law.)

Unfortunately, the use of language as unreadable (not to mention inelegant) as the passage just quoted appears to be the rule rather than the exception. Further, I suspect that many lawyers have come to see the type of language just quoted as proper "legal" syntax.

**A** PPEAL: *The Ninth Circuit denied our opponent's petition for rehearing, but granted our request to modify the court's earlier decision. The court's decision was based on the response to a judge's question during reargument. This change saved our client from a potential exposure on remand exceeding \$1,000,000.*

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We are pleased to have helped Alvin Anderson secure this result for Globe Machine Manufacturing Company. **J&J Log & Lumber Co. v. Globe Machine Manufacturing Co.**, Ninth Circuit No. 84-3788.

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Along with my colleagues in the field of legal writing, I try to teach law students to write clearly and simply. One thought haunts me, however. What will become of these law students when they graduate into a world full of lawyers unable and unwilling to communicate except in the obfuscatory and prolix language that we commonly think of as "legal writing"?

Sadly, even the *Bar News* is not free from poor writing. In the January issue, Gerald T. Osborn's letter to the editor referred to "the limp-wristed notion that style is more important than substance." I was appalled by this homophobic slur. It is especially ironic that Osborn, who considers himself a professional writer, should (I presume unintentionally) slander gay men in a letter defending lawyers and the legal profession. This type of casual heterosexist remark is especially troubling at a time when the papers are filled with reports of violent attacks on gays.

I am equally concerned that the editors of *Bar News*, whose admirable concern for our community is usually well in evidence, failed to note and excise this inexcusable remark.

DMITRI L. IGLITZIN  
Seattle

*(The "Letters" section is as free a forum as the libel laws allow. Short of that mark, people can say pretty much what they like. — The Editor)*

### **And A Five Yard Penalty For Excessive Use of the Remote Control**

Editor:

Dave Armstrong, a Kitsap County lawyer who does a lot of defense work (both well and sometimes caustically), engaged in the following exchange in a recent deposition of a plaintiff who alleged knee injuries from an automobile accident:

- Q. (by Mr. Armstrong): What do you do for sports or hobbies?  
A. (by the Plaintiff): Sports, I watch TV, that's about it for sports.  
Q. Have you still been able to do

that since the accident?

- A. Yeah, I can still watch TV.  
Q. That's good news, Mr. "X."  
Lots of folks continue on with their lives after accidents, and I'm pleased to hear you are carrying on.

GORDON E. REYNOLDS  
Bremerton

### **REVERSIBLE ERROR**

#### **A Few More Happy Lawyers**

Deborah Arron reports two errors in her article on lawyers in transition in the January 1989 *Bar News*. "First," she writes, "my statement that nearly a third of those lawyers who reported above-average satisfaction with their current employment still planned to change jobs within five years was incorrect. The correct interpretation of the ABA statistics should have been that over 20% of lawyers who report no dissatisfaction with their current employment plan to change jobs within a few years.

"Second, I overstated the percentage of lawyers with five years' experience or less who doubt they would again choose law as a career. The correct figure is 50%, not 85%."

#### **There's Taxes, And Then There's Taxes**

The December 1988 edition of "The Board's Work" included a description of several proposed amendments to state tax legislation which would, it was reported, "bring them into line with federal law."

In a recent letter from one of the presenters of those proposals, George C. Mastrodonato, to Fred Seager of the Washington Association of County Officials, Mastrodonato notes that "the person reporting for the *Bar News* is obviously confused... the comment regarding 'federal law' was really intended for the estate and gift tax proposals (described as 'utterly baffling') and not the entire excise and property tax bill ('fairly interesting')."

Mastrodonato is correct, both on the content of the proposals and the Editor's state of mind.



**Novack Commission Report  
Requires Response**

In January 1989, the Board of Governors and I met in Olympia. We met with our Supreme Court, and, in addition, considered several agenda items that came before the Board. One of the items on the agenda deserves special consideration from the Board, and, perhaps more importantly, from members of the Bar and consumers of lawyer services. The Novack Commission, chaired by Ed Novack of Everett, was assigned by the Chief Justice to examine the issue of contingent fees charged by Washington State lawyers.

Embarking on the task of examining that issue, the Novack Commission concluded that it should deal with all attorney fees charged by all attorneys in Washington State and whether there was an abuse by attorneys in Washington in contracting with their clients. The Commission found there was no pattern of abuse regarding attorney fees charged in Washington. Nonetheless, the Commission has made a wide-ranging series of recommendations to the Supreme Court regarding both the form and content of contractual relationships between attorneys and clients in *all matters* where the fee expectation exceeds \$1,000.

The Supreme Court has now published the Novack Commission's recommendations in the advance sheets and has set the comment period for

members of the Bar. The comment period expires April 30, 1989.

The Board of Governors has discussed the report of the Novack Commission and is concerned that the members of the Bar take time to examine the report and respond to the invitation of the Court to comment on the recommendations made by the Commission. The Board of Governors intends to take a position on the recommendations of the Novack Commission. The Board and I are desirous of input by Bar members and consumers of legal services regarding the recommendations of the Commission. Among numerous points raised by the Commission are the following:

1. The Novack Commission found no wide-spread abuse of attorney fee charges in Washington.
2. The Commission recommends that a document be given to every client indicating to the client that the client may dispute fees at the conclusion of a matter and that the attorney must consent to arbitration of fees by the Bar, at the client's option.
3. The Commission deals with hourly, flat-rate and contingent fees but does not provide for any other form of setting fees such as a value-added or -subtracted fee.
4. The Commission recommends that at the conclusion of all matters, the attorney examine his or her fee to determine if it should be reduced.
5. The Commission recommends that fees on the contingent fee basis



be computed on the net recovery.

6. The Commission recommends that the fee from a structured settlement be calculated on the cost of the annuity provided.

7. The Commission further recommends that the best evidence of the reasonableness of attorney fees is written time records regardless of the agreement between client and counsel.

This article is not intended to cover all aspects of the Novack Commission report. You, as members of the Bar, are urged to review the Commission recommendations as set forth in the Supreme Court advance sheets and to make known your views to the Court as well as to your representatives on the Board of Governors.

**WSBA Judicial  
Recommendation Committee  
to Schedule Interviews**

If sufficient interest is shown, a meeting of the WSBA Judicial Recommendation Committee will be scheduled for Saturday, June 17, to interview individuals who wish to be included on the list of candidates for appellate court vacancies. The committee's list is reviewed by the Board of Governors of the WSBA and is then referred to the Governor for review when appointments are made to fill vacancies on the Court of Appeals and Supreme Court.

If you are interested in scheduling an interview, please contact the WSBA at 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599, (206) 448-0441, to obtain a questionnaire. Please specify whether you need the questionnaire designed for a judge or an attorney. All questionnaires must be received in the Bar office no later than 5 p.m. on Friday, April 21, to be considered for an interview at the June meeting.



Around the Country

by John J. Michalik  
WSBA Executive Director

From time to time I have used this column to pass along what seem to be significant news items affecting or involving the legal profession in various parts of the country. This is another one of those columns; and I hope some of what follows will be of interest to you.

\*\*\*\*\*

In *Massachusetts* the State Bar Association is actively studying the potential workings and implications of a system of court accreditation. Proponents envision a statewide (and, eventually, national) voluntary court accreditation system that would create measurement standards in areas including education of court personnel, processing of cases, condition of court facilities, means of jury selection, quality of the law library, and other subjects. The standards would be used to rate and accredit courts. The

idea of the system and study, which might eventually involve the development of trial court and appellate court standards, would not be purely for the sake of comparative court-shopping, according to its proponents, but would also force courts to adhere to certain set standards.

\*\*\*\*\*

In our own state of *Washington* the Supreme Court has published the Report of the Novack Commission for public and attorney comment. The Report deals with attorney fees in general, contingent fee computations, fees in cases involving structured settlements, and proposals for mandatory arbitration of attorney fee disputes. The Report is published in the Supreme Court Advance Sheets and the comment period runs through April 30, 1989. The State Bar's Board of Governors will, this month, be adopting its position(s) on the Report for transmittal to the Court.

\*\*\*\*\*

According to a recent ABA publication, some 27 states have now seen the formation of captive attorneys' professional liability insurance companies. This includes ten states participating in the Attorneys Liability Protection Society (ALPS), the nation's first multistate captive insurance company for lawyers.

\*\*\*\*\*

Rule proposals are presently pending in *Ohio* and *New Jersey* concerning the ability of foreign lawyers to counsel clients in those jurisdictions. Such provisions, in force in a half dozen states already, allow foreign lawyers to practice under a "foreign legal consultant" designation. A major impetus for these rules has been expansion of foreign trade opportunities and, on a reciprocal basis, the opening up of practice opportunities for United States lawyers in foreign countries. Similar rule proposals are also under study by the Washington State Bar's International Law Section.

\*\*\*\*\*

The *Minnesota* State Supreme Court is believed to be the first court to adopt a rule permitting fax transmissions by judges and lawyers in state courts. When time is a factor and no local judge is available, the Minnesota system allows orders and warrants in criminal, juvenile and family matters and restraining orders in civil cases to be issued by fax. The facsimile has the same force and effect as the original, which is mailed later. The Minnesota Court order also allows any document to be filed by fax.

\*\*\*\*\*

A proposal calling for every member of the *New Hampshire* State Bar to voluntarily provide between 30 and 50 hours of pro bono service every year has been endorsed by the New Hampshire Bar's Board of Governors.

\*\*\*\*\*

A *Florida* Bar committee has proposed an anti-discrimination clause for that state's attorney ethics code. The clause would bar discrimination on the basis of sex, race, age, marital status, national origin, religion, handicap or sexual orientation by lawyers in their professional practices, employment and parts of their public lives that would impair the reputation of the bar or the administration of justice. Violation would result in disciplinary action. *Vermont* presently has such an anti-discrimination clause in its Code of Professional Responsibility; that clause provides that lawyers shall not discriminate in hiring, promotion or other conditions of employment. Similar provisions are also under study by the *New York* State Bar Association.

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## Report by the WSBA Task Force on Professionalism

### Note:

At its December 1988 meeting, the Board of Governors of the Washington State Bar Association considered the following report and recommendations by its Task Force on Professionalism. The Board requested the task force to publish the report and recommendations in the *Bar News*. The Board also urged the task force to solicit comments from local bar associations and law-related organizations.

The task force and the Board invite written comments from all members of the Association.

Written comments should be sent by April 1, 1989, to WSBA Task Force on Professionalism. Attention: Maria Regimbal, WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

### I. Introduction

In 1986 the American Bar Association's Commission on Professionalism published its report entitled "... In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism." Since that time, various state and local bar associations as well as other components of the profession have considered and addressed the question of lawyer professionalism in a wide variety of ways. The Washington State Bar Association Task Force has familiarized itself with a number of the reports issued by other organizations, including most particularly the ABA Commission Report. However, the primary thrust of our work and of this report has been to identify the key factors contributing to perceptions that professionalism in the law is declining and then to make specific recommendations designed to enable individual lawyers and law firms, the Bar Association, the judiciary and law schools to help improve the reality and the perception of professionalism within the bar.

The Task Force has deliberately refrained from addressing in detail a number of programs bearing on aspects of professionalism that already are being operated or monitored by other state and local bar committees, such as pro bono programs; continuing legal education programs; and disciplinary programs for lawyers and judges. The Task Force similarly has refrained from attempting to formulate a comprehensive set of aspirational goals; or revise any existing rules of ethics or disciplinary rules which are under continuing review of other bodies.

### II. The Decline of Lawyer Professionalism

The term, "profession," is difficult to define. Dean Roscoe Pound said:

The term refers to a group . . . pursuing a learned art as a common calling in the spirit of public service — no less a public service because it may incidentally be a means of livelihood.

Pursuit of the learned art in the spirit of a public service is the primary purpose.

R. Pound, *The Lawyer From Antiquity to Modern Times* 5 (1953) (quoted at p.10 in "... In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism," American Bar Association Commission on Professionalism (1986).

A number of profound changes have occurred in the legal profession during the past century, changes which have accelerated noticeably during the last two decades, resulting in a widespread perception that professionalism in the Bar is declining. In 1986, the American Bar Association's Commission on Professionalism reported:

The public views lawyers, at best, as being of uneven character and quality. In a survey conducted by this Commission . . . only 6% of corporate users of legal services rated "all or most" lawyers as deserving to be called "professionals." Only 7% saw professionalism increasing among lawyers; 68% said it had decreased over time. Similarly, 55% of the state and federal judges questioned in a separate poll said lawyer professionalism was declining.

"... In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism," 3, American Bar Association Commission on Professionalism (1986) (Citations omitted).

#### A. Principal Factors Contributing to the Decline in Lawyer Professionalism

The Task Force concludes that the following, listed roughly in order of importance, are the principal factors which have contributed to the perception among many lawyers and members of the public that the professionalism of the Bar, in general, is declining:

1. **Economic pressures** on law firms and increasing competition for clients,

which lead to such problems as abuses in advertising and improper solicitation of clients; excessive and unrealistic hourly billing goals for associates and partners; substantially increased capital and operating costs of maintaining a law practice and drives toward law firm growth, whether through merger or otherwise, founded not on the goal of improved service for clients or shared professional values but simply on profit maximization or the concept that bigger is automatically better. These factors singly and in combination tend to create an impression of bottom line greed rather than primary concern for service to clients and to the public. Put another way, the increased stakes of economic success or failure in the practice of law tend to overshadow the concept of lawyers as "pursuing a learned art as a common calling in the spirit of public service."

2. **Depersonalization of the Bar** — a perceived loss of common respect and courtesy among lawyers, especially but not exclusively in urban areas, which some believe is proportional to the likelihood that the lawyers will not deal with each other again or appear frequently before the same judge. The Task Force refers to the draft of the Seattle-King County Bar Association's Guidelines to Professional Courtesy as a good checklist for maintaining standards of professional behavior toward each other and toward the court.

3. **Failure to stand up to clients** who make inappropriate demands of their lawyers during negotiations or litigation.

4. **Insufficient exploration of the facts** and insufficient research of the law by lawyers prior to filing lawsuits or defense; failure to present an honest, thorough and thoughtful evaluation and disclosure of costs and potential benefits to clients early in the representation.

5. **Insufficient and untimely use of available dispute resolution methods**, including especially those outside the formal court system.

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6. *Abusive litigation practices* such as overly burdensome interrogatories, unnecessary or protracted depositions, inappropriate personal attacks on adverse counsel, and "scorched earth" motion practices, all of which tend to cause the escalation of legal fees and to increase direct and indirect costs of litigation entirely out of proportion to or without regard for the stakes realistically involved.

7. *Overcharging of fees* and, specifically, unjustifiable reliance on hourly billing as the sole measure of fees in cases in which value billing would result in a fairer fee to the client. (The Task Force is aware of the ongoing work of the Novak Commission specifically appointed by the Supreme Court to deal with the question of fees and recommends that any implementation of the recommendations made by this report take into consideration the recommendations which ultimately come from that commission.)

8. *Economic pressures on law students* resulting primarily from heavy post-graduation debt loads which prevent many graduates from pursuing careers in public service or other areas of the law which they might otherwise choose.

The Task Force makes no claim that this list of factors is exhaustive. Nor is it claimed that the problems described are caused entirely by the legal profession. However, these problems have led the Task Force to conclude that special efforts must be made to maintain and improve the level of professionalism that the public is entitled to expect of lawyers.

### III. Recommendations

The following recommendations are directed towards the members of the Bar, formal bar organizations, the judiciary and law schools. Although some of these recommendations, particularly relating to the judiciary and law schools, are beyond the power of the Board of Governors to accomplish directly, we urge the Board to take a leadership role in working with all elements of the profession in restoring and improving professional standards and goals which guide the profession in this state.

#### 1. *Recommendations to Law Firms and Individual Lawyers*

##### a. *Adopt Firm-Wide Codes of Professional Standards*

Law firms and law practice groups should address questions of professional standards which they observe and should adopt standards of conduct applicable to their firms.

##### b. *Enforce Professional Standards Firmwide*

Law firms and law practice groups should undertake direct responsibility for assuring that standards of professional courtesy and practice are observed throughout their

firm.

##### c. *Train New Lawyers*

Depending on the size and needs of their firms, law firms should formulate training programs for newer lawyers which include emphasis on standards of professional conduct and courtesy and assure that the more senior lawyers set standards of practice which the younger lawyers can emulate.

##### d. *Adopt and Enforce Billing and Client Disclosure Standards*

Law firms and law practice groups and individual lawyers should review their billing practices to assure compliance with professional standards and the regular imparting of adequate information about services performed and the basis of the charges to clients. Such information should be submitted in writing to the client in advance of the undertaking and periodically throughout the undertaking for which the lawyer or law firm has been retained.

#### 2. *Recommendations to the Washington State Bar Association*

##### a. *Appoint Judge-Lawyer Committee and Publish Sanctions*

The Bar Association should appoint a standing committee of judges and lawyers to review sanctions imposed by courts statewide under federal and state Civil Rules 11 and 37 and determine which of such sanctions should be published in the *Washington State Bar News*.

##### b. *Promote Pro Bono Programs*

The Bar Association should continue to promote local *pro bono* programs and activities by its members.

##### c. *Establish New-Lawyer Mentor Program*

The Washington State Bar Association should directly and in conjunction with local bar associations establish a new-lawyer mentor program under which experienced lawyers can volunteer their services serving as a regular counselor, mentor, and reviewer for new lawyers for a period up to three years. This program is designed to furnish the new lawyers who enter the practice outside of law firms or public agencies the type of guidance generally available to lawyers who practice with firms or public agencies. (See Task Force recommendation 1C to law firms.)

##### d. *Promote Methods of Alternate Dispute Resolution*

The Bar Association should continue to promote the establishment of alternate dispute resolution programs (including those authorized under Chapter 7.75 RCW) not only through direct funding and endorsement, but also in seeking financial support from the Legal Foundation of Washington. (The Task Force notes the preparation and distribution of the Manual on Alternate Dispute Resolution methods as a positive step.)

##### e. *Continue Existing Bar Services*

The Bar Association should continue to provide to the public the services of the Fee Arbitration Board, the client grievance procedure administered by the Legal Department, the Client's Security Fund, the Lawyers' Assistance Program, the Lawyer Referral Service, the law-related education programs sponsored by the Board's various committees, the Tel-Law Program, and vigorous enforcement of the Rules of Professional Conduct.

##### f. *Establish Loan Repayment Assistance Programs*

In coordination with representative law schools, the Bar Association should establish a fund to provide student loan repayment assistance to law school graduates admitted to the bar in the state of Washington who agree to work for a specified number of years for public-service agencies or to pursue public-interest careers in the law. A fund could be established by such means as additional assessment on bar dues or by seeking support from the Legal Foundation of Washington.

#### 3. *Recommendations to the Judiciary*

##### a. *Actively Promote Alternate Dispute Resolution*

Judges and magistrates should, at an early stage and thereafter as appropriate, urge parties to explore possibilities of resolution outside of the formal court process and should establish ongoing diversion and settlement programs with alternate dispute resolution programs operating under Chapter 7.75 RCW where such programs are available. (Currently such programs are operating in King County, Snohomish County and Spokane County.)

##### b. *Expedite Progress of Cases*

Judges and magistrates should take a more active role in directing cases through the discovery process shortening the overall time between filing and the trial. (The Task Force notes the existence of the Delay Reduction Task Force whose report, due in January in the Seattle-King County Bar Association *Bar Bulletin*, is expected to address this question.)

##### c. *Impose Penalties for Litigation Abuses*

Judges and magistrates should discourage frivolous claims and frivolous defenses, abusive motion practice, abusive pretrial and motion tactics by imposing sanctions more frequently under federal and state Civil Rules 11 and 37.

#### 4. *Recommendations to law schools*

##### a. *Increase Training in Alternate Dispute Resolution Methods*

Law schools should offer increased training in dispute resolution methods in addition to training in formal court procedures.



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### b. Emphasize Ethical and Professional Principles Throughout Curriculum

Law schools should review the curriculum and professional responsibility, legal ethics and lawyering courses to assure that ethical training and precepts are dealt with continuously throughout a law student's career and not simply limited to a single course dealing with the Rules of Professional Conduct. (The Task Force observes that the three law schools operating in the state of Washington have undertaken such a responsibility.)

### c. Enforce Codes of Conduct and Report Violations

Law schools should enforce codes of conduct for law students and should provide reports to the Bar Association with respect to violations which reflect adversely on the fitness of a bar applicant to practice law. (The Task Force notes that the three law schools in Washington have applicable Codes of Conduct.)

## IV. Conclusion

The legal profession is more diverse and provides more legal services to more people today than ever before. The Task Force believes that the vast majority of lawyers view the law as a true profession and share the concerns expressed in this report. The problems of professionalism described in this report are not exclusive to the legal profession. The problems have always been a part of all professions to some extent; and they always will. But by confronting the problems openly and looking continually for ways to root them out, we can improve both the reality and the perception of lawyer professionalism.

Recognizing that some of the recommendations made appear in summary form, members of the Task Force will be happy to discuss and expand upon the recommendations with the Board of Governors and will agree to work with the Board of Governors in securing their adoption and implementation.

Dated this 6th day of December, 1988.

Respectfully submitted,

Fredric C. Tausend, Chair  
Seattle

Joan L. Antonietti  
Spokane

William F. Ingram  
Everett

William H. Neukom  
Bellevue

John R. Ruhl  
Seattle

The Hon. John A. Schultheis  
Spokane

## R. WAYNE WILSON: Our Quiet Voice is Silenced

by Jay V. White



*Life is like a mountain railroad,  
With an engineer so brave.  
We must make this run successful,  
From the cradle to the grave.  
Watch the curves that fill the tunnels,  
Never falter, never fail.  
Keep your hand upon the throttle,  
And your eye upon the rail!*

*Life's Railway to Heaven*  
(Traditional Gospel Song)

As the grandson of a man who died at 45 and the son of a man who died at 60 — both heart attack victims — I don't take much comfort in Life's Compromise as it was given to Wayne Wilson who died at 52 of a heart attack on January 10, 1989. He is survived by his wife, Judy; two sons, Ryan, 13, and Brett, 10; his mother, Agnes Wilson — *and all of us.*

Since 1973, as the Bar Association's director of public affairs, Wayne Wilson was our voice. In essence, he was our press secretary. Although his demeanor was quiet—unflappable—it was his voice, not those of the Bar president, Board of Governors, or executive director, which most frequently was heard by the public. Like a presidential press secretary in the other Washington, Wayne Wilson was the one who had to respond—usually first, always diplomatically and accurately—to sometimes aggressive inquiries about the bar or bench, often at a time when complete facts were unavailable or unknown. Although not a lawyer, he was to the public the “shadow president” of our association during a period when our member-

ship grew from just under 5,000 to over 15,000 lawyers.

Wayne Wilson was overseer of a wide range of activities which, in this space, can only be described by an incomplete “laundry list”: (a) local bar programs, including the *Public Relations Handbook for Local Bar Associations*; the *Bulletin* newsletter to local bar presidents; and numerous statewide appearances to describe Bar Association programs; (b) law-related education programs, notably MENTOR, which today has 52 “partnerships” between law firms and high school classes statewide; the “You and the Law” curriculum delivered to every high school in the state; and the Law-Related Education Committee, instrumental in preparing and distributing statewide the booklet, “On Your Own: Your Legal Rights,” to every graduating high school senior; (c) publications, including the *Bar News*; *Resources*; *Olympia Report*; the Citizen Rights Pamphlet series; and the “Questions of Law” column published by 38 newspapers in 21 counties reaching over a million readers; and (d) coordination with many other activities, including the Speakers Bureau; statewide Tel-Law; pro bono conferences; and the State Bar Centennial.

Wayne conducted a strong media relations program, preparing news releases, background papers and “media alert” tip sheets, and meeting personally with publishers, editors and reporters across the state. Wayne also worked closely with the Law Office Economics and Management Section, and the issues addressed by that section were a special interest of his. In 1986, he founded and then served as managing editor of *Lawyer/Manager*, a private magazine offered as a practice management resource to lawyers. Wayne read a lot and wrote a lot. We all have read a lot of what he wrote, but we rarely

realized it because most of his writing was published without a byline, including an occasional column attributed to the “editor” of the *Bar News* or the “president” of the Bar!

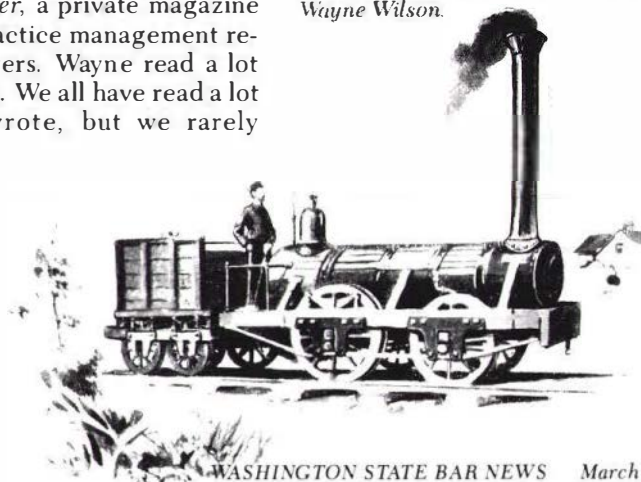
Wayne Wilson was founder and former chairperson of the Public Relations Section of the National Association of Bar Executives; past president of the former Public Relations Roundtable; and a member of the executive committee of the Law Related/Citizen Education Coalition. He was graduated from the University of Washington with a B.A. in Business and an M.A. in Communications.

Wayne and Judy Wilson were married in 1966, and in his quiet way Wayne made his friends aware of the love, joy and comfort he shared with Judy and their two sons, Ryan and Brett. Church activities also were very important to Wayne. But after family and church, Wayne's not-so-secret passion was trains! He was an enthusiastic model railroad hobbyist, a great collector of books about trains, and he developed a considerable expertise in the history of both model and real trains (though he would not have called model trains “unreal”).

*But there is only this moment, my father, Glenn White, once wrote, for that is all there ever is, and this moment is always too exquisite and painful to bear alone, and deep in this moment is death. Death comes in time, whether or not you have any self to give it.*

To Judy, Ryan, Brett and Agnes Wilson, with our sympathy, strength and love: You are not alone.

*As editor of the Bar News (1976-1980) and member of the Board of Governors (1985-1988), Jay V. White worked closely with Wayne Wilson.*



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**Paul Clausen** has appraised more than 500 businesses in over 100 industries since 1970 — for sale, estate tax, recapitalizations, ESOP's, damages, divorce, and almost every other conceivable purpose. He founded Business Valuation Research in 1982, after serving as a business valuation consultant with two national firms and a major financial institution in Seattle.

Mr. Clausen holds a B.S. in Mechanical Engineering (1969) and an MBA (1970) from Oregon State University. He publishes and lectures on professional topics, and has testified as an expert witness in state and federal courts. He is a member of the American Society of Appraisers (Senior Member—Business Valuation, 1976, 1984) and the American Arbitration Association (Panel Member, 1977).

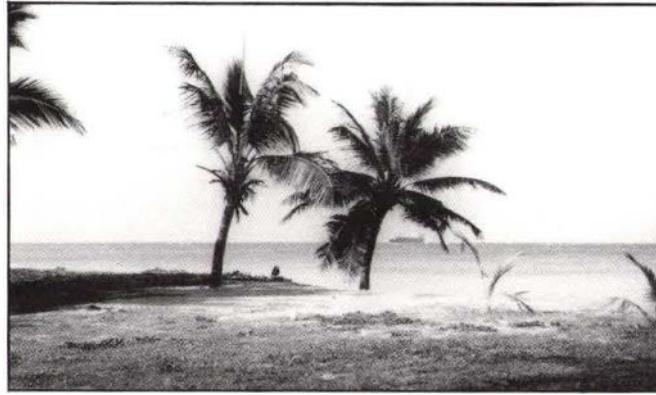


**Greg Mettler** has a diverse background in business, finance, accounting, economics, and securities. As a Certified Public Accountant with Arthur Young & Co., he conducted audits of manufacturing, service, and healthcare concerns. As a Securities Examiner with the Oregon Corporations Division, he reviewed public offerings for fairness of price and terms. He also has testified as an expert witness.

Mr. Mettler received a B.S. in Accounting (1979) and a J.D. (1984) from the University of Oregon. He is a member of the Oregon Society and American Institute of Certified Public Accountants, and the Oregon and American Bar Associations. (Mr. Mettler does not provide legal or accounting services either independently or through his affiliation with BVRI.)

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# Afloat on the Pacific Rim: A lawyer in Micronesia



by Stephen A. Cohen

## *Washington Lawyers Apply U.S. Law To Idyllic Islands' Dramatic Transformation*

**M**icronesia appears as specks of dust on a map of the world. Meaning "tiny islands," Micronesia comprises some 2,200 miniscule volcanic and coral islands sprayed in several archipelagos lying west of Hawaii, east of the Philippines, south of Japan and north of Australia and New Guinea. The total land mass of Micronesia — 1,200 square miles — is dwarfed by the vastness of the 4,500,000 square miles of Pacific Ocean surrounding them. In this area reside an estimated 270,000 people. In November 1987 my family and I joined them.

Americans became aware of Micronesia during the Pacific campaign of World War II. Tarawa, Majuro, Truk, Saipan, Tinian, Guam, Ulithi and Peliliu filled the papers. After the

war, the United States administered Micronesia through an open-ended United Nations trusteeship called the Trust Territory of the Pacific Islands. Pressure by the islanders for self-determination has led to dissolution of the Trust Territory and the emergence of new political entities: the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia and the Republic of the Marshall Islands. (The status of Guam did not change, as it was never part of the Trust Territory. It has been an unincorporated territory of the United States since the end of the Spanish-American War in 1898.)

### **The Covenant**

The Northern Mariana Islands are

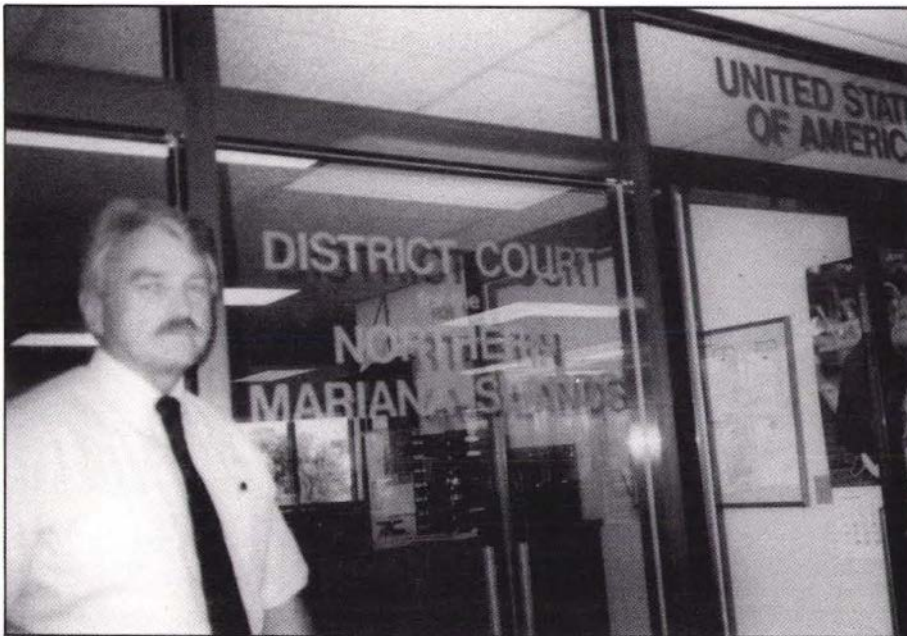
the 14 islands in the Marianas chain lying north of Guam. Having a population of about 28,000, the main islands are Saipan, the government's capitol, and Tinian and Rota. Unlike the peoples of the other island groupings in the Trust Territory, the people of the Northern Marianas did not elect to become an independent state loosely connected to the United States by a treaty of free association. Desiring a closer relationship with the United States (influenced in large measure by the fact the headquarters of the American-administered Trust Territory was located on Saipan), the Northern Mariana Islands has become a Commonwealth of the United States, governed by a multi-faceted document known as the *Covenant to Establish a Commonwealth of the*



Judge Roman Villagomez, Commonwealth Trial Court.



Nauru Building, Saipan's principal office building and home of several law offices and the U.S. District Court.



Newly-appointed U.S. District Court Judge Alex Munson.

*Northern Mariana Islands in Political Union with the United States of America* (U.S. Public Law 94-241, 90 Stat. 263).

The *Covenant* granted political sovereignty over the Northern Marianas to the United States. It provided for a local constitution having a familiar three-branch form of government and guaranteed the power of local self-government to the

people of the Northern Marianas. It granted United States citizenship to persons of Northern Mariana descent, extended a large part—but not all—of the United States Constitution including the Bill of Rights, to the Northern Marianas and authorized inclusion in the local constitution of a provision which restricts ownership of land to persons of Northern Mariana descent. It made

the Northern Marianas independent of U.S. immigration and customs and provided that the Northern Marianas government—not the Internal Revenue Service—would administer the United States Internal Revenue Code in the Northern Marianas in the same manner as it is administered in Guam by the Government of Guam. It established a formula for applying a large amount of federal law to the Northern Marianas, authorized limits on the right to trial by jury and created a United States District Court for the Northern Mariana Islands.

The *Covenant* did not, however, grant local representation in the United States Congress, and residents of the Northern Marianas cannot vote in Presidential elections.

This complex relationship, founded on elements familiar and new, creates novel problems of governance and administration. In addition, the Northern Marianas face some of the infrastructure and human problems of a third-world country and are also undergoing an unprecedented economic boom. Fueled by Japanese tourism—Tokyo is three hours' flying time away—the Northern Marianas and Guam have become a Riviera to Japan.

### The Attorney General's Office

Many of these challenges fall initially in the Attorney General's Office, headed by Marianas native Alexandro C. Castro.

To deal with these problems, the Attorney General's Office has expanded in a short period of time to 18 lawyers, two-thirds of whom are from Washington. I became one of them two years ago when, in what was initially a moment of whimsy and fantasy, applied for a job, won it, and closed my practice in Washington. Assisted by computers, two court-administered law libraries, computer-aided legal research, fax machines, satellite telecommunications and regularly scheduled air flights into and out of Saipan, the Attorney General's Office has developed the ability to handle a broad spectrum of legal matters. They sprawl from criminal law to municipi-

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Gonzaga law graduate Edward Manibusan, Director of public safety.

pal finance, from medical malpractice to land use and coastal-zone management, and from immigration to public utilities law. Due to my background in taxation, my duties have been focused primarily in that area.

### Taxes

The tax system of the Commonwealth consists of the federal income tax and several local taxes. The federal income tax applicable in the Northern Marianas is known as the Territorial Income Tax and went into effect in 1985. Administered by the Commonwealth Division of Revenue and Taxation, it comprises most of Subtitles A and F and part of Subtitle C of the United States Internal Revenue Code. A United States citizen who resides in the Northern Marianas discharges his federal income tax liability by filing his only tax return with and making his tax payment to the Commonwealth. The return must include the taxpayer's income from all sources including the United States and the Commonwealth. Corporations organized in the States, on the other hand, are treated as foreign corporations with respect to their Commonwealth income. They must file returns with and pay income taxes to both the

Commonwealth and the United States. Local gross revenue taxes are also imposed on business revenue and on wages and salaries. They are credited against the taxpayer's Territorial Income Tax liability, resulting in the taxpayer having to pay only the larger of his gross revenue taxes or the income tax due.

A novel aspect of the Territorial Income Tax is the rebate. Authorized by the *Covenant*, a taxpayer receives a rebate ranging from a high of 95% to a low of 20% of the tax paid on income sourced in the Commonwealth.

### Investments and Development

Many large transactions, particularly involving land, have been occurring as a result of the economic boom. They have been financed primarily by investors in Japan, Hong Kong and Singapore, and, to a lesser extent, the United States. A growing number of local people and even some expatriate lawyers from the States have become millionaires and multi-millionaires through land speculation. Other Americans, who have built up substantial profits from investments in U.S. companies, have taken up residence in the Commonwealth to sell their stocks, hoping to take advantage of the tax rebate on locally-sourced income.

The sourcing of income either inside or outside of the Commonwealth is important for two reasons. First, it determines whether income of a U.S. citizen, a resident alien or a corporation is subject to the rebate. Second, it determines whether income of a nonresident alien or a foreign corporation is even subject to taxation in the Northern Marianas. The income sourcing rules found in Sections 861-865 of the Internal Revenue Code are generally used for these purposes. Also, since a large amount of foreign investment in land is channeled through corporations, the income-sourcing rules of the Foreign Investment in U.S. Real Property Tax Act, IRC 861(a)(5), 897 and 1445, are applicable. They allow the Commonwealth to tax sales of stock in domestic real property holding corporations even though the sales take place wholly outside of the Commonwealth. Finally, the sourcing rule found in Section 1277(e) of the Tax Reform Act of 1986 may have the effect of denying the rebate to U.S. citizens who move to the Commonwealth to sell their highly-appreciated stocks, because it treats such income as U.S. source and not Commonwealth source income.

Recently, the speculation in land has spawned an interesting develop-

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ment. Since only persons of Northern Mariana descent and domestic corporations wholly owned by such persons can own land, all others are limited to leaseholds having maximum terms of no more than 55 years including renewal options. Several persons of Northern Mariana descent, who leased their lands at low prices and missed out on the huge profits reaped by their nonMariana lessees in later transactions, have brought lawsuits claiming that the leases they granted are void under the Commonwealth Constitution. They contend that their nonMariana lessees, through the use of straw men and unconscionable lease provisions, have in effect been vested with ownership of the land. The Chief Judge of the Commonwealth Trial Court and the recently-retired federal district judge have been made defendants in two of the cases. A number of the cases have already been tried with mixed results; the controversy will doubtless move to the 9th Circuit Court of Appeals or, perhaps, the United States Supreme Court for ultimate resolution.

These transactions have been a boon for lawyers. One set of lawyers was involved in creating the transactions while another set of lawyers has been engaged in trying to tear them down. Malpractice cases could result and, unfortunately, error-and-omission insurance has not been available here.

### General Practice

Although much of the practice of law remains familiar—case preparation, trial and appellate procedure, dealings with opposing counsel and so on—the differences are what provide the fascination of working here. Since the Northern Marianas is closer to Asia (1,500 miles) than to Hawaii, many matters have an international aspect. One also has the opportunity to be on the ground level in creating the legal structure of a newly-developing country. This involves more than the routine application of American legal principles. For instance, the people of the Northern Marianas have traditional customs of land ownership and inheritance which do not easily fit into community property or common-law precepts.

A year has quickly passed. My wife, son and I have come to know many interesting people from Micronesia, Asia and the States and have come to appreciate diverse cultures. We have also availed ourselves of the opportunity to travel to exotic places in the Pacific Basin and Asia. Has it been worthwhile? Many times yes! Despite the inevitable frustrations of living in a developing country, we are having the time of our lives. □

*Stephen A. Cohen practiced commercial, business and tax law in Seattle before becoming an Assistant Attorney General for the Commonwealth of the Northern Mariana Islands.*

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

**Creditor-debtor law.** Lien awarded to husband by dissolution decree on couple's former residence that was awarded to wife by decree was chosen in action that could properly be levied on and sold by judgment creditor in accordance with procedures governing execution against personal property. *Mueller v. Rupp*, 52 Wn. App. 445, 761 P.2d 62 (9/19/88).

—M. D. Rombauer

**Community Property.** Husband had purchased real estate on installment contract eight years before marriage. He paid some installments before marriage; community funds paid some after marriage; and community funds and labor improved land. Trial court determined that community's interest in land valued at \$92,350 was \$75,724 and awarded wife lien of \$39,439, taking into account other assets. *Held*, court erred in characterization of land, but judgment affirmed as fair, just, and equitable under all circumstances. *In re Marriage of Brady*, 50 Wn. App. 728, 750 P.2d 654 (3/7/88).

—T. R. Andrews

**Real property.** Lease gave tenant preemptive purchase option (right of first refusal), in case landlord received purchase offer he was "willing to accept." Third person took money judgment against landlord, and court ordered sale of leased land to satisfy judgment. *Held*, sale under court order did not trigger tenant's preemptive purchase option. Landlord was not "willing" seller. *Pearson v. Schubach*, \_\_\_\_\_ Wn. App. \_\_\_\_\_ 763 P.2d 834 (Div. 3, 11/10/88).

—W. B. Stoebuck

**Torts.** If hazards on floor of self-service retail stores are foreseeable, even though source of hazards may be unforeseeable, (*e.g.*, water from leaking roof), owner may be held liable without proof of actual or constructive notice of the particular hazard that injured invitee. *Wiltse v. Albertson's Inc.*, 52 Wn. App. 641, 762 P.2d 1170 (11/1/88).

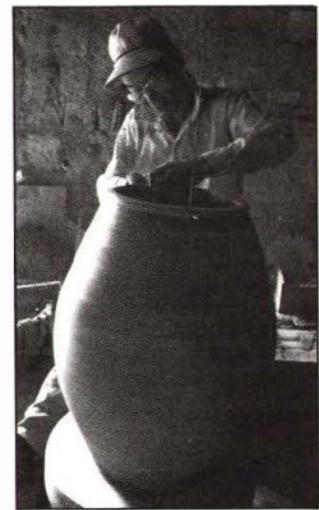
—J. T. Richardson





General Advice About

# DOING BUSINESS IN KOREA



by **Trenholme J. Griffin**

**T**he phenomenal economic performance of Korea has been described by commentators as an "economic miracle." When Korea adopted its first Five-year Economic Development Plan in 1982, per capita income was only U.S. \$82 and total exports U.S. \$43 million. By the end of this year, per capita income will exceed U.S. \$3,400 and exports will top U.S. \$54 billion. No economy in the world is growing as fast as Korea's. This booming economy presents a number of unique opportunities for foreign companies. The following discussion will acquaint readers with some of the unique aspects of the business environment in Korea.

## **Korean Attitudes Toward Written Agreements**

The most difficult problem in dealing with Korean businessmen is their very different attitude toward written agreements. A Korean businessman believes the agreement to be a ceremonial memorialization of the terms of the deal as of the day of signing. In contrast, foreigners (particularly Americans and businessmen from other Western countries) view the agreement as specifying the terms of the deal throughout its life and expect to plan for the long term on the basis of the agreement.

A major conflict almost inevitably occurs when the Korean approaches the foreigner and expects to have the agreement revised to reflect a changed economic condition (for example, a higher raw material cost).

The Korean will expect that the "relationship" between the parties will allow a mutually acceptable solution to be achieved. Unfortunately, when an approach is made by a foreign businessman for a change to reflect an unfavorable economic development, the Korean typically asserts that the foreigner is bound by the agreement. In effect, a legal double standard exists under which Korean companies expect the Asian view of an agreement to prevail when they desire a change and the Western view to prevail when a foreign company desires a change.

While there is no easy solution to this problem, skillful and creative negotiating can often produce a "win-win" solution in the event an agreement must be renegotiated. For example, an American company may be able to obtain faster delivery of products or a longer term for the agreement in return for a price concession requested by a Korean company.



But creative negotiation is no substitute for what really makes deals profitable for foreign companies. For lack of a better word, this key business ingredient can be referred to as

"continuing leverage." A foreign company will have "continuing leverage" as long as it has something that the Korean company wants, such as funds not yet released under a letter of credit, improved technology, or future orders. It is the Korean company's incentive to perform that creates leverage for the foreign company. Once the leverage is gone, the foreign company becomes a ship without wind, sails or a rudder, adrift in a sea of red ink.

Despite the relative disregard which Korean businessmen have for the terms of a written agreement, two major reasons make it very important for foreigners to carefully negotiate the terms of the agreement. First, the agreement is binding in Korean courts. If litigation becomes necessary and the agreement is not clear regarding the dispute, a legal remedy will not be available from a court. Second, a well-drafted agreement can be used to delineate the business relationship and ensure that both parties fully understand the transactions necessary to make it profitable. It does not pay to utilize complicated documentation or "clever" provisions in doing business in Korea. Full and complete disclosure of the terms of the deal will always result in fewer disputes and greater profitability.

## **Business Relationships**

Choosing a Korean business partner with the business and political connections necessary to perform its obligations is critical to the success of a business venture in Korea. The hierarchical and highly stratified nature of Korean society cannot be

overemphasized. Unless your partner has the proper social status and contacts, doing business in Korea will be nearly impossible. One of the most important rules for doing business is to obtain an introduction whenever possible. Being introduced by another person or company helps enormously in establishing the necessary relationship for doing business. Whether a Korean businessman attended the proper university or high school can mean the

difference between success or failure in doing business.

### Joint Ventures

As a rule, businessmen have found that joint ventures with Korean companies are very helpful in the short run (the first two to three years) and a greater burden in the long run. In some cases, however, it is necessary to form a joint venture because it is the only way approval can be obtained from the Korean government.

Forming a joint venture can also have advantages for foreign companies in certain industries. Some of these advantages are:

- \*access to existing manufacturing facilities and distribution networks;
- \*access to qualified personnel (Korean companies are able to attract the top students and managers);
- \*access to domestic capital;
- \*ability to deal more effectively with government officials;
- \*increased consumer acceptance;
- \*access to permits which are no longer granted (for example, refining or liquor distilling); and
- \*ease of withdrawal (since it is easier to sell to a partner under a formula than to find a third-party buyer).

Some of the disadvantages of the joint venture form of operation include sharing management control, loss of control over technology and conflicts over strategies, dividends and other aspects of the business. Conflicts often arise in areas where business objectives differ.

One of the most likely areas where business objectives of foreign companies and Korean companies diverge is in relation to profits. Foreign companies are very interested in generating earnings, which can be used to inflate stock prices in their home country. In contrast, Korean companies are more concerned with market share and cash flow since:

- \*profits are taxed;
- \*loan decisions are made on the basis of size and prestige rather than earnings;
- \*Korean companies are struggling to absorb new workers sent to them by the government;
- \*Dividends paid to foreign companies result in overseas remittances which reduce Korea's foreign exchange holdings; and
- \*their Confucian values call for reasonable (*i.e.*, low) profits.

To avoid problems relating to conflicting objectives, the foreign company must determine the Korean company's motives before entering into a business deal.

It is also vital to select a Korean company with sufficient capital to complete the joint venture project. Korean companies have historically



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been cash-short and leveraged to a degree that American business executives would find difficult to comprehend. Much of the high debt load of Korean companies arises because of a reluctance by family-owned businesses to issue shares to outsiders. Payments on trade debts are stretched to the limit and a settlement made 180 to 360 days after receipt of an invoice is common.

This "cash crunch" has moderated in recent years in some respects and become worse in others. Due to the current account surplus, which began in 1986 and 1987, Korean monetary authorities are having a serious problem controlling the nation's money supply. To reduce excess liquidity, access to bank credit in Korea has been severely restricted. However, increased exports have allowed Korean companies to generate more cash internally. Thus, it has very recently become much harder to finance a project through bank loans but easier to do so with cash generated internally by a Korean company.

Many of the most successful joint ventures and business collaborations in Korea occur when a foreign company with desirable technology approaches a Korean company that is not currently involved in the proposed line of business. Since the foreign investor is much more knowledgeable about the relevant area of business in such a situation, the Korean company is much more likely to allow the foreign company to make the decisions necessary to ensure the venture's profitability. Foreign companies that choose a business partner which is already manufacturing or selling a similar product typically find that the Korean company makes poor or misinformed business decisions on the basis of their previous practices.

### Negotiating

Foreign businessmen who are negotiating deals in Korea should keep the following points in mind:

\*Be prepared. Expect the Korean businessmen to know your company and industry extremely well and to ask penetrating questions. They will know the price of goods in world markets and will understand performance standards.

\*Do not assume that the decision

maker is actually attending the negotiation. Very few individuals have the power to make decisions in a Korean company. Often, the chairman of the company will make every significant business decision.

\*Do not feel compelled to fill in silences that may occur during the negotiation. Most foreign businessmen make unnecessary concessions merely to fill what they believe to be an awkward si-

lence.

\*Watch for "brinkmanship" (all or nothing ultimatums) by Korean negotiators. When this is encountered, ignore the threat and move the discussion in a new direction.

\*Do not undercut the authority of senior negotiators by talking to a junior official with better foreign-language skills.

\*Avoid giving the Koreans "two bites at the apple." A separate negotiation will nearly always be

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necessary to obtain government approval, and concessions may need to be made. Do not negotiate the deal so tightly with the Korean company that concessions are not possible during the government review process (unless you are willing to abandon the deal in such an event).

\*Resist the temptation to over-negotiate. Do not spend hours

trying to deal with every contingency. Instead, focus on creating mechanisms for resolving general types of disputes that may arise in the future.

\*Never let the Korean company know that you have a fixed date for leaving Korea. If the Korean company learns of your desire to complete the deal so that you can leave Korea, it will use your anxi-

ety as a lever to obtain more favorable terms.

### Relations with Government

Foreign companies should plan to spend a considerable amount of time meeting with government officials in Korea in order to develop the knowledge and contacts that are necessary to successfully do business. One particularly difficult problem for foreign businessmen is the failure of Korean government officials to implement foreign investment laws and regulations in a consistent and predictable manner. So-called "working level" government officials are notorious for creatively interpreting regulations in a manner that is unfavorable to foreign investors. Laws and regulations are revised on a regular basis and may be imposed retroactively. This problem is particularly acute in the customs area. In addition, substantial disagreements can arise between government ministries with conflicting jurisdiction regarding investments and decisions to be made by companies in which a foreign company has an equity interest. Also, Korea's extremely restrictive foreign-exchange laws may make it difficult for foreign companies to repatriate capital if the deal is not properly structured.

### Korea is Unique

Considerable time and effort should be devoted to learning about the unique aspects of the Korean business environment. Experience in the Japanese or Chinese markets does not necessarily equate with experience in the Korean market or vice versa. Each culture and business environment requires a unique approach and an analysis of new considerations. □

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*Trenholme J. Griffin is a graduate of the University of Washington and Boston College School of Law. From 1983 to 1987, he was a foreign legal consultant to Kim & Chang in Seoul. Griffin is the author of Korea: The Tiger Economy (London: Euromoney Publications PLC, 1988) and is special counsel to Shidler McBroom Gates & Lucas in Seattle.*

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**Present:** President Bracelin and the Governors. **Also Present:** C.C. Bridgewater (Prosecuting Attorneys); Alece Cox (Washington Women Lawyers); Frank Edmondson (Government Lawyers, Friday); John Fattorini (WSBA Legislative Liaison); Judge James R. Heller (Magistrates' Association); Ed Holm (Legal Foundation of Washington); Mary Krier (Government Lawyers, Saturday); John McKay (WSBA Young Lawyers); John J. Michalik (WSBA Executive Director); Judge Joel Rindal (Magistrates' Association, Friday); Matt Sayre (SKCBA Trustees); Lindsay Thompson (*Bar News* Editor); Judge Frederick van Sickle (Superior Court Judges' Association); and Robert Welden (WSBA General Counsel).

**The Swarm '89, Part I:** Executive Director John Michalik told the Board the winter Bar exam broke records again. There were 609 applicants; 578 were scheduled to sit the exam. Two hundred are attorneys.

**The World According to GAAP:** The Audit and Budget Committee — Governors Bill Bergsten, Ron Gould, Julie Weston and Chehalis lawyer/C.P.A. Brian Kelly submitted the audited financial statements of the Association as approved by BDO Seidman, accountants. The accountants gave an unqualified (*i.e.*, no reservations) opinion on the Association's financial situation.

Governor Julie Weston, committee chair, told the Board following the statements that the procedure is complicated by running the budget on a cash basis and the statements on an accrual basis. This creates confusing results; in addition, the statements cover three quarters of 1988 and the last quarter of 1987, skewing income figures. So while the income statement showed an excess of expenses over revenues of \$120,239, the budget to close showed a surplus of \$124,459, \$100,000 of which was transferred to reserves. The apparent deficit includes \$58,728 in noncash depreciation and amortization, and liabilities of

\$43,796 from 1987-1988. The accountants' cash flow statement — a new measure recently added to Generally Accepted Accounting Principles — showed a net cash position of \$96,446 from consolidated activities.

A detailed statement will be included in the Association's Annual Report in the May *Bar News*. In the meantime, the Governors plan switching the budget to an accrual basis to help make the Association's finances more comprehensible.

Particularly worrisome to the Governors was the auditors' report on the 1988 Bar convention, which showed a deficit of \$107,000. Executive Director John Michalik told the Board that low attendance cut into income. In addition, a variety of items which the headquarters hotels were under contract to provide at preferred rates if the Association filled the hotel became charged items when members booked only 67 percent of the rooms. "You don't know how many people will come until they start to register," Michalik said. "By then, many of your expenses are set in concrete."

Governor Ron Gould wondered whether the Association should be subsidizing the convention to such an extent. Governor Paul Stritmatter wondered what the effect of raising the registration fee to \$200 would be; Michalik thought it would decrease attendance further. "Four years ago we raised it to \$125 and \$100 for recently-admitted lawyers. I think we could go up \$25 or so this year." Governor Don Curran noted that the Young Lawyers Division is charging \$179 for its mid-year meeting. The matter was referred to the Budget and Audit Committee for review and recommendation what to do about the convention.

**Discipline: It's Good For You:** The Board's subcommittee for liaison with the Association's Office of Disciplinary Counsel, made up of Governors Carlson, Curran and DeForest, reported on their meetings with staff. After a lengthy exposition of how — and how

## HOW WOULD YOU DECIDE THIS CASE (Case Number Two)

The Plaintiff retained an attorney to represent him in a bodily injury action as a result of injuries sustained while making a vehicle pickup in an adjacent state.

The attorney assigned the file to an associate in his law firm. The associate brought suit in Federal Court in the plaintiff's resident state against the out of state vehicle owner.

### Sound familiar? Read on.

The defendant asserted lack of personal jurisdiction in its answers. After the statute of limitations had expired, the defendant moved to dismiss the suit for lack of jurisdiction.

The Plaintiff brings suit against the attorney for failing to commence suit in the proper jurisdiction and within the statute of limitations.

### How do you think the court found?

Decision: The vehicle owner's motion for dismissal was granted. In the separate action against the attorney, the court found in favor of the Plaintiff and substantial damages were awarded. Fortunately, the law firm was insured and a professional liability claim was subsequently paid.

### Could this loss have been avoided?

Neither attorney nor any partner reviewed the file until **after** the plaintiff made inquiries regarding the suit's dismissal. The obvious method of avoiding this situation is to supervise the work of all associates in your office. Another method in avoiding a problem is the testing of affirmative defenses regarding service or jurisdiction prior to the expiration of the statute of limitations. The use of dual docket systems with cross checking assists in timely response to statute deadlines. In addition, since suit was brought in Federal Court, the attorney could have sought a transfer of the action to an appropriate Federal Court in the adjacent state. The attorney failed to do this in his opposition papers or to seek leave to re-argue this point after the judge granted defendant's motion.

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well — the disciplinary process appears to work, Governor DeForest said the subcommittee feels there needs to be more effort to educate members on ethics and disciplinary issues in the *Bar News*.

Governor Don Curran thought the subcommittee should look further into a variety of issues — whether reprimands should be public; what to do about “ex parte communications” between the Association and disciplinary staffs and the Board of Governors in light of the Board’s quasi-judicial role; the amount of money spent by the Association on counsel for disabled lawyers in the disciplinary process; and developing a corps of volunteer lawyers to help manage the affairs and practices of disabled lawyers.

**A Trojan Resolution?** When the Governors received the Legal Aid Committee’s report on the need for civil legal services for indigents in January, they asked the committee what they could do to help. This month the committee chair was back with a resolution that he wanted them to pass and send to the Legislature. Broadly-worded, it called for expenditure of state funds or other monies — most likely, a hike in filing fees dedicated for indigent legal services. Chair Michael Mirra told the Board that House leaders had said such a resolution could help grease the budget skids.

Governor Ed Shea was dubious. He felt such a resolution was an invitation to the Legislature to impose more regulation on the Association as the price for meeting the Association’s request. Governor Paul Stritmatter expressed concern that a mandatory pro bono requirement would be tacked on by the Honorables.

WSBA Legislative Liaison John Fattorini hesitated predicting legislative outcomes without consulting with legislative friends of the Association, since no one had shown or told him about the resolution. But, while good words in the House are nice, “it’s a two-house operation in Olympia. I expect there’d be trouble in the Senate.”

Governor Julie Weston thought a WSBA resolution calling for state funding to buy legal aid for people who can’t afford lawyers would lead to the legislative argument that lawyer fees should be regulated so people can afford them. “I’m with you in my heart,” she said, “but we

have to be realistic politically.” To do so, in a 6-4 vote, the Board instructed Fattorini to sound out the Legislature and report back.

**ABA News:** The Association has had four seats in the ABA House of Delegates, held by Frank Chmelik, Patrick Comfort, Michael Hemovich, and Thomas Loftus. Recently the number of ABA members in Washington passed 6,000, opening up another seat. Asked to fill it, the Board elected outgoing Governor Ed Shea.

Former WSBA president and ABA delegate Pat Comfort told the Board about the recent ABA meeting in Denver. “Just the place to be during the cold wave,” Comfort said.

There were hundreds of resolutions on the meeting agenda. Several were particularly controversial: one, a Beverly Hills Bar Association proposal endorsing euthanasia, was withdrawn but will doubtless be back, Comfort told the Board. Tort reform advocates won a victory with a resolution calling for repeal of the McCarran-Ferguson Act antitrust exemption for insurance companies. Most controversial — occupying a full quarter of the debate time — was a resolution, endorsed by a wide array of ABA groups, calling for an end to discrimination based on sexual preference. After fierce and lengthy debate, it was approved.

**Not Even A Stake In the Heart Seems To Work:** The Unauthorized Practice of Law Committee was back with another lengthy report prepared at the Board’s request. After the Committee proposed a new court rule regulatory scheme to the Board last October, the Board asked them to develop some firmer indications of need for a regulatory regime.

Committee member Steve Crossland pointed out that the Association has been grappling with the UPL issue since at least the 1930s and produced old *Bar News* articles to prove it.

Dealing with the issue is problematical. Limited prosecutorial resources and a low complaint rate make litigation of UPL cases unlikely; anxiety about antitrust violations makes the Association nervous about trying to regulate it. In addition, most complaints seem to arise from three areas of practice — family law, bankruptcy and

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landlord-tenant law — areas “legitimate” legal services admittedly aren’t covering fully. In light of that, many argue the Association shouldn’t try to further cut services for the poor by squelching fringe practitioners.

The committee identified several potential responses: do nothing; conduct education programs; license paralegals under a limited practice rule; develop a Bar office operation to investigate complaints; press for criminal prosecutions; look for a test case to take to the Supreme Court to define the issue; or adopt the committee’s proposed regulatory rule.

Governor Jeff Tolman thought the proposed rule — which would set up a board under the arm of the Supreme Court to investigate and deal with UPL cases — the best option. “The time has come to do something,” he said. Governor Mike Carlson agreed. But Governor John Weston wondered who’d pay to set up and run the new operation.

Governor Ron Gould thought there was an insufficient showing of need for more regulatory bureaucracy. The Board appointed Tolman to work with the UPL committee to come up with how this should work. The item will come up again in May.

**Potter Stewart Lives:** After considerable pointed discussion last month, the Governors took up the Novack Commission report again. They asked Commission chair and former WSBA president Edward Novack and Seattle lawyer Geoff Revelle to point-counterpoint the report’s recommendations.

Novack, accompanied by former Supreme Court Justice and Commission member William Williams, let the air out of the balloon right away. “I’m not here to debate anything,” he said. “The report is a good, accurate summary of the Commission’s recommendations.” He said the recommendations were based on the public feeling that abusive attorney fees are a problem, and action needs to be taken to eliminate that perception.

Taxed by Governor Ed Shea for proof, Novack said, “There are isolated instances of fee abuses that can be identified, but not a pattern we could prove. I can’t say it’s not there, we just can’t prove or deny

it.” He said the experience of other states which had tried similar regulations had not caused the dire consequences critics in Washington are predicting.

Governor Ron Gould asked Novack how much the proposed fee regulations reflected a study of nontort fees, such as business transaction fees. “The rule doesn’t deal with it directly,” he replied. He felt the worst one could say about the proposed rule is that in nontort cases it might be inconvenient. Most regulations cover areas where they’re not directly needed in order to be effective where they are needed. “We did a good job,” Novack concluded.

Revelle disagreed. “This is mostly a defensive response to a hysterical reaction by the public to the tort reform movement, which I think is mostly a sham movement. We ought not to be on the cutting edge” of such experiments, he told the Board. Further, “it’s inappropriate for the Supreme Court to be bargaining politically with the Legislature.”

All in all: no breakthrough, no resolution. The Governors will continue to take member input on the Commission’s report.

**Watch The Mail, The Survey’s Coming:** Governor Ron Gould presented the finished product: a survey of Association members’ opinions on a wide array of issues a Board committee has been working on for several months. Gould had high praise for DGA Research Associates, the polling firm whose staff helped craft the questions to get usable results. The survey should be out by the time this report is.

**Wrap-up in Tacoma:** In other action, the Board approved the creation of some awards to honor Association members’ contributions to the law and society; heard Governor Jim Turner, Editorial Advisory Board chair Ruth Nielsen and *Bar News* editor Lindsay Thompson on preliminary recommendations for improving the magazine; and heard a legislative report from WSBA Legislative Liaison John Fattorini. Next month, the Board meets in Wenatchee.



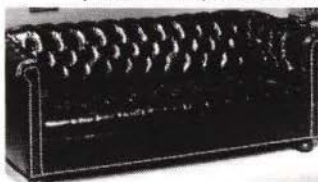
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The Washington Center for Law-Related Education, chaired by Justice James Dolliver, proposed the project to the Foundation in September 1988. It was felt that the value of such a collection of cases, summarized in lay terms, would far outweigh the minimal cost of research and printing that would be involved. The Legal Foundation agreed, and the benefits will accrue to lawyers, teachers, students and the general public, especially those who attend courses such as "The People's Law School."

For attorneys, this collection will be a handy reference. For teachers, it will be a welcome addition to law and citizenship classes, and a study guide will be available to help in lesson-planning. For the public, the compendium should be an interesting and understandable resource.

During this state's centennial year, there is an increased demand for information about state government, especially in the area of law. This collection of cases, most of which were argued to the U.S. Supreme Court, will enhance the celebration of our state's 100th birthday.

Research for the project was done by Robert Jackson, a third-year law student at the University of Puget Sound. Bob is a clerk in the Bellevue firm of Lind & Nault and has also served as research assistant to Professor James E. Beaver. With Justice Dolliver's help, cases were selected for their impact on state law and for their interest to the legal and educational communities.

The teaching guide is the product of a committee of educators who donated their time to this project. Those volunteers and the Legal Foundation deserve the thanks of the legal community for this contribution to law-related education.

For information about obtaining this compendium, call or write: Jo Rosner, Asst. Director of Student Education, WSBA — Public Affairs Department, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599; (206) 448-0441.



# U.S.-Canada Free Trade Agreement: An Overview



by Terry Leitzell  
and Joel R. Junker

The United States and Canada share many things: the longest common border in the world, a common language, other cultural characteristics, and a link with the British colonial experience. From this shared history and geography, the world's largest trading relationship has emerged. The recently negotiated United States-Canada Free Trade Agreement (FTA) has caused us to refocus on that unique north-south relationship and its immense economic importance to both nations.

In 1985, trade in goods between Canada and the U.S. totaled (U.S.) \$125 billion. That is \$37 billion more than the trade between the United States and Japan that year and \$17 billion more than U.S. trade with the 10 nations of the European Economic Community (EC). The Institute for International Economics illustrates the depth of the relationship for the United States when it states:

... in the two years 1984-1985, Canada bought 22 percent of U.S. exports, or more than twice as many as second place Japan. Indeed, if Canada were considered as two separate countries — the first being Ontario, and the second, the other nine provinces — Ontario would be the

leading buyer of U.S. exports, with the remaining nine provinces ranking in third place, ahead of Mexico and Britain.<sup>1</sup>

For Canada, the importance and proximity of the trade relationship is even more profound. Fully 80 percent of Canadian merchandise exports go to the United States. This figure grows more significant when reviewed in light of the fact that exported goods constitute one quarter of Canada's entire Gross National Product.

The U.S.-Canada Free Trade Agreement is not the first between the two countries. Three times the great neighbors have negotiated free trade or reciprocity agreements, as they were once called. The first, implemented in 1854, played a large role in the unification and creation of Canada from the colony of British North America. Until abrogated by the United States following the Civil War, it provided for free trade in a sweeping list of natural products as well as mutual fishing rights.

The second agreement, completed in 1911, would have permitted free trade in natural resources as well, but its introduction in the Canadian parliament was met with widespread opposition fueled by fears that Canada would become a dependent of the U.S. These apprehensions resulted in a widespread backlash against the majority Liberal party, which was thrown out of office over the issue.

The third attempt at a free trade agreement was withdrawn by Canada in 1948, after negotiations were completed, because the Prime Minister feared political reprisal from anti-U.S. elements in the government.

This history was almost repeated in 1988, when the Free Trade Agreement became the central issue in the November Canadian national election. Despite emotional debate and fluctuating polls, the incumbent administration was returned to power as a public endorsement of the treaty. It passed both Houses of Parliament and entered into effect January 1, 1989.

## Overview

The FTA contains 21 chapters filling 236 pages. Negotiations were conducted on nearly every sector of the trade economy. The movements of goods, services, investments and people are addressed with varying degrees of specificity. In some cases, major advancements toward a freer border were made as in the case of services. In other instances, including that of agriculture subsidies, only modest progress was made.

This article will provide a brief overview of the FTA to highlight its importance for businesses that are or might become engaged in cross-border trade. The discussion has obvious relevance for law firms that will be advising clients on the value of the agreement to their businesses. It will look at five specific trade areas cov-

ered by chapter headings: Border Measures (tariff elimination), Investment, Services, Temporary Entry for Business Persons, and Government Procurement. Also, the article points out some areas not included in this agreement.

### Tariff Elimination

One of the most important negotiating objectives for the United States was the elimination of Canadian tariffs. Although 75 percent of

trade in goods between the United States and Canada was duty-free already, the average duty for U.S. goods entering Canada that did have tariffs was nine to ten percent, double the rates for Canadian goods entering the United States and generally quite high for a developed country. The outcome of the tariff section of the agreement was a success for the United States because virtually all duties between the two countries will be eliminated by 1998.

The tariffs will be phased out in three stages. The first stage of reductions began January 1, 1989, with tariffs on products falling into this category eliminated immediately. Some examples in this category are: automated data-processing and related equipment, certain telecommunications equipment, motorcycles, whiskey and rum, some processed fish, raw hides, leather, and furs.

The second category of goods has a phase-out of duties over five years in five equal reductions of 20 percent a year. Examples of products in this category are: paper goods, furniture, chemicals, after-market automotive parts, precious jewelry, most machines, some musical instruments, and petroleum.

The third category applies to "import sensitive" goods, those needing the longest time to adjust to no-tariff protection. The tariffs on these goods will not be eliminated until 10 years from now. Ten equal cuts will take place at 10 percent a year. Examples are: plastics, rubber ware, most wood products, lead, zinc, base-metal articles, footwear, textiles and apparel, steel, many alcoholic beverages, consumer appliances, precision instruments, watches and most agricultural and fish products.

In most cases, but not all, the tariff reduction phase-out schedules are the same for the same products on both sides of the border. For example, textiles and apparel fall into the last category in both countries.

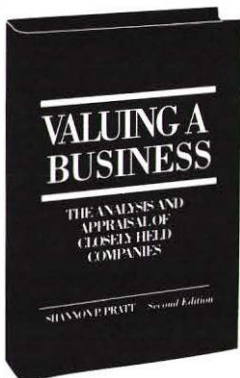
There is a section in the agreement that provides for accelerated tariff reduction in cases where both governments can agree that the affected industries and consumers will be better off — or at least unharmed by — an earlier elimination of duties.

Goods manufactured outside Canada and the U.S. (including Puerto Rico), as well as goods manufactured in Canada or the U.S. that do not meet the rules-of-origin requirements, i.e., "third country goods", will not benefit from the FTA liberalized tariff provisions. Only goods considered to be the growth, produce or a manufacture of the U.S. and Canada are subject to the special duties. The goods must also be shipped directly to the other country.

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### ABOUT THE AUTHOR

Shannon P. Pratt is president of Willamette Management Associates, Inc., a national business valuation firm. Dr. Pratt holds a Doctorate in Finance from Indiana University. He is a Fellow of the American Society of Appraisers in Business Valuation, Chartered Financial Analyst and currently serves as Chairman of The ESOP Association Valuation Advisory Committee. Dr. Pratt is the author of numerous articles and two other strategic books on Business Valuation: Valuing A Business, (1981), and Valuing Small Businesses and Professional Practices, (1986), both published by Dow Jones-Irwin.



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Third-country components which are processed in Canada or the United States will not benefit unless they undergo some transformation. There must be more than packaging or simple assembly. Whether there is sufficient transformation, or whether so-called minimum North American Content is required, will depend on whether there is a change in the tariff classification of the goods, the special rules of origin provided in the agreement and whether the importer is in possession of a specified certificate of origin prepared by the exporter of the other country. The country-of-origin rules can be complex, and there are many exceptions; consequently, care should be taken before one assumes special tariff treatment.

### Investment

Despite the substantial volume of cross-border investment between the U.S. and Canada, the investment relationship between the two countries has been fraught with difficulties for many years. While the United States has relatively open foreign investment policies, the Canadian government has played a major, and sometimes obstructionist, role in inhibiting foreign investment. The FTA embodies tangible benefits which will afford real opportunities for increased U.S. investment in Canada.

The FTA achieves liberalization of foreign investment in four major areas. The FTA requires national treatment for investors on each side of the border, eliminates most screening requirements, disallows performance requirements common to many foreign investment laws, and calls for the amendment of one of Canada's restrictive foreign investment regulations, the Investment Canada Act.

These provisions apply to future investments; existing policies are allowed to remain intact. While the agreement does grandfather in many of Canada's existing discriminatory investment policies, current regulations cannot be made more restrictive.

The theme of national treatment, which runs throughout the agreement, is particularly important in the investment area. As stated in the agreement, "each party is to treat in-

vestors of the other party at least as favorably as its own investors in like circumstances with respect to the establishment of new businesses, the acquisition of existing businesses, and the conduct, operation, and sale of business enterprises located in its territory." This provision will ensure that neither country discriminates against investments based on nationality.

Another important accomplishment of the FTA concerns per-

formance requirements. For future investments, neither party can force an investor to export a certain amount, require an investor to use locally-produced goods in production, or substitute locally-produced goods for imports. Investors may not be required to purchase or give preference to locally-produced goods or achieve a certain domestic content. This rule applies to third-country investors when such measures could affect U.S.-Canadian trade.

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Lastly, the Investment Canada Act is amended to eliminate extensive screening requirements of U.S. investments in Canada. Currently, Canada's threshold for review of *direct* acquisitions by U.S. investors is C\$5 million. The agreement provides that this amount will be phased up to C\$25 million the day the agreement becomes effective. Over the next three years, the threshold will be raised to C\$150 million. For indirect acquisitions, Canada will phase out

all review of U.S. investment over three years.

In addition to the four broad areas described above, the agreement requires that internationally-accepted standards be employed in the case of expropriation. This provision applies not only to future investments but to existing investments as well. Finally, the agreement states that neither party can prevent an investor from transferring profits, earnings from an investment, or proceeds from a sale

or liquidation.

The FTA contains exceptions to investment liberalization. The Canadians have retained the right to continue to provide certain investment incentives. For example, aquaculture production firms investing in British Columbia can receive financial benefits from the Aquaculture Incentive Program, which encourages the establishment and expansion of aquaculture in the province. Because it would have been politically impossible to exempt Canada from the U.S. requirements of *Glass Stegall* on bank sales of securities, the negotiators agreed to a compromise which will permit *all* banks in the U.S. to deal in Canadian Government securities. This constitutes the bulk of Canadian activity in the U.S. market and was therefore satisfactory to Canada.

Some important restrictions to trade in financial services remain. First, the agreement does not provide for the cross-border sale of financial services. In order to sell in Canada, a U.S. company must establish a subsidiary there; it may not do business out of the United States. The same holds for Canadian companies in the U.S. The agreement also does not affect provincial or state restrictions on financial services.

### Services


The significance of trade in services to the United States and Canada is clear from the percentage of Gross Domestic Product (GDP) in each country for which services are responsible. In 1987, over 70 percent of the gross domestic product of Canada and the United States was derived from services. The FTA lists more than 60 different service categories representing thousands of companies that produce, distribute, sell, market, or deliver some service.

The FTA addresses the service trade in three significant ways. First, as with most sectors covered by the agreement, U.S. and Canadian firms are guaranteed national treatment. This is particularly important in the services area because it will afford firms "equal access to domestic distribution systems, equal treatment in establishing a local commercial presence, and equal treatment under tax

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law."<sup>2</sup> Second, the agreement guarantees both the right to establish a "commercial presence" in the other country *and* the right not to do so. This provision ensures that a firm will be allowed to determine how it can best provide its services across the border, without the intrusion of government requirements on maintaining or not maintaining a physical presence in the other country.

Third, the countries agreed not to use licensing or certification standards to inhibit services trade. The agreement includes a commitment to explore the crafting of mutually-agreed standards for various regulated businesses.

Although most services are included, some have been left out. Among the disenfranchised are legal services, doctors, dentists, and child care workers.

### Temporary Entry of Business Persons

The Free Trade Agreement also improves the situation for individuals needing entry to either Canada or the United States to attend to business. Professionals on both sides of the border in a variety of fields have experienced difficulty moving for employment in the other country. In some cases, Canadian companies were forced to set up U.S. subsidiaries, working through third parties or doing their business electronically.

The FTA liberalizes the entry of business persons across borders by ensuring that immigration regulations are consistent with the new rules governing the movement of goods, services, and investments. Both countries agree to provide unfettered temporary entry to bona fide business persons. Any fees for processing applications for temporary entry will be limited to the costs of their preparation, and all actions governing the granting of temporary entry to business persons will be performed expeditiously.

U.S. immigration regulations, practices and procedures are being amended to facilitate greater entry by business visitors, traders and investors, and professionals. With respect to business visitors, the agreement

establishes categories of business persons (*e.g.*, economist, engineer, forester, etc.) and categories of business to be carried out (*e.g.*, research and design, sales, etc.). Labor services are generally excluded from these provisions.

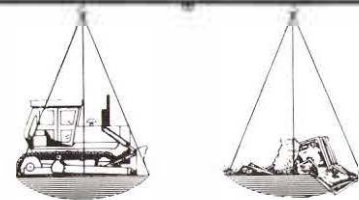
For the first time, the treaty will provide for visas for traders and investors. A business person seeking temporary entry to carry on substantial trade in goods or services in a capacity that is supervisory or execu-

tive or involves essential skills, principally between the United States and Canada, or to develop and direct the operations of an enterprise in which the business person has invested, or is actively in the process of investing a substantial amount of capital, will be admitted under this visa.

With respect to professionals, a new type of visa, a "TC" visa, will allow a business person seeking temporary entry to engage in activities on a professional level once that person

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has shown proof at the border of U.S. or Canadian citizenship and provided documentation showing he or she is engaged in one of the occupations or professions set forth in the agreement. These broadly-defined categories will enable both countries to monitor the free flow of business persons.

### Government Procurement

The agreement includes a slight but notable liberalization of the opportunities for cross-border government procurement. At present, most nations adhere to a \$171,000 threshold above which they have agreed to make their government contracts open to foreign bids. The U.S. and Canada both subscribe to this GATT rule. However, under the FTA, the U.S. and Canada have agreed to allow the other party—and no other countries—to bid on government contracts over a new threshold of \$25,000. The Institute for International Economics reports that the two governments estimate that \$3 billion of U.S. contracts and \$500 million of Canadian contracts will be affected by the lower threshold. The new threshold does not, however, apply to provincial or state government procurement, nor does it include services. One can expect a modest increase in cross-border procurement.

### Conclusion

For all of the accomplishments represented by the FTA, one should bear in mind that it has significant shortcomings and exclusions. In Canada, cultural industries, e.g., publishing, film, video recordings, radio communications and others, lobbied hard and successfully to stay out of the agreement. These Canadian industries believed that if they participated in a free trade arrangement with the U.S., they would be dominated and eventually subsumed by the U.S. market. This market represents significant potential denied U.S. entrants. Another prominent exclusion is the transportation industry, the result of hard lobbying by the U.S. maritime industry. Intellectual property rights and subsidies to agriculture were deferred to multilateral negotiations in the continuing Uruguay Round of the General Agreement On Tariffs and Trade.

With respect to foreign investment, the agreement provides that some sectors, such as atomic energy and communications, will not be open to foreign investment. The investment provisions do not require Canadians to phase out investment incentives.

Another major omission in the agreement is substantive revisions to the anti-dumping and countervailing

duty laws. Although this was a major goal for the Canadians, the substantive law changes—with the exception of a special dispute panel to replace the judicial review used in the appeal of these unfair trade practice investigations—were postponed to a later point.

What many do not realize, however, is that the FTA is by its terms a first effort. It represents a starting point for continued negotiations both in specific sectors and issues, and for the improvement of trade and resolution of trade disputes generally. Perhaps the greatest contribution of the FTA is not what it includes presently, but the foundation it sets for future trade relations. □

### Notes

<sup>1</sup>Paul Wonnacott, *The United States and Canada: The Quest for Free Trade, an Examination of Selected Issues*, (Washington, D.C.: Institute for International Economics, March 1987), p. 2.

<sup>2</sup>David A. Ruth, "The United States-Canada Services Agreement: Review and Assessment," *The Canada/U.S. Free Trade Agreement: The Impact on Service Industries*, (Provo: Brigham Young University, 1988), p. 49.

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*Terry L. Leitzell is managing partner of the Washington, D.C. office of Bogle & Gates and holds degrees from Cornell University and the University of Pennsylvania Law School. Joel R. Junker practices in Bogle & Gates' Seattle office and is a graduate of Valparaiso University, Cambridge University and California Western University School of Law.*



**If You Want to Keep It, You've Got To Give It Away**

*by B.Z., a Metropolitan Lawyer*

I've always liked being a lawyer, but eight years ago I was finding it very difficult to be productive. Days went by when I accomplished nothing — returned no phone calls, dictated no letters, answered no mail, read no files. I didn't lose my job; I was never charged with malpractice; I didn't get a DWI, but I was miserable at work, my finances were a mess, and I was unhappy. I had an overwhelming sense of impending doom. Each night I went home, ate dinner, read the paper, watched TV, and drank until I fell asleep on the couch.

I became increasingly depressed and began having suicidal thoughts. I was afraid that I might be going crazy. I saw several counselors, who gave me drugs to relieve my depression. Neither counseling nor the drugs had a lasting effect. I woke up one 5 a.m. feeling very ill — with something like a super hangover. I was nauseated but couldn't vomit; I had a pounding headache that aspirin didn't relieve; I couldn't remember how or when I had gotten to bed; and I could smell alcohol on my skin. In a panic I thought that I might be an alcoholic.

At that time there was no Lawyers' Assistance Program, and I couldn't afford treatment for alcoholism. I didn't know much about Alcoholics Anonymous, except that from my observations in a number of criminal cases, AA seemed to be effective. I drove to work, closed the door to my office, and called AA. I was astounded to learn that there were 600 AA meetings every week in the Greater Seattle area. I went to two that night. I learned later that there were also separate meetings for women, men, teenagers, singles, spouses of alcoholics, atheists, entertainers, lesbians, gays, pilots, Indians, Hispanics, bankers, felons, doctors and bums. There are currently three weekly noon lawyers' meetings in the Puget Sound area, referred to collectively by their members as the UnBar Association (UBA).

I haven't had a drink for more than seven years, and I gave up pot (my last

drug) four years ago. After I quit, I was able to get effective counseling, and my depression gradually disappeared.

My life is radically different now. I'm active in the LAP, which has been a lifesaver for numerous Washington lawyers. I keep going back to AA meetings. Every aspect of my life has improved — friendships, family hobbies, finances, the practice of law, my mental and physical health — you name it. But the biggest kick I get out of life is something I once would have scoffed at, helping other recovering alcoholics. As they say in AA: if you want to keep it, you've got to give it away.

**What It Means**

*by WSBA Lawyers' Assistance Program staff*

This account describes a lawyer who suffered from both alcoholism and clinical depression. Some typical signs of this lawyer's condition included the following:

- He had trouble with his memory.
- He felt worthless and hopeless about the future.
- He could not stop drinking without a struggle after one or two drinks.
- He had lost friends because of his drinking.
- He had awakened the morning after drinking and not remembered a part of the evening.
- He felt lonely even when he was with other people.

How many other Washington lawyers suffer from similar alcohol and depression symptoms? The results from the Lawyer Ways of Living and Health Questionnaire, completed by random 10% sample of Washington lawyers, suggest that approximately 870 lawyers (6% of the Washington Bar) are dual-disordered and suffer as the author did. In addition, 1,700 lawyers (12% of the Bar) are problem drinkers and 2,400 lawyers (17% of the Bar) are suffering from clinical depression. We suspect that many of these cases become dual-disordered

in time. The lawyer in this article began and sustained his recovery in an accepting environment that was quite effective for him. There are many treatment options. Come work with us to determine how best to recover given what your needs are. We can assist you or your fellow lawyer. Call us at (206) 448-0605.

A weekly noon meeting of Alcoholics Anonymous for lawyers (the UnBar Association) has been established in the Tacoma vicinity. This meeting is open to attorneys and law students who seek personal recovery from alcoholism. There are no dues or fees; the only requirement for membership is a desire to stop drinking. If you are interested in attending this meeting, or similar meetings in Seattle, call Sam at 386-5730 or 545-8350 (both numbers in Seattle) for additional information.

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## Marketing for Lawyers and Law Firms RPPT Mid-Year at Coeur d'Alene

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

*Marketing for Lawyers and Law Firms* will be presented in Seattle on Thursday, April 6 at the Stouffer Madison Hotel. **John A. Hoglund** (John A. Hoglund, P.S., Olympia) and **Alan D. Judy** (Sylvester, Rudd, Petrie & Cruzen, Seattle) are the program cochairs.

The morning sessions will cover the following topics: "Overview of Marketing: What It Is and What It Isn't" by **Charles A. Heinrich** (Principal, Heinrich Marketing, Redmond); "What Can I Do — Legally and Ethically?" by Professor **John A. Strait** (University of Puget Sound School of Law; Of Counsel, MacDonald, Hoague & Bayless, Seattle); "Advertising for Small Firms" by **John A. Hoglund**; "Strategies for Lifetime Client Relations" by **Dale E. Sherrow** (Sherrow & McDonell, P.S., Seattle); "The News Media: Friend or Foe?" by **Susan A. McAllister** (Senior Account Supervisor, Corporate Communications, Inc., Seattle); and "Research — Survey/ Other Techniques To Determine

Needs, Client Satisfaction" by **Elizabeth A. Pohlmann Coplan** (Director, Client Services and Development, Davis Wright & Jones, Seattle).

Following the luncheon, special guest speaker **Robert W. Denney** will address the audience on "What's Hot and What's Not." The afternoon sessions will include a presentation on "Formulating Your Marketing Plan" by **Pete Dorn** (Vice President and Manager, The Rockey Company, Portland; member, Oregon State Bar) and three sessions of concurrent breakout workshops. During the first session, registrants will choose from "Marketing Administration: Building a Successful Team" by **Elizabeth A. Pohlmann Coplan**, "Law Firm Darwinism — Surviving Natural Selection in the 90s" by **Carl F. Peters** (PENSA International, Bellevue), or "Strategies for Designing and Implementing Plans for Solo Practitioners in Small Firms" by **Jeffrey L. Tolman** (Roof, Tolman & Kirk, Poulsbo; member, WSBA Board of Governors, First Congressional District). During the second session, registrants will choose from "Developing New Areas of Practice Using Basic Marketing Principles (Emphasis on Mid-sized Firms)" by **Stephen W. Horenstein** (Horenstein

& Duggan, Vancouver), "Relationship Marketing" by **Don Miles** (Miles, Way & Coyne, Olympia) or "Attracting and Retaining Clients: Strategies From a Marketing Consultant's Perspective" by **Marilyn Hawkins** (Principal, Hawkins Vander Houwen, Seattle). The final session of the day includes the following choices: "Attracting and Retaining Clients: Strategies From an Attorney's Perspective" by **Nicholas F. Corning** (Treece, Richdale, Malone, Corning & Abbott, Seattle), "Developing New Areas of Practice Using Basic Marketing Principles" (Emphasis on Solo Practitioners, Partnerships, Small Firms) by **Darcia Owings Tudor** (Tudor & Tudor, Seattle), or a repeat of "Relationship Marketing" by **Don Miles**. For further information about this seminar, please contact Robin Anderson at the WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599 or telephone (206) 448-0433.

The 1989 Real Property, Probate and Trust Section Mid-Year Meeting and Seminars will be presented at the Coeur d'Alene Resort on May 5-7. Program Chair **Evan O. Thomas, III** (Lane Powell Moss & Miller, Seattle), Vice Chair (Probate and Trust) **Douglas C. Lawrence** (Monroe, Stokes, Eitelbach and Lawrence, P.S., Seattle), and Vice Chair (Real Property) **Guy I. Towle** (Reed, McClure, Mocer, Thonn & Moriarty, Seattle) have designed a program featuring joint sessions on Friday afternoon, followed by concurrent "Real Property" and "Probate and Trust" oriented sessions on both Saturday and Sunday. Just a few of the many topics on the program schedule are: "Desktop Computer Use by Lawyers: Demonstration and Commentary"; "A Primer on Taxes Affecting Real Estate"; "A Time-Saving Checklist for Estate Planning and Probate"; "The Attorney as Fiduciary"; "Report of the Probate Law Task Force (And How It May Affect Your Practice)"; and "Workshop: Deeds of Trust — Recent Changes." Don't miss the opportunity to travel to Coeur d'Alene with your family for an excellent offering of seminar sessions and recreational opportunities. For

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

Hey kids, what time is it? Yes, it's Beagle time. Time to present the 7th annual awards for the dubious achievement in the field of Yellow Pages advertising. This year the gala event was held at "Chez Fred's"—the revolving restaurant high atop the South Main Arch. Once again the committee wishes to thank judge

Barbara Johnson for being on hand to present the simulated porcelain or pewter statuettes of the famed "Beagle" contemplating a fire hydrant.

The theme this year was "What's my specialty?", the answer to which can only be found in *The Yellow Pages* or the bus depot.

*The Ever-Ready Award:* Dave Meyer. While many ads proclaimed "call 24 hours" or "24-hr phone," Dave was the only one who cleverly

stated, "Phone answered 24 hours." Unfortunately, the barmaid at Jubitz Truck Stop may not be able to explain all the niceties of Sub S corporations.

*The Obscure "Specialty" Award:* Glen Barker. Glen's expertise in "Longshoreman law," is not only unique on its face but mutually exclusive. Honorable mention goes to newcomer John Patrick McDonald for "Advisor's Law" also known as Abby Law; and Mark Lang's "Claims

further information about the program, please contact Robin Anderson at the WSBA, (206) 448-0433.

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APR 2 Inn
- Marketing for Lawyers and Law Firms  
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APR 6 Seattle (Stouffer Madison Hotel)
- The Fundamentals of Evidence  
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APR 8 Seattle (Stouffer Madison Hotel)
- Using Evidence Effectively  
7.75 credits  
APR 14 Seattle (Stouffer Madison Hotel)
- Special Problems In Evidence and How To Solve Them  
7.00 credits  
APR 21 Seattle (Stouffer Madison Hotel)
- Real Property, Probate & Trust 1989 Mid-Year  
12.00 credits  
MAY 5 Coeur d'Alene (The Coeur d'Alene Resort)

For further information on the following CLE courses, call or write the listed contacts directly.

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Against Bureaucracies.” A quick check confirmed that the CCBA was not a bureaucracy and, further, judgment-proof.

*The Good Hands Award* (for inventive insurance usage): **Steve Thayer**. Steve theorizes that if you can beat 'em you can also join 'em. His slogan, “Insuring your recovery,” shows he not only sues insurance companies but also sells his clients a policy.

*The Fortune Cookie Award* (for the slogan most likely to be found at a Chinese restaurant): **Joe Prather**. Joe's announcement, “Most People Keep Property,” may — on its face — be somewhat suggestive, but the more you think about it the less sense it makes. Myself, I keep aluminum cans. But then again, that is property. See what I mean?

*The Stealth Attorney Award*: Meader & Devlaemink. **John** and **Vic** “specialize” in something called “Radar Tickets.” If these are citations given for microwave-oven abuse, then my wife surely will need their services. On the other hand, it could be a violation by air traffic controllers. Check out a blip near you and call them.

*The Little-House Award* (for cutesy use of a house in an ad): Poyfair &

English. The little log cabin, next to the Cascade Park Cinema, comes complete with picket fence and clothesline. The house is also symbolic of their “specialty” — settlements — as there is a definite list to the foundation.

*The King's English Award* (for best usage of one's native tongue): **Larry Neal**. Larry proudly proclaims, “None or Low Retainer,” and this is for bankruptcies, no less. Now, I do not profess to be the best-learned grammar guy, but “none retainer” just sounds like a no-no. Isn't that right, Vern?

*Ma Bell Award* (for best use of a prop phone in an office photo): **Dan Marsh**. Now, I know all of you are saying, “Hey, last year you said that Dan, after receiving the award for four years in a row, was retired and was no longer eligible for a Beagle.” True, but Dan was not to be denied. This year's edition has Marsh and his associates gathered around a cardboard library setting with Dan holding a phone to his ear. Unfortunately, the cord extends down Dan's arm and disappears into his sleeve, thereby affirming the rumor that it's not a phone but some insidious growth attached to Dan's body. Get

some help NOW, Dan.

*The Edsel Award* (for the first award to become obsolete): **Mary Arden** and/or **Charles Buckley**. Said ad, although tastefully done, was rendered useless prior to its publication by the dissolution of the partnership. Arden & Buckley will have the distinction of having an ad lasting longer than the firm.

Finally — the *Beagle of the Year* (for that ad that in size, content and general demeanor captures your eye, catches your throat and kicks you in the gut): **Michael Hicks**. Yes, after years of being an also-ran, a bridesmaid and a runner-up, Mike finally grabbed The Big One. Mike's busy little ad is of the half-page variety in basic black, yellow and red. In keeping with the Olympic year, Mike used the international logos for diverse personal injuries, such as the silhouette of a man bending over (back injuries); a little girl crying — complete with doll — (child injuries); and my favorite — the vicious dog outline — for dog bites. How Mike was able to cast those shadows using just his hands is amazing. The font used for the lettering can only be described as “Classic Crayola.” The *coup de grace* was Hick's slogan, “It

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doesn't hurt to call." True, but it does to read this ad.

Meanwhile, the social and athletic event of the lawyer year (next to the Beagles and Horenstein & Duggan's new partner), took place with the Annual CCBA-Bar Auxiliary Dinner Dance. Unfortunately a major snafu arose over whether the function was semiformal (matching three-piece suits), or semicasual (slacks, nice shirt and reindeer sweaters). The debate raged on until **Ben Shafton** resolved the issue in favor of the suits by arriving in low-cut Converse instead of his usual high-top army boots.

The highlight of the evening was the appearance of **Jim Sellers**, who showed off his new "make over." Having lost *beaucoup* kilos, Jim felt compelled to wear the same golf slacks that fit him in 1969. As luck would have it, they came in his favorite color (plaid) — and matched his favorite dance (square), which clashed with the band (heavy metal).

In other news, **Mary Kay Gaffney** capped a successful year with a major move up the corporate letterhead of Boyd, Kurtz and Swanger. **Jim Swanger** vacated the Camas office for the friendly confines of solo practice, while **Dave Kurtz** is rumored to be heading the friendly skies of commercial airlines. Dave, who in addition to inventing reusable plastic parsley, is also a pilot who frequently flies between the three branch offices of his firm. The fact that they are located within three miles of each other has restricted Dave's flying hours.

Plans are under way for the formation of a Bar Association section for Around the State reporters. On the agenda are CLE hours; travel expenses; and space equal to that of the King County Reports. *Bar News* editor Lindsay Thompson has refused comment and his answering machine will not take my messages.

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

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As a proximate result of your reporter's recent election as trustee of the East King County Bar Association, he was assigned the "unofficial" duty of writing this column. All liabil-

ity for libel resides with your reporter and, as was made clear, if caught in error, the EKCBA secretary (**Steven Toole**) will disavow any knowledge of your reporter's existence. Despite earnest inquiry, **Ken Davidson**, new vice president and president-elect, and **Barry Hasson**, present president, declined to define your reporter's duties further, stating only: "Treasurer **Jean Kunz** has just had a baby boy. That's news." To be sure, there was an oblique suggestion by president Hasson that he would not be averse to reviewing the column before submission. Under the circumstances, however, your reporter feels little inclination to comply.

*Fast and Furious Department:* Perkins Coie has added **Bruce Dick** (corporate finance) and **Mark Quehrn** (real estate) to the firm and associates **Rob McKenna**, **Susan Lybeck**, **Charles Eberhardt**, and **Catherine Phillips**. As regards the fast and furious Perkins Coie crowd, one could, but will not, overlook the fact that two Perkins attorneys were recently ticketed by the Bellevue Police for jaywalking on 108th Ave. N.E. just north of 4th — \$29 each. With the influx of attorneys to Bellevue, this presents a previously underrated, but promising, source of revenue.

Riddell, Williams, Bullitt & Walkinshaw as of January 3, opened a Bellevue branch in the Rainier Bank Building. And, now, the rest of the story. Your reporter was an associate at Riddell and at the 1982 firm retreat reported on branch offices offering the conclusion: only if you must. Apparently, it has only taken six years to overcome that piece of advice. Managing partner **David Hoff**, who watched a certain young associate suffer serious self-inflicted injuries on cross-examination, will be managing that otherwise unmanageable group of **Morris Kremen**, **Howard Coleman**, **Karen Jones**, and **Thomas Hamerlinck**, whose commutes to the Family Law Motions Calendar may justify an I-90 branch. For what it's worth, I wouldn't.

"*All the News that Fits, We Print*": On the distaff side of the Hoff clan, **Valerie Hoff** has joined Revelle, Ries & Hawkins as a family law associate. **Mark Phelps** and **David Shank** have joined as litigation partners swelling the ranks to 20 attorneys. Davis, Wright & Jones has an Open House at

their Eastside Office at 1800 Bellevue Place on March 16. **Allen Clark** is managing partner of the 21 lawyers on the eastside outpost. **Eve Fitzsimmons** is a new partner of the firm emphasizing tax law. Inslee, Best, Doezie & Ryder, P.S. have added **Stephen Rose** and **James Watt** (both in health care law) and **John Milne** (municipal law) as partners. **John Rodda** and **Rosemary Larson** have joined as general business associates.

*Good News for the Legal Stationers:* O'Shea & Straight (on Mercer Island) have two new partners: **Randy Barnard** (litigation) and **John W. Martin** (construction and litigation), and one new associate, **Christine Maddox** (general business). The new firm name? Q.E.D.: O,S,B & M. **Betty Drumheller** has become a partner, effective January 1, in a firm with the following mellifluous appellation: Hanson, Baker, Ludlow & Drumheller. **Ronald L. Cohen** brings to Casey & Gordon, P.S. a tax and business practice and, more significantly, like each of the other two principals, **Kevin Casey** and your reporter, adds to the firm two daughters under the age of five. At the first firm meeting, daughters Michelle (5), Erin (5), Katie (4), Kristen (2), Casey Anne (1), and Shari Kiara (Kiki) (9 mos.) were in attendance with spouses **Katie Casey**, **Donna Dixon**, and **Cynthia Cohen** and hired HELP.

*Eastside Practice:* The 10,000 volume Eastside Tax and Law Library is expected to open March 1, 1989, Bellevue Place (3rd Floor) with hours 24 hours a day, seven days a week, for those who eschew the 40-hour work week. TV, VCR, A-V aids, and other acronyms are available, together with conference and study rooms, and secured, covered parking. This may, according to attorney-creator Ted Barr, be the best law library in the country — Barr none. For information, call Shari Perkins: (206) 451-3961.

Your reporter, bound by strict journalistic standards, to wit: never letting the facts get in the way of an amusing anecdote, humbly solicits from the reader news of note and, even, information offered for the purpose of obtaining free publicity. Having been degraded by this shameless solicitation, your reporter reveals himself to be beyond redemption by further suggesting that information be conveyed to Legal Assistant

Dorothy Leischner at (206) 454-3313, rather than himself, that another be forced to bear the burden of responsibilities he has so heedlessly taken upon himself.

### PIERCE COUNTY REPORT by GEORGE S. KELLEY

The bankruptcy court in Tacoma has moved from the Federal Courthouse/Post Office to the recently-constructed Tacoma Financial Center building. It must give the other tenants of the building, which include one major stock and securities firm, reassurance to know that in a market downtown relief is only an elevator ride away.

There are also plans to move the Federal District courts and Magistrate's courts to a refurbished Union Station, which has been designated as a historical landmark. If the move takes place one can imagine complaints by criminal defendants that they were "railroaded."

Retired judge William Brown is seeking information leading to the return of the Salvi Gagliardi low-net golf trophy, which is awarded as part

of the bar association's annual golf tournament. It is a companion to the Ed Eisenhower low-gross trophy. Apparently, the person who last won it did not return it the following year — maybe in fear that the tournament committee would require proof of his claimed handicap.

New officers of the Young Lawyers Section are Jeanne Betzendorfer, president, Mark Dynan, vice president, Sal Mungia, secretary and Jim Orlando, treasurer. Shawn Ann Flood, Dennis Greenlee, Paul Willet and Tom Campbell have been elected as trustees.

John L. Messina has been chosen as a Fellow in the International Academy of Trial Lawyers, a select group of trial lawyers.

The state attorney general's office in Tacoma announced the addition of Robert S. Spaulding and Charles M. McCullough as staff attorneys.

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

*Office Moves.* Garvey, Schubert & Barer has added the following partners in its Portland office: Jeffrey

Boly, Christine Brown, Stephen Connolly, Mark Friedman, Gregory Hathaway and Robert Weaver, Jr.; Peter Burger, Frank Curci, Virginia Gustafson and William Jessup are now associates there. Ronald E. Braley has joined Lasher & Johnson as a partner. Joseph A. Barreca has joined Leach, Brown & Andersen as of counsel. Mark R. ("Grand Slam") Busto has become a member of Schweppe, Krug & Tausend, and Gilberto I. Gentili has become an associate. Bruce D. Erickson has joined Betts, Patterson & Mines. Laura Jaeger has opened new offices in Federal Way. Rosemarie Warren LeMoine has relocated her offices to 11000 Main Street, Bellevue.

Perkins Coie announces that Fred B. Arvidson and Gordon J. Tans have joined the firm as counsel, resident in the Anchorage office; and Bruce E. Dick, Markham A. Quehrn, Richard L. Baum, William L. Green, James R. Moore, Mark P. Munson and Michael E. Stansbury have been named partners. Ellen E. Barton, Todd S. DeGross and Lise F. Place have associated with Wilson, Smith, Cochran & Dickerson. Judith ("Par Shooter") Eiler announces that Paula

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Similarly, at the appellate level, procedural traps for the unwary practitioner abound. For example: "there must be specific assignments of error before we will go behind the trial

court's findings." *Dave v. Nastos*, 39 Wn. App. 590, 595, 694 P.2d 686 (1985).

With our years of appellate experience, we can help you through every stage of the appeal process. James E. Lobsenz and John W. Wolfe are available for referral, consultation or association in state and federal appeals, as well as in trial court matters leading to appeal.

JAMES E. LOBSENZ, former Clerk to Associate Justice Mathew O. Tobriner, California Supreme Court, and Chief Justice Vincent L. McKusick, Supreme Judicial Court of Maine; author of numerous law review articles; successful appeals include *In re Adleman*, *State v. Ryan* (amicus), *State v. Pam*, *State v. Sargent*, *Lang v. Lang*. Federal appeals include *Watkins v. United States*.

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S. Pridgeon is now of counsel to Eiler & Pridgeon. Douglas Purdy has become a partner in Berkman, Burgher & Purdy. John Wunsch has been named executive director at Bogle & Gates. Mark Hutcheson has been named chief executive officer at Davis, Wright & Jones.

*Worthy of Note.* William R. Hickman has received an Award of Excellence from State Farm Insurance Companies in recognition of his outstanding service for editing the *Washington Insurance Law Letter* since 1975. Alan H. Kane has been elected chair of the Taxation Section of the WSBA. Michael C. Hayden has been recognized by Plymouth Congregational Church with the Plymouth Award for service to the church.

*Three-point Play.* It has been reported that the annual convention of the Washington State Trial Lawyers Association in July will feature a 3-on-3 basketball tournament. However, there is no truth to the rumor that the early favorite is a team coached by Mike "Tark the Shark" Welch and comprised of John "Count It" Aaby, Dave "The Rave" Robinson, Bob "In Your Face" Knies, and (in reserve) Jan "Dr. J" Peterson.

*Speaking of Sharks.* It was reported in the January issue of the *Bar News* that Marisa L. Velling had joined Graham and Dunn as an associate. What escaped the attention of this correspondent is the fact that Velling is the former scourge of the South Seattle Swim League, having been known in her younger days as the "Bobby Knight of the Arbor Heights Swim Club."

### SKAGIT COUNTY REPORT by KEITH W. TYNE

Superior court judges Walter J. Deierlein, Jr., and Harry A. Follman recently retired after a combined 42 years of distinguished service on the bench. The Skagit County Bar Association honored the retiring judges with a dinner which was attended by justices from around the state including Supreme Court Justices James M. Dolliver and Keith J. Callow.

Gilbert E. Mullen and Stanley K. Bruhn are the new superior court judges. George E. McIntosh was ap-

pointed court commissioner.

The new year brought several of-fice moves: Paul W. Taylor and Jack R. Wallace are partners in the firm Bannister, Clark, Taylor & Wallace. David M. Beninger has recently become associated with Paul Luvera's law firm. No longer with Paul is Carole Fisher. Mary McIntosh, the daughter of commissioner McIntosh, succeeds him as a partner with McIntosh, Lewis, Evans & Nielsen. S. Gene Willett is the new Skagit County Deputy Prosecutor, and Katherine M. Prunty is the new Skagit County Deputy Defender in the Public Defender's office.

The Community Development Division of the governor's office has recently selected the Skagit County Bar Association for the Outstanding Community Service Award based upon the effectiveness of its pro bono program. The county attorneys' participation rate is among the highest in the state.

### SPOKANE COUNTY REPORT by BERNIE MCNALLAN and RICH KUHLING

*Recent Judicial Retirements:* Court

of Appeals, Division III, J. Ben McInturff; and Spokane Superior Court, John J. Ripple.

*New Judges:* George T. Shields, former superior court judge, has been elected to the Court of Appeals, Division III; Kathleen O'Connor and Robert Austin, former court commissioners, have been elected to the Spokane Superior Court. Judge O'Connor is the first female member of the Spokane Superior Court bench.

*New Commissioners:* Joseph Valente has moved from family law commissioner to superior court commissioner, and Neal Q. Reilly has been appointed to the second vacant superior court commissioner position. Royce Moe has been appointed superior court family law commissioner.

*Kudos:* It is always a pleasure to recognize members of the Spokane Bar Association that have contributed their time and talents in civic endeavors. Dave Michaud of the Lee & Michaud firm recently completed another year of providing pro bono legal services to the Spokane Food Bank. Valerie Jolicœur is treasurer and serves on the speakers' commit-

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tee for the Spokane chapter of SCAN. The SCAN organization focuses its efforts on helping eliminate child abuse and neglect.

*Upcoming Events:* The Spokane Bar Dinner will be held at the Spokane Club March 18. Among the night's festivities and entertainment will be the inimitable *Heath Players*. The Heath ensemble has been described as being talented, versatile, possessing great stage presence and, last but not least, soporific.

*Affiliations:* **Suzanne Manning**, a member of the Huppin, Ewing firm in Spokane, has been elected president of Washington Women Lawyers.

**WALLA WALLA COUNTY REPORT**  
by **THE WALLA WALLA SCRIBE**

The winds of change are in the air in Walla Walla, where judge **James B. Mitchell** steps aside to be replaced by **Donald W. Schacht**. Don moves over from the prosecutor's office to the bench. Who will be the new prosecutor? Speculation abounds that **Art Eggers** will return from Seattle. For the first time in his life, Art has no comment. (As this report was being filed, **Jim Nagle** was named prosecutor.)

At the annual Christmas Party, **James K. Hayner**, outgoing bar president, was the target of substantial abuse for his lax approach to his duties. When asked if his poor performance was the result of ignorance or apathy, he responded, "I don't know and I don't care." New president, **Larry Siegel**, has promised to be more serious in 1989. The meeting deteriorated to an even lower level when judge **Jerry Votendahl** presented his view from the bench of advanced medical diagnostic technique. After the meeting adjourned, several members stayed too late.

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

*A New Benchwarmer:* In his previous missives to the *Bar News*, your obedient correspondent omitted mention of another new superior court judge who was sworn and robed in early January 1989. At one time our chief criminal deputy prosecutor, **Robert N. Hackett, Jr.**, is now holding court in Department 5. Bob won the seat, which was vacated by the Honorable **H. Howard Hettinger**, in the November 8, 1988 election. We all wish Bob interesting cases and succinct counsel.

*Judge Hettinger Retires:* The aforementioned Honorable H. Howard Hettinger, who sat on the superior court bench until January 6, 1989, has retired after over 15 years of service. Howard will take up full time his flying, boating, cowboying and husbanding avocations. Scholarly and controversial, Judge Hettinger was described by the *Yakima Herald Republic* as having a "bald pate" and "elfin grin." Most Yakima County lawyers, including myself, have at least one amusing Howardism to relate: A young lawyer, not on the public defender list, had been appointed by Howard to represent an indigent criminal defendant during one of the judge's "clear the backlog" assaults. While court was convened for the criminal docket, the lawyer made an oral motion to withdraw because the charge was a felony, and he did not feel competent to handle the case. The judge inquired: "Mr. Doe, do you have a license to practice law in this state?" Doe replied: "Yes, I guess I do." Said he of the elfin grin and bald pate: "Motion denied." Good luck, Howard, and good times.

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## DISCIPLINE

**Reprimanded:** Vancouver attorney **Mary H. Arden** (admitted 1984) has been ordered reprimanded pursuant to a stipulation for discipline. The discipline was based on Arden's misrepresentation regarding her employment and income on a financial statement, submitted to a credit agency, in an attempt to obtain a home loan.

**Censured:** Inactive attorney **Richard Alan Alcorn** has been ordered censured and placed on probation by the Washington State Supreme Court on December 20, 1988. The order of the court was based on a reciprocal discipline from the Arizona Supreme Court for a misdemeanor theft conviction and RLD 12.6.

**Censured:** Vancouver attorney **Charles H. Buckley, Jr.** (admitted 1979) has been ordered censured pursuant to a stipulation for discipline. The letter of censure was based upon Buckley's written misrepresentations, at the request of a third party, to a credit reporting agency that he had employed that third party.

**Censured:** Pasco attorney **David W. Corkrum** (admitted 1983) has been ordered censured by the Disciplinary Board based upon his failure to file an appeal on behalf of a client, his subsequent misrepresentation to the client as to the status of the matter, and his failure to cooperate with Bar counsel in the disciplinary proceeding. Corkrum will also be on probation for two years during which time his cases will be monitored by a supervising attorney.

**Censured:** Longview attorney **Vernon J. Guinn** (admitted 1966) has been ordered censured by a Review Committee of the Disciplinary Board, which, on December 22, 1988, approved his stipulation to discipline based on his failure to cooperate in the investigation of a complaint.

**Censured:** Suspended Olympia attorney **Andrew W. Kramer** (admitted 1983) has been ordered censured by the Disciplinary Board, which, on

November 18, 1988, approved a stipulation for discipline based upon his neglect of a collection action and failure to keep his client advised of the status of the matter.

Kramer has been suspended for failure to comply with the requirements of APR 11 (CLE) and nonpayment of dues. Kramer will be on probation with a supervising attorney should he return to private practice within the next two years.



## IN MEMORIAM

**William T. Beeks, Sr.**, 82, died January 6, 1989 in Seattle. A graduate of the University of Washington School of Law, Beeks gave up a career in the merchant marine at his wife's request to read law. During his time at the University, Beeks roomed with the late Senator Henry Jackson, who proposed Beeks for appointment to a federal judgeship by President Kennedy in 1961.

Even after taking senior status, Beeks handled virtually all maritime cases filed in the western district of Washington until his retirement in 1984. U.S. Magistrate Philip

Swigert, a former clerk of Beeks, said the judge insisted on a high level of practice in his court. "He hung by the thumbs any attorney who ventured into his courtroom ill-prepared." Many attorneys remembered Beeks for his stern but fair approach to trying cases, and spoke highly of him at his death.

Surviving Judge Beeks is his son, William T. Beeks, Jr.

**Robert E. Brooke**, 66, died October 4, 1988 in Seattle. Born in Spokane, he practiced with Hamblen, Gilbert & Brooke until 1965, when he moved to Seattle. Brooke was a graduate of Whitman College and the University of Washington School of Law. During World War II he was a member of the U.S. Navy submarine service.

Brooke's civic activities included service as a member of the Navy League, president of the Spokane County Bar Association and the Spokane Symphony, teaching at Gonzaga University's law school, and membership in the Elks, Eagles, Kiwanis and the American Legion. Survivors include his father, Spokane attorney Philip Brooke, Sr., his wife, six children, and five grandchildren.

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Curran said, "the passing of Bob Brooke brings to an end a legal career of a true professional... To his colleagues Bob Brooke was the epitome of a trial lawyer who earned, deserved and had the respect and admiration of his peers. He will be missed."

(The following remembrance was contributed by Spokane attorney

Robert T. Carter.)

**Grant L. Kimer** died December 20, 1988 in Spokane. He was 70 years old. Grant was born in Indianola, Iowa July 19, 1918. He came to the Northwest as a result of Navy time spent at Bremerton after his ship was damaged.

He was graduated from Simpson College and Drake University Law

School in 1947 and passed the Iowa bar before coming to Spokane later that year. Joining J. Webster Hancox, Kimer practiced in that partnership until 1967, when he joined Randall & Danskin. After serving a year as president of the Spokane County Bar Association, he served three years as a Governor of the Bar Association. Grant gave distinguished service to Inland Empire Goodwill Industries, Inc., serving as a guiding figure on their board from 1950 until just a year or two before his death. At one point he served as its vice president.

Grant started his avocation as a magician early in life. His magic exhibitions were high entertainment. He carried them off with a gentle humor and a fine sense of timing. Above and beyond this, Grant was widely known as an all-time droll fellow. It was impossible not to like him.

**Philip G. Sheridan**, 76, died November 21, 1988 in Everett. An Everett native, Sheridan served two terms as Snohomish County prosecuting attorney, in private practice, and thirteen years as a superior court judge. Survivors include his wife, two children, and three grandchildren.

**Roger L. Shidler**, 88, died December 17, 1988 in Seattle. Born in Burlington, he took his law degree from the University of Washington in 1924. Corporate counsel for many Washington corporations, Shidler was also involved in the creation of several major shopping malls. He was a founder of the law firm of Shidler, McBroom & Lucas, and in 1948 managed Republican presidential candidate Thomas E. Dewey's Washington campaign. Survivors include his wife, daughter, sister, four grandchildren and one great-grandchild.

**Thomas C. Stacer**, 70, died June 9, 1988 in Olympia. An administrative law judge for the Utilities and Transportation Commission, Stacer was born in Oregon and held degrees from Willamette University and the University of Oregon School of Law.

During World War II, Stacer

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served as an air cadet pilot, radio technician, and a rehabilitation instructor for blinded soldiers. He remained active in work with the blind for the rest of his life.

From 1948 to 1969 Stacer was assistant attorney general of Oregon, concentrating on forestry law; he was honored by Oregon Governor Mark Hatfield for his revision of the state's forestry code. In 1969, he moved to Washington to become executive officer for the Utilities and Transportation Commission; he later served as its chief administrative law judge. In 1975-1976 Stacer was acting chair of the Washington Energy Facilities Site Evaluation Commission. His civic activities included service on the Oregon Geographic Place Names Committee, membership in the Elks and Lions Clubs, and fishing, hiking, hunting and freelance writing. Survivors include his wife, daughter and brother.

**Richard E. Williams**, 58, died January 17, 1989 in Seattle. A

graduate of Syracuse University and Boston University School of Law, Williams joined Perkins Coie in 1957. He became a senior partner in the firm and chaired its hiring committee. Williams practiced in the fields of antitrust and general litigation. He was finance chairman for Senator Slade Gorton's 1988 campaign and had been active in prior Gorton electoral efforts; he was also a director of AIDS Housing of Washington. Williams was a member of the Washington and Massachusetts bars.

Survivors include his wife, four children and three grandchildren.



#### King County: New Fee Announced

Pursuant to King County Ordinance Number 8752, M. Janice Michels, Director, King County Department of Judicial Administration, advises that, effective on March 1,

1989, for any document which is intended to be placed in a court file or otherwise processed by the Department of Judicial Administration which must be returned to the filing party due to error or lack of completeness in the document, an \$8 fee will be assessed to cover the costs of extra handling.

#### Statewide Centennial Tour of *Douglas*, Play on Judge's Life, Planned

"The memory of Justice Douglas is well served in *Douglas* . . . At the end, the opening night audience stood, applauded and cheered — and cheered and cheered. With good reason. Bill Douglas was an extraordinary man; Glenn Mazon is an extraordinary actor." So commented Wayne Johnson of *The Seattle Times* when the one-man production of *Douglas*, written by Robert Litz, opened in Seattle in 1984.

In March and April, 1989, the late William ● Douglas will come to life

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again when actor Glenn Mazen tours the state in a specially commissioned tour of *Douglas*. The first such undertaking by Intiman Theatre Company of Seattle, the tour is their contribution to the 1989 Washington Centennial celebration. *Douglas* is slated to be presented in cooperation with statewide theatres, colleges, high schools, and historical groups.

"You could look all over America and not find a better actor for the part. He, for me, is Douglas," says Robert Litz of Mazen. Together actor and playwright have woven a picture of Douglas on the day of his forced retirement, a man not ready to give up; still mentally capable but confined to a wheelchair from a recent stroke. Alternating between the younger and older man, Mazen intertwines memories of Douglas' boyhood days in the Yakima Valley with highlights of his record 36 years on the Supreme Court Bench.

Mazen is familiar with Douglas' territory; he spent some time in Yakima himself while growing up. More recently, he visited Goose Prairie, Douglas' old home in the Cascades. It was an emotional, overpowering experience, Mazen says. "I could feel his presence. I felt like he was looking down and saying, 'Good, I know what you guys are doing. I like it.'" Mazen himself is a veteran of the theatre: appearances at The American Conservatory Theatre in San Francisco, The Oregon Shakespearean Festival, New York's Lincoln Center, and the Edinburgh International Arts Festival top his credentials. A graduate of the Royal Scottish Academy of Music and Drama, he has also performed for British and Scottish television. Mazen is well known to Northwest audiences; he has been seen in over 150 professional theatre productions.

Originally produced at the Philadelphia Festival Theatre of New Plays in May 1984, *Douglas* played at Seattle's New City Theatre later that same year. Now partially-funded by the 1989 Washington Centennial Commission, the highly acclaimed one-man production is available in March and April of 1989—and is designed to be as accessible as possible: the fee for evening performances is

\$600; the daytime school performances fee is \$300. The Clark County Bar Association and Clark College will bring the play to Vancouver in early April, attorney Steven Tubbs has announced.

For booking and other information about *Douglas*, please contact Kyle Morrison at Intiman Theatre: (206) 626-0775, or P.O. Box 19645, Seattle, WA 98109.

## In Re: RCW 19.52.020(1) Interest Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in February is 9.04 percent. The maximum allowable interest permissible for March 1989 is thus 13.04 percent. For further details and past rates, see the October 1987 *Bar News*, page 39.

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The University of Puget Sound Law Alumni Society (L.A.S.) has set the date for its sports day: April 1. Get your teams together now and challenge your former classmates and faculty members!

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**Calendar of Upcoming Events**

- TBA: Board Nominations
- April 1: Sports Day
- April 14: Annual Dinner
- May 13: 1979 Class Reunion

**Withdrawal of Ethics Opinion**

The Board of Governors has withdrawn Formal Opinions 108.115 and 180. See, *Loudon v. Mhyre*, 110 Wn. 2d 675, 756 P2d 138 (1988).

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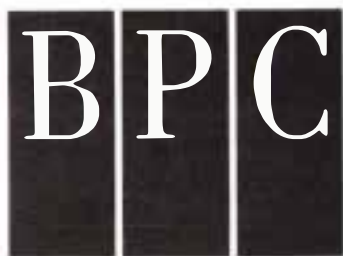
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