Washington State Bar News
Volume 43, No. 7, July 1989

Immigration Law, Business and the National Interest: The New Debate

Immigration
- **Consequences of Criminal Activity**

Deportation
- **As a Consequence of Divorce**

OUR 10 MOST WANTED

Valuing a closely held business is a complex task requiring a thorough investigation of the facts, informed judgement, experience, and common sense. Obviously, one must have all the relevant facts. But knowing ***which*** facts are relevant and ***where*** and ***how*** to find them can be challenging – particularly in today's complicated legal proceedings.

Over the years we have designed comprehensive procedures to discover relevant valuation facts. These include a series of requests for documents leading from general to specific items. The initial request usually identifies a number of ***standard business documents*** with which appraisers and lawyers should be familiar, including . . .

1. Federal income tax returns; five years.
2. Annual financial statements; five years.
3. Interim financial statements (monthly, quarterly, etc.); latest 24 months.
4. Depreciation schedules; five years.
5. Articles of incorporation and bylaws, or partnership agreements, including amendments.
6. Minutes of all meetings of shareholders and directors (partners); five years.
7. Shareholders' (partners') buy/sell agreements, including amendments.
8. Loan applications; five years.
9. W-2's (or equivalent) for the five highest-paid employees; three years.
10. Documents describing the company's products, services, operations, facilities, customers/clients, and competition, etc., including: promotional literature, product brochures, newsletters, business plans, offering memorandums, leases, production schedules, staff time/billing records, backlog data, management reports and other such documents.

BUSINESS VALUATION RESEARCH, INC.

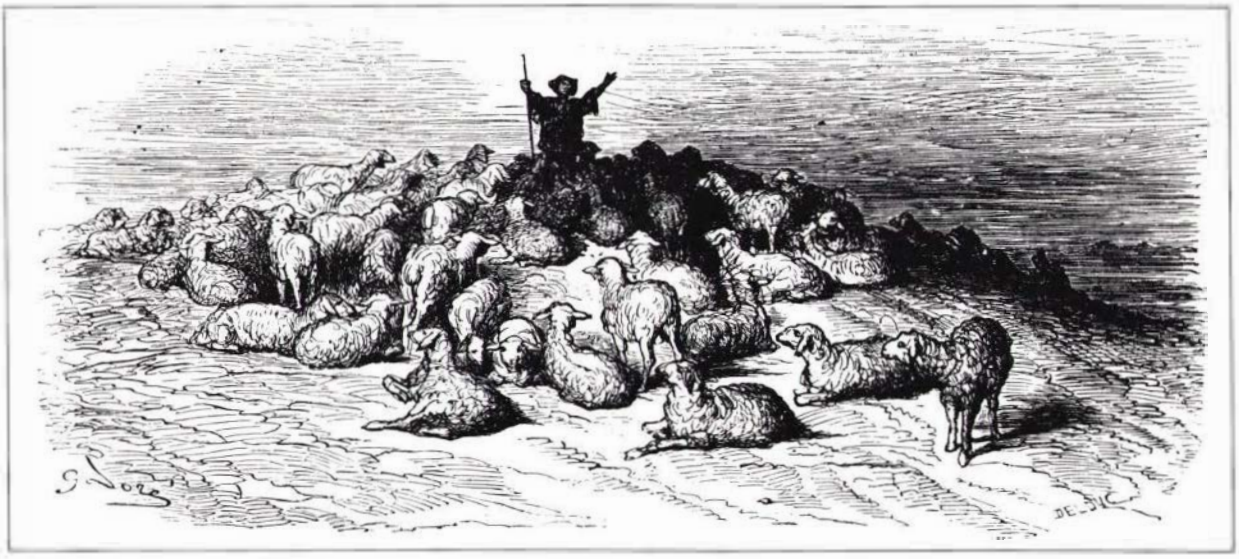
Paul T. Clausen, BSME, MBA, ASA
Greg L. Mettler, CPA, JD

2020 COLUMBIA SEAFIRST CENTER
701 FIFTH AVENUE
SEATTLE, WA 98104

(206) 622-6883

We specialize in valuing closely held businesses for sale/merger, estate & gift taxes, ESOP's fairness opinions, divorce, damages, expert testimony, and other purposes.

Washington State Bar News Vol. 43, No. 7, July 1989



"With nothing to do, lawyers will have to turn their oratorical talents elsewhere." — See "Afterword," page 40.

FEATURES

DEPARTMENTS

ART CREDITS

Fourth of July fireworks burst over Seattle's Kingdome. Photograph by **Matt McVay** for *The Seattle Times*, ©1984.

WSBA Telephone Numbers

Administration **(206) 448-0441** — Lawyers' Assistance **(206) 448-0605** — Admissions **(206) 448-0563** — Legal Department **(206) 448-0307** — Continuing Legal Education **(206) 448-0433** — Lawyer Referral **(800) 552-0787**

PUBLISHED the last day of the month before cover date. Editorial deadline 25th day of month for *second* issue following. Direct correspondence to *Washington State Bar News*, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599, telephone (206) 448-0441. All editorial material, including editorial comment, appearing herein represents the views of the respective authors and does not necessarily carry the endorsement of the Association or the Board of Governors. Likewise, the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement. SUBSCRIPTION, included in active membership, is $12.00 a year for inactive members (WA State residents add $0.98 WA State Sales Tax), and $24.00 a year for nonmembers (WA State residents add $1.97 WA State Sales Tax).

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

An Improved RCW System

Editor:

Over 100 lawyers responded to my letter in a previous issue of the *Bar News*, which announced the availability of a microcomputer version of the Revised Code of Washington. Unfortunately, many of those who expressed interest did not have the required 50 megabytes of hard disk storage space.

In response to this problem, I am pleased to announce the availability of an improved RCW system which can operate with as little as 16 megabytes of storage, an amount available in nearly every law office. The minimal-storage version of the new system is called the "Electric Index." This system allows key word-searching on all words and numerals within the RCW and has the Boolean logic capabilities of the previous system. However, rather than displaying full text, it provides the user with a list of citations to relevant sections.

The next step up is "RCW-Lite," so-called because it is less filling for one's hard disk. This system provides indexing plus full text retrieval on such RCW titles as the user chooses to preload on the hard disk. Thus, a lawyer who cares only about hazardous wastes might need only an additional ½ megabyte to store Title 71, in addition to the 16 required for the index.

Many lawyers have inquired concerning the availability of other databases. Chief Justice Callow is currently considering my request for a copy of existing computer tapes containing the Washington Reports and Washington Appellate databases. If and when the Court decides to release these tapes, I hope to produce an annotated version of the computerized RCW in addition to a CD-ROM optical disk containing both case and statutory law.

EDWARD V. HISKES
Richland

Floppy disks containing all required software, data files and loading instructions are available on an overnight loan basis to any lawyer. Since this is a pro bono project, there is no charge except for the actual cost of shipping. Those interested may get the system by writing to:

Jeffrey J. Bode, Director
Washington Digital Law Library Foundation
2121 Pacific Building, 720 Third Avenue
Seattle, WA 98104

Request for Information

Pretext stops. Allegations have been made that law enforcement agencies have stopped motorists on Interstate 90 between Cle Elum and Spokane for minor or, perhaps, nonexistent infractions, apparently in order to interdict drugs. Information suggesting single or multiple incidents of pretext highway stops throughout the state is sought from readers. Please call or write Jeffry K. Finer, % Stiley & Associates, P.S., 210 Rookery Building, N. 14 Howard, Spokane, WA 99201; (509) 747-8181.

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

JOHN J. MICHALIK, *Executive Director*
GEORGE SCOTT, *Director of Public Affairs*

Published by
WASHINGTON STATE BAR ASSOCIATION
500 Westin Building 2001 Sixth Avenue
Seattle, WA 98121-2599

PUBLISHED the last day of the month before cover date. Editorial deadline 25th day of month for *second* issue following. Direct correspondence to *Washington State Bar News*, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599, telephone (206) 448-0441. All editorial material, including editorial comment, appearing herein represents the views of the respective authors and does not necessarily carry the endorsement of the Association or the Board of Governors. Likewise, the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement. SUBSCRIPTION, included in active membership, is $12.00 a year for inactive members (WA State residents add $0.98 WA State Sales Tax), and $24.00 a year for nonmembers (WA State residents add $1.97 WA State Sales Tax).

Elizabeth J. Bracelin

Manners Make the Lawyer

For the past several months I have stressed the Board's commitment to member services. As I approach the end of my term as Bar president, I wanted to take a moment to reflect on one aspect of our practices which does not directly deal with that topic, but rather focuses on what lawyers can do for themselves, for others, and for the reputation of the Bar as a whole. The answers to the membership questionnaire which was sent to all members of the Association indicate that members of the Bar rate "professionalism" as one of the major topics to be faced by our profession in the coming years. Survey answers came from lawyers of every age, gender, economic, racial, and ethnic group throughout the state and were found to be demographically representative.

While it is heartening to know that a large number of the members of our Association feel professionalism is an important issue and will continue to be one, it is also disconcerting to note that there is a general feeling among lawyers that professionalism has declined in recent years.

Obviously, as advocates, we have a responsibility to our clients to represent their points of view with vigor. Concomitantly, we have an obligation as officers of the court to treat the court and other officers of the court with dignity and courtesy in all of our dealings. In my mind, professionalism can generally be summed up by the adage, "Do unto others as you would have them do unto you." Unfortunately, the adage misses the point about professionalism unless there is an understanding of a baseline below which conduct toward others who are members of the Bar will not, or should not, be tolerated.

Because we are advocates, we lawyers often run the considerable risk of personalizing our clients' views to such an extent that the clients' battles become personal vendettas, where the losers (regardless of the outcome) are the lawyers, the clients, and the profession as an entity.

The Washington State Bar cannot legislate good manners and has never attempted to do so. I would urge, however, as a member of the Association that all members take a look at their conduct over the past six months toward opposing counsel, other lawyers in general, and the court where they practice. If each of us could *honestly* say that we have treated individuals in these groups with dignity and courtesy in all situations, we would have come a long way toward restoring a sense of professionalism to lawyering.

Recently several lawyers in this state advised me, and then forwarded to me meeting notices, of one local bar association which refer to women lawyers as "girl lawyers"; competitive sporting events as "faggot sports events"; and sniggering comments about the AIDS virus. Pretty tasteless — and demoralizing — in the year of our centennial when we thought we were committed to a system of equal treatment by and among members of our profession. The First Amendment notwithstanding, the above comments have no place in official bar publications, State Bar or otherwise.

Other lawyers and judges have mentioned lawyers who, in open court, accuse opposing counsel of misconduct which is not born out by the record. Still others have complained of attorneys who, without regard to opposing counsel's schedules, set matters which could have been set amicably by agreement of counsel.

I recently received a copy of a letter one lawyer in our state sends out to opposing counsel at the commencement of representation. Paraphrased, it essentially states that the lawyer will be courteous in all of his or her dealings with opposing counsel, will accommodate counsel on scheduling whenever possible, will provide discovery by formal and informal means, and will not inflexibly rely on court rule cutoffs. The letter does not extract a promise of parallel behavior by opposing counsel. But surely, it must get the case started in the brightest light possible. Perhaps we all could profit from at least considering such an offer to opposing counsel. Certainly we, our clients, and the profession would profit from renewing our commitment to treat all lawyers, clients, opposing counsel and the court with courtesy and dignity in all of our dealings.

Immigration Law, Business and the National Interest: The New Debate

by **Pamela S. Cowan**

The world is effectively growing smaller. The significance of borders is diminishing. International investment is growing. While we have become accustomed to the international flow of goods and services, we often don't consider the international movement of people. America remains a magnet for both investments and individuals. Although American dominance of the world economy has faded, this country continues to hold unrivaled attraction for many of the world's investors, refugees, businesses and professionals.

This flow of people has significant consequences for our region. Washington state's economy is more closely tied to international trade than that of any other state in the Union. Be it for corporate personnel, individual investors, or skilled professionals, business-related immigration law is moving to the forefront of international legal practice. Most practitioners with corporate clients will eventually have to have at least a minimal ability to identify immigration law issues.

These developments have further significant consequences for our nation and its policies. How do we decide who can come in and stay in the United States legally? What are we trying to accomplish? These questions are at the heart of a heated battle in Congress this session over major immigration law revisions which would significantly alter employer-sponsored and family-sponsored immigration and open up new opportunities for both unsponsored individuals and foreign investors.

This article examines the extent to which immigration law does and should accommodate the needs of U.S. businesses and the economy. It looks at the historical context of the debate over immigration policy. It presents an overview of the operation of current immigration law as it most directly affects business. Finally, it looks at proposed legislation which would change the balance of priorities and preferences of our immigration law.

I. Where Have We Been, and Where Are We Going? The U.S. Immigration Policy Debate

Legal and illegal immigration into the United States have been increasing steadily for the last two decades. In 1986, the Immigration Reform and Control bill was passed as the culmination of a landmark effort to attack the perceived problems of illegal immigration with a package of legalization programs and imposition of employer sanctions.

Legal immigration has received much less attention in recent years than illegal immigration. Yet there is obviously more direct control and, hence, more explicit policy choices over legal immigration. The United States economy, with falling birthrates, labor shortages in some fields and low salaries in others, has become increasingly dependent on foreign labor as well as capital. Further, as the number of legal immigrants increases over the years, an even larger pool of people in this country become legally eligible for sponsoring alien relatives. Since not everyone who wants to come to live in the United States can be accommodated, we are forced to weigh the values of family unification with the economic utility of allowing in talented and educated professionals, scientists and needed workers and capital-rich investors.

Early American immigration law reflected Americans' cultural biases and racial fears. Nineteenth century legislation banning convicts and prostitutes and local laws were voided by the courts as violating the commerce clause of the U.S. Constitution. The 1882 federal law excluded "lunatics, idiots, public charges and convicts" and contained the "Chinese Exclusion Act." By 1924, nationality quotas favoring western and northern European immigrants were made law.

Today's immigration law can be traced to the Immigration and Nationality Act of 1952, passed by Congress over President Truman's veto and significantly amended in 1965, to abolish the National Origin Quota System and other discriminatory aspects and to fix quotas for each hemisphere. In 1980, an annual quota was set for refugees, and new political asylum provisions were added.

The questions facing immigration law reform are complex and passionate. How do we protect existing American workers, unify families, not overwhelm social resources and still use our immigration capacity to our nation's advantage in a highly-competitive world economy? While family unification is currently the cornerstone of the existing system of immigration law, there are growing voices in Congress and elsewhere that argue for some shift towards giving greater weight to those individuals who bring needed skills or job-creating capital to our country. While the passionate debate concerns immigrants, some of the same controversies are found in the issues over nonimmigrant (temporary) visas as well.

1870, Liverpool docks: British emigrants await their voyage to the New World.

II. Current Business and Profession-Related Visas

How do current laws regulate which business-related aliens get into the United States? In the past two years, immigration laws have undergone at least four statutory rewrites, scores of regulatory amendments, and thousands of judicial and administrative decisions. The extraordinary degree of administrative discretion vested by law in the Immigration and Naturalization Service (Service), the State Department, and the Attorney General, makes knowledge of these administrative arenas critical.

A. Temporary Visas

Most business-related visas are temporary and offer foreign business visitors immediate entry into the United States upon approval. They are characterized by the presence of "nonimmigrant intent" — in other words, the alien intends to return to his home country at the termination of the business visit.

The B-1 "business visitor" category allows an alien to enter the United States temporarily in a function associated with international trade or commerce as long as such individual is not engaged in "productive employment" in this country. Typically, a candidate for a B-1 visa will present himself at his home U.S. consular office, demonstrate that he will be entering the U.S. for a temporary period of time, and that he will be engaging in a permissible business activity (*i.e.*, soliciting sales, negotiating contracts, taking orders, procuring goods, consulting with U.S. business associates). He will also show that he will continue to accrue his salary or his revenues abroad. Upon entry to the United States, the business visitor is typically given up to six months of visa permission, which can often be extended for another six months. It is also permissible for a B-1 business visitor to change his visa to a longer-term one that authorizes work in the United States during the duration of the business visit.

An H-1 nonimmigrant working visa is available for an alien who is of "distinguished merit and ability." He must have a foreign residence which he does not intend to abandon ("nonimmigrant intent"); the U.S. employer must be seeking the services for a temporary period of time; and the services to be performed must require such "merit and ability." "Distinguished merit and ability" under current immigration regulations requires either that an alien be a professional or be clearly preeminent in his specialty. The Service's test for professional status is: 1) the candidate must have a bachelor's degree or equivalent in a given field of expertise; and 2) the attainment of such a degree is usually the minimum requirement for entry into the occupation. The employer must meet *both* aspects of this test. This is an easier test to satisfy in technical areas, such as computer science, electrical engineering and microbiology, than in broader areas of business work.

The H-1 visa is one avenue for foreign university students to gain short-term employment with a U.S. employer upon graduation from a degree program. It is also an effective way for U.S. businesses to utilize foreign professional expertise for specific projects. The H-1 visa can initially be issued for a three-year period of time, with the possibility of two years of extension.

Another nonimmigrant category heavily utilized by international businesses is the "L-1" intracompany trans-

feree visa. Pursuant to this category, a business with an overseas operation — branch, affiliate, parent corporation or subsidiary — can transfer managers, executives, or employees with specialized knowledge who have been working for the business overseas for at least one year to its U.S. operations to work in one of those three categories. Joint venture operations can qualify under this category. The L-1 visa currently can be issued for an initial three years (one year if it is a start-up operation), with two years of extensions possible. In practice, it is very difficult for managers or executives of small companies to qualify for this category unless the job description is very skillfully drawn. Employees may also enter as L-1 staff if they possess "specialized knowledge" which currently requires "advanced level of expertise and proprietary knowledge not readily available in the United States labor market." Once a technology is well-established in the United States, it becomes very difficult for an employee to qualify under this category unless he possesses some unique and proprietary information about the technology which is specific to his employer's product.

Many Washington businesses are managed by personnel with E-1 (Treaty Trader) or E-2 (Treaty Investor) visa status. These visa categories require that the business be primarily owned (at least 50%, which includes joint ventures) by aliens of a country with which the United States has an applicable treaty of commerce and navigation. While for instance, there are a large number of Japanese E-1/E-2 visa holders in Washington state, there are no Chinese E visa holders, since the requisite treaty relationship does not exist. The individual E-1/E-2 visa applicant must have the same nationality as the shareholders of qualifying E-1/E-2 entity. The E-1/E-2 status is unique among nonimmigrant visa categories because it is "temporary" but can be extended indefinitely as long as the treaty and business exist.

The difference between the two types of visa categories has to do primarily with the amount of trade between the United States and the foreign treaty country. To receive a treaty trader visa, the treaty trader must establish that there will be "substantial trade" carried on "principally" between the United States and the foreign country of which he is a national. A treaty investor need not establish any trade between his country and the United States. Rather, the issuance of the visa is conditioned upon the size of the investment and the nature of the enterprise being invested in.

The Free Trade Agreement which became law on January 1, 1989, has dramatically increased opportunities for Canadian business personnel to enter the United States in various nonimmigrant categories. Perhaps most significantly, this agreement now includes Canada among those countries that are entitled to utilize the E-1/E-2 treaty trader/investor categories. A new category has also been established exclu-

sively for use by Canadian citizens. It is entitled "TC" ("Treaty Canada"). It authorizes entry of certain professionals with job offers in the United States for a one-year period of time upon demonstration of: (1) a bona fide job offer (supported by evidence concerning the precise professional activity and necessary credentials to do the job, the proposed length of stay, and that the hiring of the individual complies with all state laws); (2) documentation that establishes the applicant's professional status; and (3) documentation that the applicant is a Canadian citizen and otherwise admissible into the United States. This visa application can be made *only* at a port of entry, and it is approved for up to one year, with unlimited one-year extensions authorized. If a Canadian client happens to fall within one of the designated professions (set forth in a schedule to the Agreement, which includes professionals in such fields as science, medicine and engineering), "TC" status appears to be a vastly-expedited processing procedure, with no limitations on extensions.

The H-1 and L-1 categories are still available to Canadian citizens, but the Free Trade Agreement provides for an expedited application process at any port of entry, and the B-1 category has been expanded for Canadian business visitors.

B. Immigrant Visas

Currently, immigrants who are allowed in this country based on their talents and skills must be sponsored by a U.S. employer. This includes aliens who entered the United States in nonimmigrant visa categories who decide they want to accept permanent employment within the United States. Two current immigrant visa categories, Third and Sixth Preference, are based on the alien's business and occupation. Third Preference visas are available for qualified immigrants who are "members of the professions" or who have "exceptional ability" that will benefit the United States, and whose services are sought by an American employer. Sixth Preference visas are reserved for those qualified immigrants who can perform skilled or unskilled labor for which a shortage of U.S. workers exists. Since a limited number of immigrant visas are issued each year, both these visa categories are typically oversubscribed.

Most of these business-related immigrant petitions require the sponsoring American business to conduct a "labor certification" to determine that there are no qualified Americans who seek the position the alien wants to fill. This process is conducted through state and federal labor departments, and must be completed before filing any visa application with the Service. The sponsoring business must conduct a recruitment procedure as directed by the state labor department. Every applicant who applies for the position through this procedure must be considered and either be rejected for viable job-related reasons, or the labor department will not give the business permission to hire the alien. This process is fairly time-consuming and requires strict compliance with labor department procedures. Following a successful labor certification, the business may then file a petition with the Service for one of the two business preference visas.

Two groups of business professionals do *not* have to obtain a labor certification. They are "pre-certified" due to their respective business standings. The first group, "Schedule A, Group II," consists of aliens of exceptional ability in the sciences or arts (except the performing arts) who have been practicing their science or art in the year prior to applying for permanent resident status and who intend to practice the same science or art in the United States. Case precedent requires the alien to be "internationally famous," that is, famous in at least two countries in his specific field, and to demonstrate his professional status through such documentation as publications, and honors and awards received. The second group, "Schedule A, Group IV," consists of those aliens who have been continuously-employed in an executive/managerial capacity by an international corporation for the year prior to applying for permanent resident status and who will be employed by the same corporation in an executive/managerial capacity in the United States. This group also includes aliens who have worked in the United States in an executive/managerial status for one year prior to applying for permanent residency (L-1 and some E-1/E-2 employees) and who will continue to work for the same corporation.

III. The Current Legislative Debate

The major bill in Congress is the "Kennedy-Simpson" bill, sponsored by Senators Edward M. Kennedy and Alan K. Simpson, which restructures the immigrant visa allocation system to allow more visas for those in work- and talent-related categories and effectively reduces family-dependent visa categories. It also creates an independent investor visa category, to allow a designated number of investors (5,000) to enter the United States every year on the basis of a minimum investment of $1,000,000 and which would create at least ten jobs for U.S. citizens or permanent residents.

The bill would distinguish family-sponsored immigration from employer-sponsored immigration and create separate categories. The Senators' bill attempts to make "the immigration process more sensitive to U.S. labor market needs," but it restricts several existing categories. One could not qualify as a professional under Third Preference requirements without an advanced degree, and eligibility based on labor shortages for skilled and unskilled workers would be limited to those occupations which are deemed to require at least two years of training and experience. The "exceptional ability" category would be expanded however, beyond arts and sciences to include abilities in business.

Immediate family members would be under the overall family-sponsored ceiling that would set them off against other family-sponsored immigrants. Eligibility would be eliminated for married brothers and sisters of U.S. citizens and unmarried sons and daughters of permanent residents over 25 years old. New eligibility for a class of unsponsored immigrants would be established under a point system based on age, education, English-language ability, and occupational demand. This is a reflection of one of the Senators' other major objectives, to increase immigration "from earlier sources of immigration." Critics, including representatives of Asian and Hispanic groups, have vigorously attacked the limits on family unification

and the English-language "bonus." The bill is largely identical to one which passed the Senate last year, 88-4.

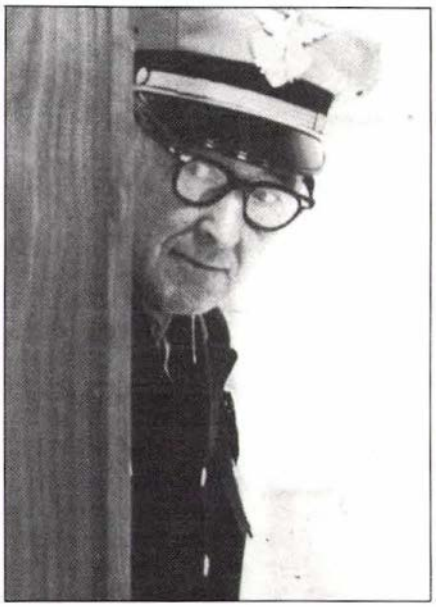
While the bill increases worldwide immigration by 100,000 visas per year, most of the increase would not go to family- or employer-sponsored immigrants, but to investors, point system immigrants and other nonsponsored immigrants. Several competing bills would expand the number of places available to employer-sponsored categories. A business and immigration coalition, consisting of the American Immigration Lawyers Association, the Chamber of Commerce of the United States, the National Association of Manufacturers, the National Foreign Trade Council, and the American Council for International Personnel, has joined the campaign for favorable business immigration changes. Their goals include 120,000 visas per year for employer-sponsored categories to meet business needs, revision of H-1 nonimmigrant categories to liberalize the definition of "professional" and prominence/preeminence for both Third Preference and H visas in order to reflect contemporary business realities and promote U.S. international competitiveness. On the other hand, unions and employee-based organizations are lobbying for a more restrictive application of the H-1 visa category to bar persons with merely a Bachelor's Degree in their field of expertise from qualifying as "professionals" for visa issuance. The Senate continues to consider the Kennedy-Simpson bill and its alternatives.

Conclusion

As international investment and commerce continues to grow in the United States, the need for and importance of foreign talent, expertise and managerial acumen continues to rise. The desire to define and allocate a greater number of visas to conform more directly to the demands of American technology and commerce will be balanced against other values. But the momentum for change is building. The benefits to the nation and the economy of employer-sponsored visas must be measured against the proposed creation of a class of independently-sponsored individuals with education and generally-needed skills. The value of English-language capacity will be weighed against broader family unification goals.

The debate is not just over arcane issues meaningful only to a handful of specialists and the masses of hopeful immigrants. Our capacity to select those immigrants and temporary residents who will be allowed in the United States is a little-grasped but vital national resource. How we as a nation choose to exercise this capacity reflects our values of justice, equity, humanity and national and economic interests. □

Pamela S. Cowan practices exclusively immigration and naturalization law, focusing on the needs of businesses. She has served on the Executive Board of the American Immigration Lawyers Association, Washington chapter. She attended University of Washington and Harvard law schools, and is a former Federal District Court clerk and Fulbright Fellow. She lectures and writes frequently on immigration-related matters.



Immigration Consequences of Criminal Activity

by **Ira S. Rubinstein**
and **Ester Greenfield**

In representing a noncitizen involved in criminal activity, it is all too easy to overlook the immigration aspects of the case. The primary concern of defense attorneys is achieving the best possible result for their clients. Unfortunately, even the best plea bargain may have a devastating impact on a client's immigration status.

Most defense attorneys would consider dismissal of a charge of delivery of narcotics in exchange for a guilty plea to simple possession and a suspended sentence a good result. From an immigration standpoint, however, it makes no difference whether a noncitizen is convicted of a less-serious drug offense because all such convictions (with the exception of simple possession of 30 grams or less of marijuana) will subject him or her to deportation and exclusion, no matter how slight the punishment. Nor will a suspended sentence protect a noncitizen from these consequences in view of the very restrictive definition for immigration purposes, of a final conviction.

Over a dozen provisions in federal immigration law expose noncitizens involved in criminal activity to the risk of deportation or exclusion. (As used in this article the term "noncitizen" applies to both permanent and temporary residents as well as illegal aliens.) These include provisions concerning drug offenses, crimes of moral turpitude, firearm violations, prostitution, aiding illegal entry and conviction of certain national security crimes. Noncitizens convicted of criminal offenses also may be disqualified from receiving immigration benefits such as amnesty, adjustment of status to permanent residence and naturalization. In many instances, there is little criminal defense attorneys can do to shield their noncitizen clients from deportation or other adverse immigration consequences. But — sometimes — knowing the basic immigration rules can save the client from severe penalties which often are more disruptive than a prison term.

This article provides an overview of the immigration consequences of criminal activity by focusing on the two most common criminal grounds of deportation and exclusion: crimes of moral turpitude and controlled substance offenses. It also briefly reviews the standards for finality of conviction and the various waivers of deportability and excludability available under the immigration laws.

Crimes of Moral Turpitude

Under § 241(a)(4) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1251(a)(4), a noncitizen is *deportable* if convicted of a crime of moral turpitude committed within five years after entry and resulting in a sentence of confinement of *one year or more*. A noncitizen is also deportable if convicted of two such crimes committed at any time after entry, not arising out of a "single scheme of criminal misconduct," regardless of whether any sentence was imposed. This means that the first misdemeanor will not subject a noncitizen defendant to deportation.

Under § 212(a)(9) of the INA, 8 U.S.C. § 1182(a)(9), a noncitizen is *excludable* from entry to the United States if convicted of a crime of moral turpitude or if (s)he has admitted committing such a crime or its constituent elements. There are several exceptions to excludability under this provision including purely political offenses and certain juvenile or petty offenses. The so-called petty-offense exception is limited to a conviction of a single offense for which the sentence actually imposed did not exceed a term of imprisonment of *six months* or to cases where the noncitizen admits the elements of one offense for which the maximum sentence is no more than one year. Note that for purposes of this exception, if *imposition* of a sentence is suspended, no sentence has been actually imposed. However, if *execution* of a sentence is suspended, a sentence has actually been imposed, even though probation also may be granted. Thus, it makes no difference how much time is served whenever the sentence actually imposed exceeds six months. *Matter of Castro*, Int. Dec. 3073 (BIA August 1, 1988).

Although the courts have never clearly defined "moral turpitude," the term is not void for vagueness. *Jordan v. DeGeorge*, 341 U.S. 223 (1951). A good rule of thumb is that a crime is turpitudinous if it involves conduct which is generally regarded as morally wrong or corrupt. *Skrmetta v. Coykendall*, 22 F.2d 120, 121 (5th Cir. 1927). Thus, murder, rape, larceny, bribery, theft, and any crime in which fraud is an element are crimes of moral turpitude. Crimes *not* involving moral turpitude are more difficult to characterize but include simple assault, bigamy, draft and tax evasion, and joyriding. For a sample listing of such crimes, *see generally* Annot., 23 ALR Fed. 480 (1975); D. Kesselbrenner & L. Rosenberg, *Immigration Law and Crimes*, Appendix E (1988 rev. ed.); *Foreign Affairs Manual*, Note 4.3 to 22 CFR § 40.7(a)(9).

In determining which offenses are crimes of moral turpitude, the courts

rely solely on the nature of the offense rather than the specific conduct of the person convicted. *United States ex rel. Zaffarano v. Corsi*, 63 F.2d 757 (2d Cir. 1933). Accordingly, counsel should consider both the statute under which a person is charged and the record of conviction (including the indictment or information, plea, verdict or judgment, and sentence) to determine whether a crime of moral turpitude has been committed.

In some cases, a noncitizen accused of a crime may avoid adverse immigration consequences by pleading to a lesser offense not involving moral turpitude — for example, simple rather than first degree assault. If your client must plead to a crime involving moral turpitude, deportability under § 241(a)(4) can be avoided by limiting the sentence to less than one year. However, conviction of a second crime of moral turpitude makes the client deportable regardless of the length of sentence of either the first or any later conviction. Similarly, conviction of two or more offenses, whether or not crimes of moral turpitude, results in exclusion if the aggregate sentence of confinement actually imposed exceeds five years. 8 U.S.C. § 1182(a)(10).

Reduction of a sentence to less than one year will not protect a noncitizen from the stricter excludability provisions of § 212(a)(9), which govern "entry" and "admission" into the United States. An entry occurs when a noncitizen leaves the country and later tries to return. Similarly, a noncitizen seeking various immigration benefits, such as adjustment of status, must prove his or her admissibility (*i.e.*, nonexcludability). Thus, a noncitizen with no record of criminal activity at the time of initial entry who is subsequently convicted of a crime of moral turpitude and sentenced to confinement of between six and 12 months may not be deportable. But a new entry will subject him or her to exclusion. Therefore, it is crucial to advise a noncitizen in this situation to remain in the country to avoid future exclusion, subject to a waiver of excludability (discussed below).

A noncitizen also may be excluded for committing a crime of moral turpitude even in the absence of a conviction. Consider the case of a noncitizen who is arrested and charged with a crime of moral turpitude and, in the course of the criminal investigation, makes admissions to the essential elements of the crime. If the charges are later dropped and no conviction is obtained, he will not be deportable; however, his admission of conduct involving moral turpitude may render him excludable.

If it is impossible to avoid a conviction of a crime of moral turpitude, there are several post-conviction remedies that should be explored. These remedies have the effect of nullifying the conviction for immigration purposes. The most important is the "judicial recommendation against deportation" (JRAD) pursuant to § 241(b) of the INA, 8 U.S.C. § 1251(b). A properly obtained JRAD bars the Immigration and Naturalization Service (INS) from using a crime of moral turpitude as a basis for deportabil-

ity. An executive pardon has the same effect. Both forms of relief are statutorily precluded for drug offenders. Nor are they available to noncitizens charged with any ground of deportability other than, or in addition to, a crime of moral turpitude.

The statutory requirements for a JRAD are: (1) the applicant must give notice to (a) a representative of the state (usually the state attorney general), (b) the district director of the local INS office; and (c) the prosecution authorities (usually the local district attorney); and (2) the sentencing court must make its recommendation at the time of imposing judgment or passing sentence, or within 30 days thereafter. The notice and timing requirements are strictly observed. The opposing parties must receive notice at least five days prior to the court hearing on the JRAD. 8 C.F.R. § 241.1. Failure to comply with the notice provisions renders the recommendation null and void. *Matter of I*, 6 I&N 426 (BIA 1954). Similarly, the sentencing court must actually rule on the motion and make its recommendation within the 30-day statutory period. A late or nunc pro tunc recommendation is ineffective, even if the judge and counsel were unaware of the requirement. *Marin v. INS*, 438 F.2d 932 (9th Cir.), *cert. denied*, 403 U.S. 923 (1971). As of this writing, regulations have been proposed to tighten the procedure for a JRAD. *See* 54 Fed. Reg. 154-155 (Jan. 4, 1989).

Failure of defense counsel to seek a JRAD may constitute ineffective assistance of counsel. *People v. Pozo*, 712 P.2d 1044 (Colo. App. 1987); *Lyons v. Pearce*, 694 P.2d 969 (Or. 1985). For a detailed discussion of the notice and timing requirements and various tactical issues to be considered in seeking a JRAD, *see Immigration Law and Crimes*, *supra*, Chapter 10.

Other post-conviction remedies that may protect your client from deportation and exclusion include expungements under federal and state law and various procedures for vacating a judgment. These remedies nullify the impact of a criminal conviction for immigration purposes. In general, withdrawal of a guilty plea and vacation of the judgment or conviction can be obtained upon a showing that the plea was not knowing and voluntary under Fed. R. Crim. P. 11 or CrR 4.2(d), or that defense counsel's representation was ineffective. *Strickland v. Washington*, 466 U.S. 668 (1984). A guilty plea may be withdrawn by means of a motion under Fed. R. Crim. P. 35(d) or CrR 4.2(f), a writ of error *coram nobis*, habeas corpus proceedings pursuant to a motion under 28 U.S.C. § 2255, and various other petitions under Washington law. *See generally* CrR 7.8(c); RAP 16.3 to 16.15.

Finally, the court's failure to advise a noncitizen of immigration consequences pursuant to a state notice statute may result in vacation of judgment. In 1983, the Washington Legislature enacted a statute requiring the trial court, prior to accepting a guilty plea, to notify noncitizens of the potential immigration consequences of a conviction including deportation, exclusion, and denial of naturalization. RCW 10.040.200. Failure to give the statutory notification entitles the defendant to vacation of judgment, withdrawal of the guilty plea, and entry of a not guilty plea. This relief is of limited value, however, unless counsel is fairly confident about attaining a more favorable outcome in a new trial.

On the other hand, defense counsel's failure to advise his or her client of the potential immigration consequences of a conviction does not necessarily violate the Rule 11 requirement that a plea be voluntary. This is because Rule 11 does not apply to "collateral consequences" such as deportation. *United States v. Sambro*, 454 F.2d 918 (D.C. Cir. 1971); *State v. Malik*, 37 Wn. App. 414 (1984). However, in *Strader v. Harrison*, 611 F.2d 61 (4th Cir. 1979), the court held that the collateral consequence rule should not apply when a guilty plea was "induced by actual misadvice" by defense counsel. *See also People v. Correa*, 45 N.E.2d 307 (Ill. 1985).

When you are advising the client of immigration consequences, it is worthwhile to bear in mind that many of the procedural protections granted to criminal defendants do not exist in deportation cases, which are deemed to be civil in nature. *Wong Wing v. United States*, 163 U.S. 228 (1896). The rule excluding evidence obtained in violation of the Fourth Amendment does not apply to deportation proceedings. *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984). Nor is a noncitizen entitled to *Miranda* warnings during a custodial interrogation. 8 C.F.R. § 242.2(b). However, the Fifth Amendment's due process clause can be used to invalidate a deportation proceeding which is fundamentally unfair. *Navia-Duran v. INS*, 568 F.2d 803 (1st Cir. 1977).

Controlled Substance Violations

Several recent anti-drug bills enacted

by Congress reflect a consistent national policy of expelling noncitizen drug offenders. The Anti-Drug Abuse Act of 1986, P.L. 99-570, widened significantly the definition of drug offenses rendering noncitizens deportable or excludable. Previously, only cacao leaves, heroin, marijuana or those drugs derived from opium were deemed to be narcotics for purposes of deportation or exclusion. The 1986 amendments to § 241(a)(11) and § 212(a)(23) now apply to all offenses "relating to" any controlled substances (as comprehensively defined by 21 U.S.C. §§ 802 and 812) including both narcotic and synthetic drugs. Whether an offense "relates to" a controlled substance depends upon the nature of the offense as defined by state law. *See, e.g., Matter of E-R-*, No. A27 093 221 (BIA 1988) (money laundering and facilitation under Arizona racketeering statute not drug offense under § 241(a)(4) because statute not part of any drug enforcement act).

The Anti-Drug Abuse Act of 1988, P.L. 100-690, created a new ground of deportability as well as harsh new penalties for drug offenses. As codified at § 242A(c) of the Act, 8 U.S.C. § 1252a(c), a noncitizen convicted of an "aggravated felony" (defined as murder, drug trafficking or firearm trafficking) is "conclusively presumed to be deportable" and subject to expedited deportation proceedings. Moreover, an aggravated felon is ineligible for voluntary departure or release on bond pending deportation, 8 U.S.C. § 1254(e)(2), and must wait 10 years after deportation before seeking reentry to the United States (as opposed to five years if deported on any other ground, 8 U.S.C. § 1182(a)(17)).

Even if a person is not *convicted* of a drug-related offense, (s)he may be excluded if proved to be a "narcotic drug addict" at entry, 8 U.S.C. § 1182(a)(5), or deported if this is proven at any time after entry. 8 U.S.C. § 1251(a)(11). Drug addiction may be proved or disproved by medical reports or the noncitizen's admissions. *Matter of FSC*, 8 I&N 108 (BIA 1958). Thus, defense counsel seeking alternatives to imprisonment should be wary of on-the-record discussions of a client's drug addiction or availability for treatment. In addition, § 212(a)(23) renders excludable any noncitizen "who the consular officer or immigration officer knows or has reason to believe is or has been an illicit trafficker in any ... controlled substance."

If convicted of a drug-related offense, a noncitizen almost certainly faces deportation proceedings, which may be held at state or federal prisons, where access to competent counsel may be severely limited. Post-conviction remedies also are extremely limited. JRADs and pardons are statutorily precluded. 8 U.S.C. § 1251(b). Nor will expungements nullify narcotics convictions for immigration purposes, with the exception of those obtained under the revised federal first offenders statute, 18 U.S.C. § 3607, and its state counterparts. Washington's general expungement statute,

RCW 9.95.240, is not such a state counterpart. *Matter of Golshan*, 18 I&N 92 (BIA 1981). (Note that RCW 9.95.240 is inapplicable to felonies committed on or after July 1, 1984.) Vacation of judgment is the only form of post-conviction relief that remains generally effective in eliminating the immigration consequences of drug offenses. The BIA has yet to construe the provisions of the Washington Sentencing Reform Act dealing with vacation of convictions (RCW 94A.230).

Finality of Conviction Under Ozkok

In order to render a person deportable, a conviction must be final. A recent decision by the Board of Immigration Appeals (BIA) has changed the test for determining what criminal dispositions in state courts will constitute a final conviction for immigration purposes. In *Matter of Ozkok*, Int. Dec. 3044 (BIA April 26, 1988), the BIA held that a conviction occurs whenever a three-part test is met: (1) guilt has been judicially determined or facts submitted sufficient to warrant a finding of guilt; (2) some form of punishment or restraint has been imposed (including incarceration, probation, fines, restitution, rehabilitation programs, work and study release, revocation or suspension of driver's licenses, deprivation of nonessential activities or privileges, and community service); and (3) a judgment of guilt will occur without renewed proceedings upon violation of the terms of the punishment or restraint.

Under this definition, neither a deferred adjudication nor postponement of sentencing is sufficient to prevent a finding of finality. The Sentencing Reform Act specifically abolished the power to defer or suspend sentences in virtually all felony cases, RCW 9.94A.130, and repealed RCW 9.92.060 (suspended sentences) as well as RCW 9.95.200 (probation) with respect to felonies committed on or after July 1, 1984. Even prior to the repeal of the latter two provisions, the BIA held that neither a suspension of execution nor a suspension of imposition of a sentence under Washington law avoided a final conviction. *Matter of Johnson*, 11 I&N 401 (BIA 1965). Nevertheless, counsel should examine each of the three elements in *Ozkok* in relation to current state sentencing law to determine if there is any way to structure a plea bargain so as to prevent a conviction from being considered final for immigration purposes.

Waivers Under the INA

If your client is found deportable or excludable for a crime of moral turpitude or a drug offense, there are a number of discretionary waivers available under the INA for which (s)he may apply. The most important is the waiver available under § 212(c), 8 U.S.C. § 1182(c). By its terms, § 212(c) applies only to a noncitizen who has left the United States and seeks reentry. Court decisions and administrative policies have extended the scope of § 212(c) to those who have never left the United States but are in deportation proceedings. *Francis v. INS*, 532 F.2d 268 2d (Cir. 1976). Thus, § 212(c) is available to noncitizens who are deportable due to having committed crimes of moral turpitude or drug offenses. *Matter of Golshan*, 18 I&N 92 (BIA 1981).

Two key eligibility requirements for § 212(c) relief are lawful admission for permanent residence and an unrelinquished, lawful domicile in the U.S. of at least seven years. The domicile is established only when the alien has attained permanent residency. *Matter of Newton*, 17 I&N 133 (BIA 1979). Thus, the alien must have had a U.S. domicile for seven years after receiving a green card. A noncitizen can move to reopen his deportation case if he acquires seven years' lawful domicile during the appeal of the deportation order. *Wall v. INS*, 722 F.2d 1442 (9th Cir. 1984). Conviction of a drug or other offense does not terminate permanent residence or domicile. *Matter of Mosqueda*, 14 I&N 55 (Reg. Comm. 1972).

Once statutory eligibility for § 212(c) relief is established, the applicant bears the burden of proving that such relief should be granted as a matter of discretion. In exercising discretion, favorable factors must be balanced against adverse ones. The most important favorable factor is rehabilitation from the criminal conduct. Other favorable factors include family ties in the United States, length of residence, hardship if deported, employment history, ownership of property, and good moral character. *Matter of Marin*, 16 I&N 581 (BIA 1978).

Application for 212(c) relief is made on Form I-191 in either exclusion or deportation proceedings. Such relief is available for convicted drug offenders and aggravated felons. However, the BIA requires "unusual or outstanding countervailing equities" in drug cases, especially if the offense involves distribution of drugs. *Matter of Marin*, *supra*; *Matter of Buscemi*, Int. Dec. 3058 (BIA April 13, 1988).

Section 212(h) of the Act, 8 U.S.C. § 1182(h), waives excludability for crimes of moral turpitude and a limited class of drug offenses. The statutory criteria are: (1) having a spouse, parent or child who is a U.S. citizen or permanent resident; and (2) proving that deportation would result in extreme hardship to the U.S. relative. The only eligible drug offenders are those convicted of simple possession of 30 grams or less of marijuana. Defense counsel should make certain that the quantity of marijuana is included in the record of conviction so that § 212(h) eligibility can be readily established from the court record. A convicted noncitizen must prove rehabilitation to be granted the waiver. *Matter of Barnes*, 10 I&N 755 (BIA 1964). A waiver of deportability with very similar requirements is available under § 241(f)(2), 8 U.S.C. § 1251(f)(2) for noncitizens convicted of possession of 30 grams or less of marijuana.

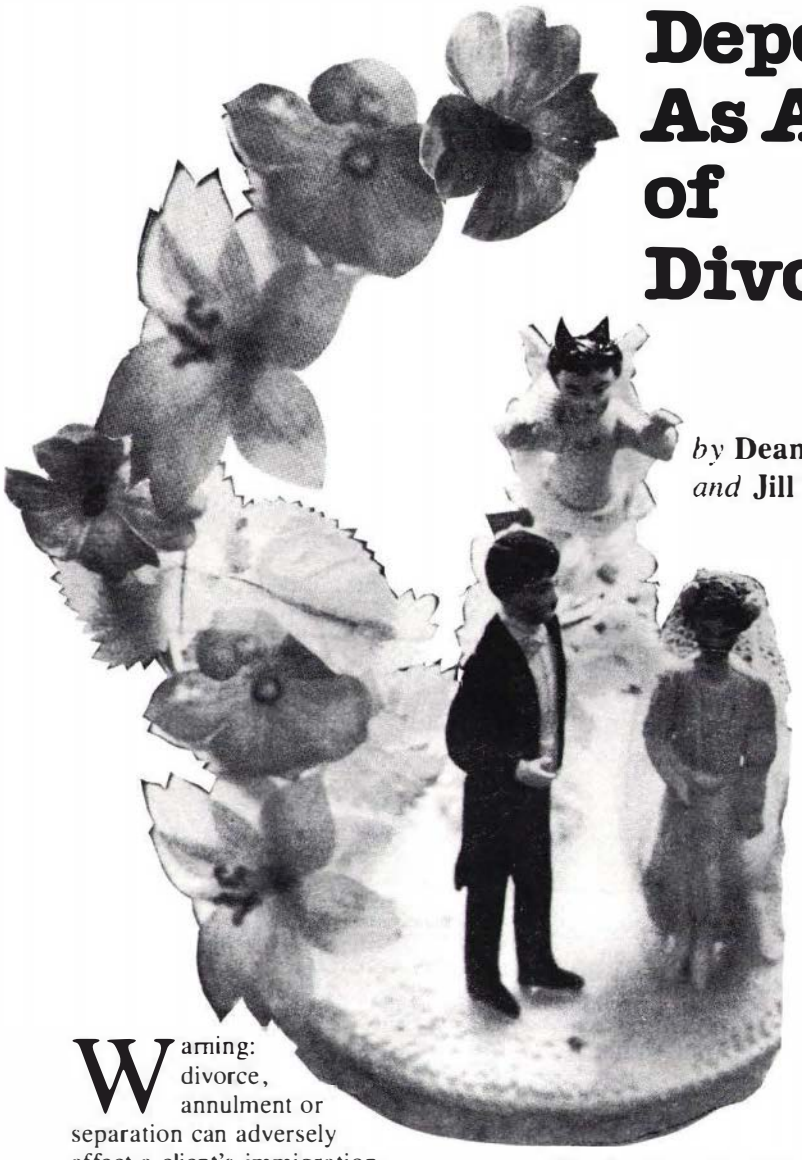
Finally, § 212(d)(3), 8 U.S.C. § 1182(d)(3) provides a discretionary waiver of excludability for noncitizens with criminal records seeking to enter the United States as nonimmigrants, *i.e.*, under temporary status. In exercising its discretion, the INS must weigh the risk of harm if the noncitizen is admitted, the seriousness of the excludable conduct, and the noncitizen's reasons for seeking entry to the United States. *Matter of Hranka*, 16 I&N 491 (BIA 1978). A § 212(d)(3) waiver is available to noncitizens who are excludable due to drug-related activity.

Conclusion

There are many cases in which little can be done to minimize the negative impact of a noncitizen's conviction or admission of criminal activity. But a thorough knowledge of immigration laws and procedures is necessary to identify those cases where immigration strategy should be linked with criminal defense tactics to help the noncitizen client preserve his or her immigration status. The analysis must be done at the outset of the criminal case, before immigration proceedings are initiated, while there is still time to prevent irremediable damage. □

*Seattle attorneys **Ira Rubinstein** and **Ester Greenfield** practice immigration law at MacDonald, Hoague and Bayless. They are active in the American Immigration Lawyers Association.*

Deportation As A Consequence of Divorce



by **Deanna Pumplin**
and **Jill Salmi**

Warning: divorce, annulment or separation can adversely affect a client's immigration status. Divorce has always been a potential problem for aliens, but with the passage of the Marriage Fraud Amendments to the immigration statutes in 1986, the alien (nonU.S. citizen) is faced with more severe consequences as a result of a separation or divorce. The amendments even impose adverse consequences to marriage at certain times. This article is to alert family law practitioners to the provisions of the relevant statutes and the problems they pose for nonU.S. citizen clients and the need to obtain immigration advice.

Marriage Fraud Amendments of 1986

The Marriage Fraud Amendments of 1986 (section 216 of the Immigration and Nationality Act) are codified at 8 U.S.C. § 1186a. Implementing regulations can be found at 8 C.F.R. § 216.

Any divorce, separation or annulment involving an alien or children of that alien has the potential of depriving that alien or children of their legal immigration status and may result in their deportation. Some clients will be aware of their potential immigration problems, and others will not. Even those aware of the problem may not be cognizant of possible solutions. Thus, a routine query as to the nationality of the spouse and children should be made at the initial divorce consultation.

If the client and his or her children are not U.S. citizens, the family law practitioner should carefully investigate the circumstances of the marriage and each individual's immigration status. Failure to ascertain the client's status and proceeding without knowledge of the immigration laws may result in a costly deportation defense or actual deportation.

Section 216 applies to an alien spouse of a U.S. citizen or lawful permanent resident, the children of the alien spouse, and the fiancé(e) of a U.S. citizen who obtain permanent resident status after November 10, 1986, by "virtue of a marriage which was entered into less than 24 months before the date the alien obtains such status by virtue of such marriage." § 216(g)(1). In other words, if permanent resident status was obtained less than two years from the date of the qualifying marriage, § 216 will apply.

Section 216 provides that if the marriage is less than two years old when the alien enters the country (or is in the country but adjusts status), the permanent resident status is "conditional." The alien's conditional status may be terminated and the alien deported under certain conditions: (1) if the Attorney General determines before the second anniversary that the qualifying marriage was entered into for the purpose of procuring an alien's entry as an immigrant (a fraudulent marriage), *or has been judicially annulled or terminated (other than through the death of a spouse)*, or that a fee or other consideration was given, or (2) if the alien *and* his or her spouse fail to petition to have the conditional status removed prior to the second anniversary of the granting of the status. (The alien and U.S. spouse or permanent resident spouse must take affirmative steps to petition the INS to remove the conditional status within the 90-day period just prior to the second anniversary of the granting of the conditional status.)

Thus, if a divorce or annulment is final before the second anniversary of the granting of the conditional permanent resident status, *or* if your client is legally separated at the time a petition to remove conditional status is filed, *or* if your client's spouse will not petition for removal of the conditional status, your client's immigration status is in jeopardy.

a. *Can the parties petition for removal of the conditional status if they are contemplating divorce or are separated?*

Yes. If, during the 90 days before the second anniversary of the granting of the conditional permanent resident status, the parties are separated and/or thinking about a divorce, they can still petition INS for the removal of the conditional status. This is so because immigration

laws do not require that the parties be living together at the time of this petition, but only that the marriage was in good faith (*i.e.*, they intended to make a life together) at its inception, and still exists in that the marriage has not been terminated by entry of a decree of dissolution or annulment. In cases where the U.S. spouse or permanent resident spouse is not opposed to filing the joint petition, you may want to counsel your client to postpone any divorce proceedings until after the petition has been filed and conditional status has been removed by the immigration service. (See section below about situations where alien spouse will want to be sure to be the first to file for divorce.)

A separation agreement or entry of a decree of legal separation may, however, preclude granting of the petition for removal of the conditional status if the INS follows decisions in cases upholding denials of the *initial* Petition for Alien Relative. Courts have held that a legal separation precluded the granting of the initial petition even though the marriage was not finally dissolved. Moreover, your client should keep in mind that in deciding whether to grant the petition to remove the conditional status, INS will consider conduct after the marriage (*e.g.* separation) as relevant to the intent of the parties at the time of the marriage. Other factors such as the commingling of assets and liabilities, birth of children, joint ownership of property, the parties' hopes for reconciliation, etc. should be considered as favorable factors by the immigration service in making its decision. If the parties are living apart at the time they file the petition to remove conditional status they would want to also provide detailed affidavits from relatives, friends or employers regarding the nature of the marriage and the reasons for living apart.

b. *What if the alien is unable to petition for removal of the conditional status. Can anything be done?*

Maybe. Where the other spouse refuses to join in filing the petition, or where the marriage is dissolved prior to the two-year limitation there are three possibilities.

(1) If the U.S. spouse refuses to join in the filing of the petition, the alien may file an application for waiver of the requirement to file the petition (form I-752). (The grounds may be limited to extreme hardship.)

(2) The alien may file a waiver application on form I-752 on the grounds that the good-faith marriage has been terminated by the alien spouse for good cause. INS has interpreted the statute to mean that the divorce petition must be filed *by the alien* in order to be eligible for this waiver. If the U.S. citizen spouse has already filed for divorce, and if the alien has "good cause" for terminating the marriage, the alien should probably file a counter-petition in order to preserve possible eligibility for the waiver. To avoid an adverse interpretation by INS, the alien spouse should be counseled not to file a joint petition. He or she should be the sole petitioning spouse.

Since this is a new law, there are no rulings or interpretations regarding "good cause." It does seem safe to assume that an alien spouse subject to cruelty, desertion, nonsupport or other traditional grounds for divorce would have good cause to terminate the marriage. Reasons such as that the parties just didn't get along, or that they fought over money, may not be considered to be "good cause" by INS.

How can the alien establish good cause? Because the sole statutory ground for divorce is an "irretrievably broken" marriage, divorce pleadings will normally lack the specificity required to show that the alien qualifies for a waiver. However, when the alien spouse has requested restraining orders to be protected from abuse or has sought a domestic violence protection order, documents of proceedings under those statutes may be sufficient evidence to establish good cause for termination of the marriage. You can also help the alien client to preserve evidence in the form of affidavits from friends, neighbors, doctors, police officers, clergy, or anyone else who may have knowledge of the actions of the U.S. spouse which have caused the alien spouse to seek divorce.

Allegations in petitions or counterpetitions or affidavits filed in connection with a divorce proceeding regarding the actions of the U.S. spouse may be helpful to the alien when (s)he seeks a waiver.

If your client's divorce is not yet final at the time the waiver application must be filed, the application should be submitted with certified copies of the petition, other pertinent documents and a statement that the record will be updated at the time of the interview.

(3) The alien whose good-faith marriage has ended and who is unable to establish good cause for the dissolution may file for a waiver (form I-752) on the ground that extreme hardship would result if the alien were deported. Your client should consult an immigration attorney regarding the evidence required to show extreme hardship. Do not assume that your client will quality.

c. *When can a waiver application be filed?*

When the marriage has been dissolved, the waiver application (form I-752) may be filed at any time before the two-year anniversary of the alien's entry. (Otherwise it must be filed during the 90 days preceding the second-year anniversary of the alien's entry.) However, if INS has not been or will not be informed of your client's divorce, it generally is preferable to wait until just before the two-year anniversary to file the waiver application. This is because under the law the alien's immigration status can be terminated by the INS if it learns that the marriage has been dissolved, and because the local INS office is interpreting the statute at § 216(b)(2) to mean that a waiver is not available to anyone whose status is terminated by the INS during the two years after entry. (This interpretation is unfair because it means that an alien whose divorce escapes the attention of the INS may take advantage of the waiver, while the alien whose divorce comes to the attention of the INS may not. This interpretation of the law is under review.)

Penalties for Fraud in Obtaining Immigration Benefits

Another change in immigration laws makes it imperative that an application for *any benefits* under the immigration laws be without misrepresentation or fraud. The alien must be advised of the consequences of misrepresentation in obtaining relief under § 216. If misrepresentation is proved by INS, the alien may be deported and may be excluded from ever reentering the United States, under § 212(a)(19), 8 U.S.C. § 1182, and § 204(c), 8 U.S.C. § 1154(c) and also subject to imprisonment under 18 U.S.C. § 1001, 18 U.S.C. § 1546, and other applicable criminal statutes.

Remarriage of the Alien

There is no law prohibiting the divorced conditional permanent resident from remarrying and seeking immigration benefits from a different U.S. citizen or permanent resident. However, the following laws will apply:

a. The alien will not be able to adjust status in the United States. (S)he will have to apply for permanent residence through the U.S. Consulate in his or her home country. Because of the prior entry as the spouse of a U.S. citizen or permanent resident, which ended in divorce within two years of entry, the alien will have to establish both that the prior marriage was not fraudulent and that the current marriage is not fraudulent.

b. If the alien marries "during deportation proceedings," a visa petition will not be entertained by INS until the alien has resided outside the United States for two years. Thus, in order to take advantage of marriage to a U.S. citizen, the alien should marry prior to the institution of deportation proceedings or after the alien has left the United States and deportation proceedings are terminated. A fiancé(e) petition can be sought for an alien granted voluntary departure while the alien is still in the United States under deportation proceedings. The alien could then leave the U.S., seek to reenter as nonimmigrant on the approved fiancé(e) petition, marry within 90 days of entry and seek to adjust status to permanent residence after the marriage. However, your alien client should obtain the advice of an immigration attorney regarding the consequences of deportation and relief from deportation.

Fraudulent Marriage

An alien is always subject to deportation based on grounds that a marriage upon which status was obtained was fraudulent and that the alien was, therefore, never lawfully admitted. There is no statute of limitations on a charge of fraudulent marriage.

Conclusion

Your noncitizen family law clients and their children may be subject to deportation because of a divorce, separation or annulment. This is particularly true where they are conditional permanent residents or have no evidence that the qualifying marriage was not fraudulent. The most important practice pointer is

to ask about the immigration status of all your family law clients and their children. If your client is not a U.S. citizen and his or her immigration status is based on a marriage, refer to the immigration law or an immigration attorney before giving legal advice — and certainly before filing any pleadings. □

__Deanna Pumplin__ has practiced immigration and family law since 1986. She is a member of the WSBA Family Law Section and the National Lawyers Guild Immigration Committee.

__Jill Salmi__ has been a solo practitioner in Seattle emphasizing personal injury and family law for 11 years. She has spoken at family law seminars for the Seattle-King County Bar Association volunteer lawyer programs, National Lawyers Guild, and Northwest Women's Law Center. She is a mentor for the SKCBA Family Law Clinic, and a consulting editor for the Family Law Deskbook.

July 1989

14-15 WSBA Board of Governors' Meeting, Bellingham. *For information*: (206) 448-0441.

14 Essentials of Real Estate, Tacoma. Also to be presented July 21 in Spokane and July 28 in Seattle. *Sponsored by*: WSBA Young Lawyers Division and CLE Committee. *For information*: (206) 448-0433.

20 Introducing the Washington Community Property Deskbook (Second Edition), Seattle. Also to be presented July 21 in Yakima, July 26 in Spokane, and July 27 in Bellevue. *Sponsored by*: WSBA CLE Committee. *For information*: (206) 448-0433.

August 1989

18-19 WSBA Board of Governors' Meeting, Union. *For information*: (206) 448-0441.

28-Sep 8 Skills Training Program, Seattle. *Sponsored by*: WSBA CLE Committee. *For information*: (206) 448-0433.

September 1989

10 WSBA Board of Governors' Meeting, Whistler, B.C. *For information*: (206) 448-0441.

10-15 WSBA 100th Annual Meeting and Convention, Whistler, B.C. *Sponsored by*: WSBA. *For information*: (206) 448-0441.

11-15 Twelve CLE seminars, spread over seven sessions and providing 21 possible mandatory credits. Whistler, B.C. *Sponsored by*: WSBA. *For information*: (206) 448-0443.

October 1989

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

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

Vancouver, B.C., Canada, June 16-17, 1989

Present: President Bracelin, president-elect Vander Stoep, and all the Governors, save Jeff Tolman. **Also present:** Judge Mary Bruckner (Sup. Ct. Judges' Assoc.), Fred Butterworth (SKCBA), Frank Edmondson (Gov-Law), Dan Gottlieb (SKCBA Young Lawyers Div.), David McEachran (Prosecuting Attys Assoc.), John McKay (Young Lawyers Div.), John Michalik (WSBA exec. dir.), Lindsay Thompson (*Bar News* editor) and Robert Welden (WSBA general counsel).

The Road Show made the first of two Canadian appearances this year, pitching the tent on Hornby Street, across from the Law Courts.

Friday's meeting can best be described, from this reporter's standpoint (or pen point), as a big blank space. The Governors met in executive session for 90 minutes first thing in the morning, then met in open session for two hours, then adjourned to go off and meet with the Board of Governors of the American Bar Association. Observers, including this reporter, were excluded. Two reasons were given, at different times: The meeting room was too small and/or the ABA invited only the Governors. Maybe some of the Governors will talk about it in their newsletters; perhaps there will be something in the *ABA Journal*. Check around. You never know.

In the brief public session Friday, here's what went on.

This Time Resources Isn't a Directory: Last year's Governors' Long-Range Planning Committee proposed creating a Task Force on Bar Association Resources to systematically review WSBA programs for their effectiveness. Chaired by former WSBA president Jack Dean, the task force looked at some 60 Association programs. Nine were recommended for review in Dean's report to the Governors, including Law Clerk, Legal Intern, Bar Exam and Admissions. Association sections should have various fees added or increased to make them more nearly self-supporting, Dean said. The Tel-Law recorded telephone legal messages program was recommended for termination, as was the Lawyer Referral Service and Speakers Bureau, on grounds the degree of public use or lawyer participation doesn't justify their cost. The Young Lawyers Division should generate more income for itself, too, the report held. Otherwise, Dean said, WSBA programs are well-run and cost-effective.

No particular action was taken by the Governors, but a number of the recommendations will likely be taken up next month at budget time.

Friday Morning Miscellany:

- WSBA executive director John Michalik reported on the Supreme Court's adoption of a number of court rule changes previously recommended by the Governors and discussed in prior episodes of "The Board's Work." He said Microsoft Corporation and West Publishing Company have signed on to be corporate sponsors of the Bar Convention.
- Governor Paul Stritmatter raised again the subject of the WSBA subsidy of new lawyer admission ceremonies in Seattle. He thinks it costs too much and could be done in King County courtrooms much more cheaply than in a hotel ballroom. A round-robin series of reports by Governors ensued on admission ceremonies in Pierce, Spokane, King, Thurston and Grays Harbor counties.
- Governor Steve DeForest reported on a mass of letters he has sent out to advance the work of the Task Force on Professionalism. "This will take a long time," he said. "Raising and restoring the level of professionalism is not a quick fix, but I am heartened by what is going on."
- The Governors considered an Evergreen Legal Services request that they take some resolution action on proposed changes in the way federally-funded legal services are contracted out.
- The Governors passed some amendments to the Client's Security Program bylaws, reflecting the changes they made last month in the program's operation.

Then, off they went to whatever they did.

With so little accomplished Friday, there was much to do on Saturday. The Governors started at 8 a.m. by unanimously approving the text of previously o.k.'d changes to the *Bar News* Editor's Handbook. The changes significantly restore the authority of the editor over the magazine and its contents, after years of erosion through restriction of the editor's ability to edit or not print various departments of the publication.

Then it was back to the procession of ex-WSBA presidents. Mount Vernon's Dave Welts, chair of the Board's Committee on Committees, presented his second annual sunset review of the Association's committees. Last June, a mere word from Welts led the Governors to abolish the Travel Committee.

Welts and his committee met with all the committee chairs to review their work and effectiveness over the past year, he said. Key to the committees' success, he found, is in the chair. For example, the report notes, the Legal Aid Committee "is perhaps the most telling example of what a motivated chair can accomplish. Will Roarty has accomplished near-miracles with his committee in the preparation of materials serving the area of indigency." Most committees, in fact, work well, the committee found.

Welts said a few committees could benefit from refocused mandates, and several could well be combined. The Lawyer Referral Committee was this year's candidate for the block: the committee felt its work could be better run out of the Bar office.

Governor Jim Turner then moved acceptance of the report and its recommendations, but got no second for the motion. Governor Mike Carlson then moved to approve the recommendation to abolish the Lawyer Referral Committee. Governor Don Curran introduced the idea of parceling out the committees among the Governors so they can serve a liaison and general prodding function. Executive director John Michalik said, however, that the idea had been tried in 1979-1980 and didn't work. The Governors had too many meetings to attend, and the committee chairs complained that their authority was being usurped.

Governor Ron Gould thought several committees ought to have their memberships dramatically reduced, such as the 25-member Law School Liaison Committee, which meets each year at all three state law schools. Governor Carlson, seeing his motion drowning in side-tracked discussions, withdrew it, and Gould proposed cutting the law school committee to nine — ten on an amendment by Governor DeForest — and restricting the committee to visiting one law school per year. Governor Curran wanted to table the whole matter until the Governors take up committee appointments next month, but that motion failed, 2-7.

Then Governor DeForest moved to keep the size of the committee the same but to limit its trips to one law school per year. That passed, 7-2. Governor Turner rolled out his motion to accept the report and its recommendations again, and again got no second. Finally, a Curran motion to receive the report passed.

How Many Young Lawyers Does It Take To Split A Hair? Last month, the Young Lawyers Division put their report on merit selection of judges to the Governors, who said they'd seek section and county bar input and think about it. YLD president John McKay said that in the meantime, they planned to circulate the report. "Circulating" turned out to include press conferences in which YLD members said the division would lobby for its proposal whether the Governors endorsed it or not, meetings with Senator Phil Talmadge, and a variety of editorials and news stories. Unhappy Governors thought the Young Lawyers had overstepped their bounds a bit. McKay said they'd done just what the Governors had authorized them to do, and thought meeting with Talmadge, who apparently plans legislation on the YLD report, was not lobbying. The Governors did. Semantic distinctions were split pretty thinly, but in the end, everyone promised to stay in closer touch, and a truce was declared.

Committed to Committees: After McKay finished, the Board came back to the Welts committee's committee report. They voted not to cut any committee sizes just yet and to ask Welts to come back in the fall with specific recommendations on what to do about the Lawyer Referral Committee, the Legal Services to the Armed Forces Committee, and consolidation of the Civil Rights, Legal Aid and Corrections committees. Governor Mike Carlson then moved Curran's idea of creating a gubernatorial committee liaison system. No one liked the idea. It fell, 1-8. Even Carlson's seconder abandoned ship.

Circuitous Discussion: Last month's consideration of Senator Slade Gorton's bill to hive off the Northwest from the Ninth Circuit Court of Appeals and make it the Twelfth Circuit came up again. Reasons *pro* include increasing efficiency by reducing judicial travel, cutting the size and workload of the circuit, creating a more "northwest" body of law, and allowing circuit judges to better master state law and keep up with their own circuit panel decisions for uniformity's sake. Arguments *contra* include extra cost, increased intercircuit conflict, the opposition of judges, and the reduction of case backlogs which once fueled demand for a new circuit. After some discussion, a motion by Governor Jim Turner to support Gorton's bill failed, 4-5.

Executive director John Michalik noted that the Governors' vote left them having rejected a bill calling for the division of the circuit, but leaving in place their 1982 resolution calling for the division of the circuit. To address this quandary, Governor Paul Stritmatter moved to oppose the Gorton bill, but got no second. Governor Ron Gould moved to neither support nor oppose the bill, pending the results of a study by the Commission on the Federal Judiciary. But SKCBA president Fred Butterworth thought that politically inexpedient. "You're taking yourself out of play," he said. "No one will ask you what you think later, and there's no telling when that report will be out." A discussion ensued on the political implications of nondecision, including whether it might lead to the location of a twelfth circuit headquarters in Portland. Could

thought the Board lacked sufficient information to make a decision. He moved that the Board take no position "pending receipt of other information," which might justify actually doing something. Butterworth thought that if Senator Gorton wanted the Board's support he ought to come and tell them why. A motion by Governor Julie Weston to table the matter until the Senator could be invited failed, 4-4; then Gould's motion passed, 5-3.

Hold That Thought: A long discussion ensued on what to do about the Bar Convention, which lost a small fortune last year. The Governors took two actions. First, they commanded the receding tide not to return by voting, 5-4, that it be an objective to make future Bar Conventions break even on direct expenses. Then they voted 5-4 to create a committee to figure out how. Paul Stritmatter, Julie Weston and Jeff Tolman are the new Convention czars.

I'm Sorry; I'll Read That Again: Someone once defined metaphysics as going into a dark cellar at midnight without a light looking for a black cat that isn't there. Late in the day, the Board took up almost as odd a proposal: a report from a Board committee charged with reviewing the Board's procedures for electing WSBA presidents. The report contained a lengthy, detailed set of policies for doing so, but the committee said they didn't intend that the Board vote to receive or adopt the report, nor make any commitment to actually use the guidelines. A motion by Governor Bill Bergsten to adopt the guidelines was tabled.

And A Surprise: By now, people were feeling fractious, and when Governor Jim Turner offered up another sacrificial motion — this time to take up the deferred question of whether to endorse the proposed constitutional amendment reorganizing the Commission on Judicial Fitness — the Governors voted no, 5-4. Then they went home.

Next Month's Meeting: July 14-15, in BELLINGHAM, not Bellevue, as was reported last month. At the request of Yakima lawyer Richard Wiehl, this space, as well as the "Calendar," will note several future meetings each month. August 18-19, the Board will meet in Union, Washington; September 11, they'll meet in Whistler, B.C. at the Bar Convention.

Other Corrections: The Seattle-King County Bar Association Young Lawyers Division representative at the May meeting in Spokane was Mike Larson, not the mysterious Keith Nelson listed in "The Board's Work." The editor apologizes for the error.

SPECIAL NOTICES

The following late-breaking items may be of interest:

Court of Appeals Position Announced: Division One of the Washington State Court of Appeals seeks a commissioner. The position is available commencing October 2, 1989. Salary ranges from $54,839-$70,870 annually. Applicants must be graduates of an accredited law school and members in good standing of the WSBA. Prior to appointment, they must have at least five years of experience in the practice of law in a judicially-related field. See CAR 16(c) for duties. Submit resumés to Richard D. Taylor, Clerk, Division One, One Union Square, 600 University Street, Seattle, WA 98101-4170, by July 28, 1989.

Legal Foundation Grant Deadlines: Grant applications are now available from the Legal Foundation of Washington for the funding of law-related charitable and educational programs for 1990. Application deadline is August 31, 1989 at 5 p.m. Interested applicants may obtain grant criteria and grant application forms from the Legal Foundation office, 600 Central Building, 810 Third Avenue, Seattle, WA 98104. Telephone: (206) 624-2536. Foundation president M. Margaret McKeown estimates that $2.5 million will be available for distribution. Awards will be announced in late November.

— By **Lindsay Thompson**
Editor of the *Bar News*

Notices of Interest to Association Members

RESOLUTIONS

Filing Deadline For Resolutions To Be Presented At The Annual Meeting

Any ten (10) active members of the Washington State Bar Association may present a written resolution to the Board of Governors for possible consideration at the Annual Business Meeting. Such resolutions must be presented and filed with the Board of Governors at least twenty (20) days before the Annual Meeting. Any resolution must be accompanied by a written report explaining the resolution. The resolution and explanatory report together shall not exceed a total of one thousand (1,000) words. Resolutions are to be filed with the Board of Governors, Washington State Bar Association, 500 Westin Building, 2001 Sixth Avenue, Seattle, Washington, 98121-2599. The deadline for filing such resolutions and explanatory reports will be 5 p.m. on Monday, August 28, 1989 (the first business day following the twentieth day prior to the Annual Meeting).

According to the Bylaws of the Washington State Bar Association, proper resolutions and reports received by the Board of Governors at least sixty (60) days prior to the Annual Business Meeting are to be published in the *Washington State Bar News* prior to such Annual Business Meeting. The Annual Business Meeting of the Washington State Bar Association shall be held on the morning of Friday, September 15, 1989 beginning at 8 a.m. at the Delta Mountain Inn, Whistler, British Columbia. Proper resolutions and reports received by the Board of Governors by 5 p.m. on July 17, 1989 will be published in the August 1989 *Bar News*.

Referral To Resolutions Committee

The Board of Governors shall refer to the Resolutions Committee any resolution within the purposes of the Association as set forth in Article I of the Bylaws. If the Board of Governors finds the resolution is not within such purposes, then such resolution shall not be considered at any meeting.

Notice Of Public Hearing On Resolutions

As announced in the June *Washington State Bar News*, the Resolutions Committee will hold a public hearing prior to the Annual Meeting. The hearing is scheduled for 9 a.m. on September 5, 1989, at the offices of the Washington State Bar Association, at the above address. Upon completion of business that day, or at the Chairperson's discretion, the hearing will be adjourned to reconvene on September 13, 1989 at 4 p.m. at the Delta Mountain Inn Hotel, Whistler, British Columbia. The advance public hearing session on September 5 has been scheduled in an effort to allow more time to those presenting views and in an effort to give the members of the Committee more time to consider the resolutions and to request any additional information which might be helpful to the Committee in making its recommendations on the resolutions to the membership. Proponents and opponents of resolutions are urged to attend the September 5 hearing if at all possible, and, if not, to present their views prior to that time in concise written form for consideration by the Committee at that hearing. Presence at or absence from the September 5 hearing will not affect any right under the Bylaws to present views when the public hearing reconvenes on September 13. At the reconvened hearing, preference in presenting views will be given to those with viewpoints which were not expressed at the September 5 hearing. Proponents and opponents will be given a reasonable opportunity to be heard at the advance session and at the reconvened hearing.

At the conclusion of the hearings on each resolution, the Resolutions Committee will recommend approval or rejection of any such resolution (with any amendment deemed appropriate).

Resolution Committee Members — Donald H. Bond, Chairperson, James H. Allendoerfer, Philip H. Brandt, William L. Dowell, Paul C. Gibbs, Harry H. Goldman, Michael J. Hemovich, James T. Johnson, Frederick W. Lieb, Gregory H. Pratt, Eugene C. Routh, Janice E. Shave, Lawrence C. Smith and Ted D. Zylstra.

Disciplinary Notices

Censured: Spokane attorney *William R. Norton* (admitted 1983) has been ordered censured by the Disciplinary Board based upon his inadvertent practice of law while suspended and his failure to cooperate with a Bar investigation.

Public Notices

King County Courts Announcement: Starting in May 1989, for cases set for trial in October 1989, the Clerk's Office is assigning civil cases (jury and non-jury) on a random basis to six judicial departments that are part of the court's individual calendaring project. Upon assignment to a particular department, counsel will receive notice of the procedures and rules developed by the court for this project.

The assignment of cases to the individual calendaring project will continue on a monthly basis until further notice.

Request for Authors: The *University of Puget Sound Law Review* is publishing an international law issue in the spring of 1990, to coincide with a symposium on Pacific Rim International Law. The program and issue will focus on challenges and problems of western states in a Pacific Rim context. Proposals should be submitted to the *Law Review* Editor, University of Puget Sound School of Law, 950 Broadway, Tacoma, WA 98402, telephone (206) 591-2995.

Court Rules - Advance Notice: When it reconvenes this fall, the Court Rules and Procedures Committee is scheduled to review the Superior Court Criminal Rules (CrR) and Criminal Rules for Courts of Limited Jurisdiction (CrRLJ). The Committee will also consider selected provisions of the Rules of Appellate Procedure (RAP) dealing with appeals in criminal cases. Members of the Bar are invited to submit comments on these rules to Steven Rosen, WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

Appointment to King County Superior Court Judgeships: The Judicial Screening Committee of the Seattle-King County Bar Association will be interviewing and rating applicants for King

County Superior Court judgeship vacancies this summer and fall. Governor Gardner appoints King County Superior Court judges from this list of rated applicants. Applications are available from Alice Paine, Executive Director, SKCBA, 600 Bank of California Building, Seattle, WA 98164; (206) 624-9365. Questions may also be directed to co-chairs Jane Fantel (Lopez & Fantel, (206) 622-3010) or Dick Prentke (Perkins Coie, (206) 583-8888).

Federal Courts Jurisdiction Change: Hon. Robert J. McNichols, Chief Judge of the U.S. District for the Eastern District of Washington, has suggested lawyers will want to note that May 18, 1989 was the effective date for important changes in the BASIS of Federal Court Jurisdiction under *DIVERSITY*.

The major change increases the minimum from in excess of $10,000 to in excess of $50,000, exclusive of interest and costs.

Other changes refer to corporations and provide the legal representatives of decedent's estates and/or infants or incompetents shall be deemed to be *citizens only* of the same State as the decedent or the infant or incompetent for diversity purposes. See 28 U.S.C. § 1332.

In re RCW 19.52.020(1): Legal Interest Rates: The average coupon equivalent yield from the first auction of 26-week treasury bills in June 1989 is 8.44%. The maximum allowable interest permissible for **July 1989** is therefore **12.44%**. For further details, see the June 1989 *Bar News*, page 37. Interest rates can be found each month since then in the *Bar News*.

STATE LAW LIBRARY
Recent Acquisitions

Listed below are some of the new titles recently acquired by the State Law Library, and available for loan by calling (206) 753-6525, or mailing your request to: Washington State Law Library, Temple of Justice AV-02, Olympia, WA 98504-0502. A bimonthly *Selected Recent Acquisitions* list, generally containing 150-250 new titles, is also available. Copies may be obtained by mail from the Washington State Law Library at the above address.

AIDS (DISEASE) — PATIENTS — LEGAL STATUS, LAWS, ETC.

AIDS legal guide. 2d ed. Edited by Abby R. Rubenfeld. Albany, NY: Lambda Legal Defense and Education Fund, Inc., 1987- . 1 vol. (loose-leaf)

APPELLATE PROCEDURE

Stern, Robert L. *Appellate practice in the United States*. 2d ed. Washington, D.C.: The Bureau of National Affairs, Inc., 1988. Pp. 572.

COMMON LAW

Eisenberg, Melvin Aron. *The nature of the common law*. Cambridge, MA: Harvard University Press, 1988. Pp. 214.

DEATH BY WRONGFUL ACT

King, Elizabeth M. and James P. Smith. *Computing economic loss in cases of wrongful death*. The Institute for Civil Justice. Santa Monica, CA: Rand, 1988. Pp. 146.

DISCRIMINATION IN EMPLOYMENT — LAW AND LEGISLATION

Greenwood, Mary. *Hiring, supervising and firing employees: an employer's guide to discrimination laws*. Wilmette, IL: Callaghan & Company, 1987. Pp. 135.

DRUNK DRIVING

Shilling, Dana. *Winning defenses in drunk driving cases*. Englewood Cliffs, NJ: Prentice-Hall, Inc., 1987. Pp. 144.

ERRORS — ANECDOTES, FACETIAE, SATIRE, ETC.

Lederer, Richard. *Anguished English: an anthology of accidental assaults upon our language*. Charleston: Wyrick & Company, 1987. Pp. 125.

EVIDENCE (LAW)

Pellicciotti, Joseph M. *Handbook on basic trial evidence*. 2d ed. Lanham, MD: University Press of America, 1988. Pp. 246.

JURY SELECTION

Werchick, Arne. *Modern civil jury selection*. New York, NY: Garland Law Publishing, 1987. Pp. 380.

LAW OFFICES

Feferman, Richard N. *Building your firm with associates: a guide for hiring and managing new attorneys*. Chicago, IL: American Bar Association, Section of Economics of Law Practice, 1988. Pp. 120.

LAWYERS — MALPRACTICE

Bowman, Forest J. *The ten most common causes of lawyer malpractice claims: and how to avoid them*. Athens, GA: CLE, 1987. Pp. 167.

LEGAL ETHICS

Luban, David. *Lawyers and justice: an ethical study*. Princeton, NJ: Princeton University Press, 1988. Pp. 469.

PERSONAL INJURIES

How to evaluate and settle personal injury claims in Washington. By David A. Bufalini and others. Eau Claire, WI: Professional Education Systems, Inc., 1988. Pp. 238.

PRACTICE OF LAW

Marketing for lawyers and law firms. Seattle, WA: Washington State Bar Association, Continuing Legal Education Committee, 1989. V.p.

VIDEO TAPES IN COURTROOM PROCEEDINGS

On the cutting edge of technology: the computer in the office & video tape and computer animation in the courtroom. January 27, 1989. The Four Seasons Olympic Hotel. WSTLA Legal Educational Seminars Presentation. Seattle, WA: Washington State Trial Lawyers Association, 1989. Pp. 267.

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

IN THE NEWS

Tort Reform

High Court Pops Cap

Washington's three-year-old statutory cap on noneconomic damages in personal injury cases was overturned by the Supreme Court on April 27.

The 6-3 decision drew predictable responses from each side in the tort reform coalitions of 1985-1986 who battled its passage by the Legislature. The court found the law limiting damages denied citizens the constitutional right to have damages determined by a jury. The statute had set out a complex formula allowing awards based largely on life expectancy. The test case involved the 1987 lawsuit of retired Kitsap County pipefitter Austin Sofie, awarded a million-dollar-judgment by a jury for acquiring mesothelioma — a type of lung cancer — from exposure to asbestos. The judgment, reduced to $316,000 by the trial judge to comply with the cap law, was reinstated by the Supreme Court's ruling. Hoquiam attorney Paul Stritmatter, who argued Sofie's case before the Supreme Court, called the decision "a vindication of the jury system in the state of Washington."

New York

Computers Raise Taxing Questions

A New York program cross-checking partners at law firms with master income tax files turned up 1,500 lawyers, estates and professional corporations who apparently didn't file state income tax returns, the *Wall Street Journal* reported in March.

"The state even found 31 attorneys who paid their back taxes during an amnesty period in recent years, but who haven't filed tax returns for 1986 or 1987," the *Journal* said.

In addition to cross-checking tax returns, partnership files and payroll records, New York's computers crunched through 16,000 *Martindale-Hubbell* attorney listings as well. Interestingly, a check of 73,000 law firm employees turned up only 349 potential nonfilers.

The Bar Exam

Many Are Called, But 57.8% Are Chosen

Three hundred eight candidates made the cut in the February Bar exam, the Bar office announced last month. Five hundred thirty-three sat the exam; 57.8% passed. The candidates came from 110 law schools around the country. 62.8% of them passed the analytic side of the exam, and 69.2% passed the ethics exam. Thirty-three of the successful candidates are from Oregon, with smaller numbers coming from 12 other states.

Minority Lawyers

An Imaginative Collaboration in Seattle

Two Seattle law firms have won national attention for a unique plan to enhance opportunities for minority lawyers. Brown, Mathews, Seattle's largest black-owned law firm, has joined Karr, Tuttle, Campbell, a major Northwest firm.

The 85-year-old Karr, Tuttle, Campbell firm provides attorneys in the four-year-old Brown, Mathews firm access to its law library, word and data processing services, conference rooms, and a "visiting" office space. Brown, Mathews attorneys are also developing informal consulting relationships with the larger firm's senior attorneys. The firms say the plan will extend many of the benefits of large firm legal practice to the smaller firm, making it more competitive in its bid for major legal service contracts.

The firms also hope to jointly serve clients who want to retain minority counsel, but whose legal work demands more extensive expertise or resources than Brown, Mathews can presently supply with its five attorneys.

"Minority law firms have not always been given an opportunity to provide legal services to major clients," said Craig Campbell, president of Karr, Tuttle, Campbell. "This has been due in part to their lack of access to potential clients and the kinds of resources available to large firms."

"We are enthusiastic about this relationship and the potential benefits for both firms and the legal profession as a whole," said Christopher Mathews, a founding partner in the Brown, Mathews firm.

While the number of minority and nonminority firms have occasionally operated as co-counsel or joint venturers to serve specific clients, none are known to have developed such a well-defined program of cooperation. The relationship between the two firms in Seattle does not, however, constitute a partnership or joint venture, and clients must

Two Seattle law firms are collaborating to enhance opportunities for minority counsel. Pictured (clockwise, from left front) are Karr Tuttle Campbell shareholders ***John E. Shaw, Craig P. Campbell, Philip G. Hubbard****; and Brown Mathews partners* ***Jackie R. Brown, LaVeeda Garlington-Mathews,*** *and* ***Christopher E. Mathews****. Shaw and Mathews are the principal liaisons between the two firms.*

give express consent to any co-counsel relationship.

"This is not a static or formal arrangement," said Jackie Campbell, a principal of Brown, Mathews. "Instead, we expect the relationship to evolve as our firms explore its unique potential for mutual benefit."

Court Delay

King County's Decongestant

King County's Bench/Bar Delay Reduction Task Force presented its May 22 report and plan to reduce court congestion. The task force, analyzing problems of delay and congestion for over a year, recommended a variety of solutions, including setting standards for case disposition which will require that 90% of all civil cases be resolved within 12 months of filings; 98% within 18 months, and 100% within 24 months. For domestic cases, 90% should be resolved within nine months of filing, 98% within 12 months, and 100% within 15 months.

In addition, the task force recommends extraordinary measures to increase the court's ability to reduce its current inventory of cases, including the permanent addition of four judges, the increased use of visiting judges and pro tem judges, lengthening the trial day by one hour during 1989, the creation of civil and criminal trial departments and the use of attorney mediators for longer civil jury cases. The court will also be adopting new rules to implement a system of court-managed case flow for civil and family law cases, the implementation of an individual judge's calendaring system and a number of other administrative actions. The proposals will be phased in over the next year.

Access to Justice

ABA Pro Bono Study Finds No One Path to Pro Bono Success

A new study of different methods for providing legal services to poor persons has identified a host of issues for possible future study, but it has found no basis for concluding at this time that one mechanism is superior to another, according to the American Bar Association committee that conducted the study.

"While the study's findings contribute to our knowledge of the relative performance of alternative service delivery systems, those findings remain incomplete," according to the report. "No policy recommendations should be made solely on the basis of the San Antonio study," the report concludes. Rather, future studies should be conducted "on ways to improve both the amount and quality of legal services to the poor by all delivery systems."

The ABA Special Committee on Delivery of Legal Services, chaired by Jane Barrett of Los Angeles, conducted the study in cooperation with the Legal Services Corporation. The study compiled information on the disposition of divorce cases that did not involve child-custody disputes in San Antonio, Texas, during 1985-1987. Research data was gathered by project director Steven R. Cox, an associate professor of economics at Arizona State University in Tempe.

Some of the cases were handled by staff lawyers for Bexar County (Tex.) Legal Aid Association; some were handled by law firms that had contracted to take a specific number of cases for a lump sum; and others were handled by private attorneys who had agreed to take simple cases for payment of set fees through vouchers provided to clients by the legal services program.

The study is being released at a time when the current board of the Legal Services Corporation is advocating use of competitive bidding for all legal services grants and a far greater use of private attorney involvement, including such mechanisms as contracts and vouchers, in delivering legal services to the poor. The study suggests that the evidence to-date does not provide

justification for major changes in the delivery system.

Among the points the study did show were that vouchers can be used for some kinds of noncomplex divorce cases, and that external peer review, when properly administered, may be helpful in identifying areas where improvements in legal services delivery are possible. Some of the questions raised by the study are:

- Why did many more clients of the voucher system fail to keep appointments with lawyers and pursue their cases than those of either the contract system or the staff attorney program? Was it because of difficulty in selecting from a list of available lawyers, inconvenience, confusion, or some unknown consideration peculiar to the voucher system?
- Would private lawyers be willing to serve indigent clients with a voucher or contract mechanism indefinitely, or would they withdraw from such programs over time?
- Is one mechanism more cost-efficient than any other? The study results were inconclusive on this question, since different formulations suggested different answers.
- Was client satisfaction higher under any one of the three mechanisms? Not enough responses were received from a client satisfaction survey to suggest an answer.
- Why did it take staff attorneys longer to close cases than it took contract attorneys or those paid by voucher? Were the private lawyers more efficient because they would be paid only upon closing a case, or were the staff attorneys simply overburdened because they were also handling a caseload of complex cases in addition to the study cases?
- Why were the services provided under each of the mechanisms judged to be of poor quality by the peer review panel that was created as part of the study? Were the services in fact inadequate, or did the panel erroneously assume that certain procedures were necessary, when in fact they would have been fruitless in these types of cases?

Copies of the report are available from James Podgers, staff counsel to the committee, from the ABA, 750 N. Lake Shore Dr., Chicago, IL 60611; or by phone at (312) 988-5761.

NOTES FROM THE ACADEMY

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

Civil procedure. In action against state of Washington, statute required service on attorney general or assistant attorney general. Plaintiff's service on attorney general's administrative assistant was held to be deficient, even though administrative assistant had mistakenly stated that she had authority to accept service of process. Court rejected plaintiff's arguments that substantial compliance with statute was sufficient and that state was estopped from contesting service because of assistant's false representation. ***Landreville v. Shoreline Community College***, 53 Wn.App. 330, 766 P.2d 1107 (Div. 1, 12/12/88).

— K. B. Tegland

Evidence. In asbestos litigation, plaintiff should have been allowed to refer to so-called Sumner Simpson papers, revealing industry's awareness of possible health hazards associated with asbestos, during cross-examination of defense expert. Court rejected defense argument that cross-examination related to collateral matter because witness claimed he knew nothing about the papers and had not read them. Court said papers were relevant to witness's "bias, his competence as an expert, and the weight that should be given to his testimony. . . ." ***Falk v. Keene Corp.***, 53 Wn.App. 238, 767 P.2d 576 (Div. 1, 1/17/89).

— K. B. Tegland

Torts. (*Case 1*.) Department of Social and Health Services caseworkers who failed to inquire whether potential foster parent had criminal record were absolutely immune from tort liability for sexual abuse of four foster daughters by foster father who previously had been charged with rape. Immunity arises out of quasi-judicial function of caseworkers in adversarial process of dependency proceedings. Individual immunity of caseworkers bars claim against state. Three judges dissented to finding of state immunity. ***Babcock v. State***, 112 Wn.2d 83, 768 P.2d 481 (3/2/89).

(*Case 2*.) Where public official sues newspaper for defamation for satirical parody, he must prove defendant acted with malice. Given humorous nature of column at issue and context of public debate over plaintiff's qualifications, trial court properly dismissed all claims. ***Hoppe v. Hearst Corp.***, 53 Wn.App. 668, 770 P.2d 203 (Div. 1, 3/20/89).

(*Case 3*.) State's decision to parole convict is discretionary, because it involves basic governmental policy and requires exercise of judgment and expertise. Thus, state owes no duty to persons who are injured by convict following his release. ***Noonan v. State***, 53 Wn.App. 558, 769 P.2d 313 (Div. 3, 3/9/89).

(*Case 4*.) Even though 1981 Tort Reform Act, RCW 7.72.030, subjects manufacturers to liability where the "claimant's harm was proximately caused by the *negligence* of the manufacturer in that the product was not *reasonably safe* as designed or not *reasonably safe* because adequate warnings or instructions were not provided," (emphasis added) reference in jury instructions to word "negligence" was reversible error. Notwithstanding language of statute, strict liability is still standard in design defect cases. ***Falk v. Keene Corp.***, 53 Wn.App. 238, 767 P.2d 576 (Div. 1, 1/17/89).

— J. T. Richardson

Incest

Since LAP's inception in 1988, several hundred lawyers have sought assistance for a variety of needs. Two-thirds of these cases have been self-referred. More than 80% of the caseload has involved clinical depression (63%) and alcohol or drug abuse (23%). Other reasons for turning to LAP have included difficulties at finding and keeping a job or becoming dissatisfied with practicing law. In about a third of the self-referred cases, staff have noticed a disturbing similarity. Many lawyers seeking our services were victimized as children physically, emotionally, and/or sexually. Usually these clients have minimized or repressed their childhood abuse and have attempted to compensate through intellectual and professional achievements. Until they experience a major loss or a series of smaller losses as adults, the impact of childhood abuse remains nascent. However, the present losses coupled with the earlier abuse affects our clients dramatically. Abnormal levels of anger, depression, shame, helplessness, fear and guilt plague the person. Not surprisingly, these feelings usually are associated with just current events. The following article describes a typical case. Fortunately, relief can be the end result of working through the devastating effects of childhood abuse.

— ***Andrew Benjamin***, *Director, Lawyers' Assistance Program.*

I always knew something was wrong at my house; I just didn't know what. Our family looked happy — orderly and functional — from the outside. People told me I was "lucky" to have such a thoughtful and caring mother, but the more they said it, the angrier I got.

She abused me physically, emotionally and sexually. The sexual and physical abuse began as early as age two and continued into my teens. The emotional abuse has been ongoing. Also, an uncle sexually abused me from ages three through 17.

As amazing as it sounds, until recently my memories of this abuse were completely suppressed. I was always puzzled by the rage I felt toward my mother and uncle. My dad became ill and died, and the pain I experienced, coupled with the strained relationship with my mother, was so great that I could no longer avoid the repeated suggestion that I seek counseling. Early in therapy, I was asked if I had ever been sexually abused. I recalled being molested once by my uncle, but denied any other abuse. As I allowed myself to remember the "one incident" the flood of painful memories began.

During my childhood, I developed elaborate skills to help survive. When my uncle fondled me my mind went blank; when he rubbed me against his aroused body my mind traveled to other rooms and places. Sometimes I chanted silently, "This is not happening." My denial had begun. I practiced standing motionless and thoughtless. I taught myself not to feel, cry or trust. I placed these traumatic and painful events in "a box," walked the box up to an imaginary attic and placed it on a shelf. I got a sense of relief.... "God, I'm glad that's over with." This was my method of dealing with life: deny the problem. Pack it away in a box. A clever technique for a child, but a dysfunctional approach to life as an adult.

My mother also refused to respect my physical and emotional boundaries. Reasons for my punishment were rationalizations for her exploitation. I don't know why she abused me, only what she did to me and how it felt. I'm still learning how it affected me.

Her abuse was varied and often advanced under the guise of "medical" treatment or "education." She forced me to take repeated enemas on a daily basis. My bottom was chronically raw and cracked. It was not uncommon for her to explore my rectum. I was directed to take baths with her for years. When I protested, she used water conservation as a rationale. When I said I would bathe alone in dirty water after she was done, she said it would be too cold. Once I was in the tub she made me touch and hold her breasts. Whenever I said no, she filled my mouth with liquid dish soap and forced me to choke on it. Naturally, I complied.

First I tried to hide my feelings; then I tried to ignore them. Eventually, I took any necessary measure to anesthetize my self-hatred and shame. My goal was simple: avoid pain through denial of feelings. As the emotional pain increased so did the "self-help" remedies. I first experimented with drugs at age 12 and almost immediately became addicted to codeine cough syrup. I was able to quit on my own, vowing "never again" to take drugs. By my teens, I was suffering from regular migraine headaches, which resulted in a ready supply of narcotics — a welcome addition to the increasingly difficult task of killing my pain.

I spent most of my adolescence and early twenties depressed and suicidal. I devoted hours to planning my demise.

Thanks to a support group, I have now been in recovery for alcoholism for several years. However, quitting active addiction did not erase either the past or the dysfunctional behavior patterns. I would love the luxury of denial, but it is one I cannot afford. (You can only stuff in feelings for so long before you start to rip at the seams.)

I have received LAP counseling. The services are totally confidential, which is an absolute requirement for me. I am truly grateful. I also attend an incest survivors group and a group for adults who were raised in dysfunctional families.

I am blessed with a strong will to live and a desire to heal. Today, I choose to confront my past and to be less secretive. Recovery from incest is painful and unpredictable. However, the rewards of knowing why I have been so distressed and the hope of a freer life make it all worthwhile. I am no longer living in isolation and secrecy.

A weekly noon meeting of *Adult Children Anonymous*, a group for adult children of dysfunctional families, began Thursday, May 18, at 12:15. The first meeting was held at the First United Methodist Church (second floor, Bishop's Room), 811 Fifth Ave. in Seattle. Call LAP for any additional information: (206) 448-0605.

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

Foot in the mouth award: This semi-occasional award is bestowed as the need arises to a qualified recipient. The winner this time around is a previous champion, **Bill Baumgartner**. Billy's award-winning *faux pas* occurred during a recent malpractice case involving a tracheotomy. Bill, in representing the plaintiff's side, repeatedly referred to the procedure as a "episiotomy." Such a slip, while pregnant with editorial possibilities, is best left well-enough alone.

Moves: In a related story, **Paul Henderson** announced that he was leaving the friendly but strange confines of Hazel Dell and the firm of Weber, Gunn et al, for a partnership with the aforementioned Bill Baumgartner. Attempts to reach Mr. B. for his comments were unsuccessful. Apparently, Bill is undergoing an appendectomy on his tongue. Hopefully, Paul will be the spokesman for the firm. Henderson did advise that the firm will emphasize short-person law: restricting representation to those whose height fails to reach the line on the standard roller coaster measuring mark. In layman's vernacular, no taller than eitherof the principals of said firm.

Newsmakers: In the past, local newspapers have filled their columns with the exploits of such legal luminaries as **Jim Carty**, **Mike Wynn** and **Darrell Lee**. But with the lack of any activity by these legal-lites, the void has been filled with that self-proclaimed "gadfly," **John Karpinski**. John emphasizes representing environmental concerns from the spotted owl to Woodsey Owl; from tree huggers to fickle-fingered bond dealers. Karpo, who bears a striking resemblance to Portland car dealer **Scott Thomason**, has gone so far as to adopt Scott's slogan: "If you don't see me today, I can't save you any endangered species."

Yet, it's not Karpo's vigorous representation of the undefended that has generated such a stir in the local scene. It's his voice straining to be heard: a classic impersonation of the fabled "Knee-jerking Whiner," seldom seen but frequently heard in the courthouse halls, that brings tears to one's eyes and gas to one's tracheotomy. Keep up the good work, John, but in the future, try duck calls.

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

Sometimes, even Memory Lane gets congested.

The Bellevue City Council is currently reviewing a proposal to set the congestion limit higher downtown than elsewhere in Bellevue. The reasoning: if the congestion limits allow less congestion than is likely to occur, development is slowed. For those whose commute has just been prolonged another five minutes, there will be ample time for reflecting on this one.

Never dabbling in anonymous statistics, your reporter went straight to the City of Bellevue Planning Department and fired off some tough, incisive questions in an impromptu Q and A session.

Q: Where are all these cars coming from?

A: Eastside King County is expected to grow to 355,424 by 1990, 457,802 by 2000, and 626,005 by 2020. Bellevue, a sleepy burg of 5,950 in 1953, now has an estimated population of 87,060 in 1989 and has evolved from a white, upper-middle-class bedroom community to an increasingly diversified city, the fourth largest in the state after Seattle, Tacoma, and Spokane, and a retail and employment base for the Eastside region. Growth is expected to be the highest of any area in the county — 29% over the next decade. Of course, we are counting on the United States Census for 1990 to give confirmatory figures.

Q: I knew that. But . . . where are all the cars coming from?

A: Well, some of these Eastside people drive to work, to the store, and places like that.

Q: Oh.

Another bruising cross-examination grinds to a halt.

Sammamish High graduate and Bellevue attorney, **Ron Cohen** ('68) states: "I remember when there was a Milk Barn where Benjamin's now stands." Another Eastsider, with impecunious and imprudent ancestors, recalls a family cabin where skyscrapers are today. History is close at hand.

So is the future. The Eastside, defined as the area east of Lake Washington to the Snoqualmie Valley and north of Renton to the Snohomish County line, is changing. Bellevue will take on more and more characteristics of a large urban center according to the *1989 Human Services Needs Update* just concluded in April by the Bellevue Human Services Commission.

The trustees of the East King County Bar Association have just approved creation of a separate nonprofit organization to establish an Eastside Legal Clinic. The clinic will be overseen by 15 trustees, eight attorneys, and seven laypersons knowledgeable in provision of human services. Vice president and president-elect of EKCBA, **Ken Davidson**, chaired the Community Services Committee, which completed an exhaustive evaluation finding substantial unmet need for basic legal services on the Eastside.

Seeking an ever-more-expansive definition of "Eastside" is **Tom Fain** of Williams, Kastner & Gibbs, who is eastward bound to Switzerland for the start of his three-month sabbatical. Colleague **Karen Tall**, meanwhile has relocated to the Seattle office of the firm. Filling the void Karen leaves will be a tall order; fortunately, she leaves behind a brother, **David Tall**, an associate with Oseran, Hahn, Kelley, Spring & Maimon.

Shorter moves include those of **Sandra Bates Gay** who, effective May 1, has opened her general practice law firm at Suite 300, Bellevue Place at 800 Bellevue Way N.E. Former EKCBA trustee **Douglas W. Harris** announced the opening of his offices at 12100 Northup Way, Suite B in Bellevue.

MICRONESIA REPORT
by **STEPHEN A. COHEN**

The Commonwealth of the Northern Mariana Islands underwent an historic development in May with the creation of a Supreme Court. Locally-appointed appellate judges will now be the final interpreters of the constitution and laws of the Commonwealth. In the past, appeals taken from the Commonwealth Trial Court, now renamed the Superior Court, went to the Appellate Division of the United States District Court for the Northern Mariana Islands, and then onto the Ninth Circuit Court of Appeals in San Francisco. Although the Commonwealth is still subject to the jurisdiction of the federal courts in cases involving federal questions and diversity of citizenship, this will be the first time in nearly 400 years that the people of the Northern Marianas have substantial control over the legal system holding sway in their islands.

Also in May, two members of the Washington legal community in the

Northern Mariana Islands received changes in their job descriptions: **John F. Biehl** was appointed the acting attorney general, succeeding **Alexandro C. Castro**, who resigned to become a judge of the superior court. John is the dean of Washington lawyers in Micronesia, having served for three years as an assistant attorney general for the Federated States of Micronesia, and the past three-and-a-half years as deputy attorney general for the Northern Marianas. Northern Marianas assistant attorney general **Stephen A. Cohen** was appointed to the newly-created post of legal counsel to the Department of Finance. Steve's efforts will be devoted exclusively to finance and taxation matters.

The attorney general's office also welcomed a new member from Washington, King County attorney **Stephen J. Nutting**. Steve has been assigned to the criminal prosecution division, where he will join King County attorneys **Craig Platt**, **Mimi Buescher** and **Patricia Halsell**. The criminal prosecution division is now completely staffed by attorneys who formerly practiced together in Associated Counsel for the Accused, the Seattle public defender organization.

On the travel front, Northern Marianas assistant attorney general **Gail Geiger** was in Bali on vacation, and **Robert Naraja**, Northern Marianas assistant attorney general, was in Washington, D.C. on business, where he assisted the Commonwealth team which is engaged in negotiating outstanding issues with the United States.

Finally, the Washington legal contingent in the Northern Marianas received a visit in May from King County attorney **Stuart A. Cohen**. He stayed with his twin brother, Stephen, at the Cohens' home on Capitol Hill, Saipan.

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

Jerry Lynch, who runs the Mt. Rainier guide service and climbing school, recently appeared on NBC's "Today Show." He was introduced as a Tacoma attorney. During this photo opportunity and sound bite (that's show-business talk for a free ad for the guide service) Jerry stated that even show hostess Jane Pauley could climb the mountain. Jerry is to be admired for turning an enjoyable hobby into a successful business and also for enjoying the law practice as a hobby.

Carson Eller is taking a sabbatical from his practice to renovate a rundown luxury home in Lakewood. Carson apparently finds it less stressful to deal with rotten roofs and porous plumbing than cantankerous clients.

Another escape from the practice is being presented by the creation of three new judgeships for Pierce County. **Henry Haas**, **Fritz Hayes** and **Joe Quinn** have indicated an early interest and are sure to be joined by a horde of judicial office seekers. After the difficulties of the recent legislative session it may be easier for weatherman **Willard Scott** to climb Mt. Rainier (even if Jerry Lynch has to drag him up there) than for

a Republican to obtain one of the judicial appointments.

Two who are not seeking to escape the practice are **Carl Skoog** and **Dean Mullin** who are moving their offices from the third floor of the Washington Building to the sixth.

Stan Wagner has joined the firm of Eisenhower, Carlson, et al.

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

Office Moves. **Joseph A. McIntosh, Norman J. Bruns** and **James C. Brown** have become of counsel at Bogle & Gates; the following have joined as associates: **Kevin J. Fay, Cynthia L. Pope, James T. Latting, David H. Bjornson. Heidi A. Irvin, Timothy K. Borchers, Jodi L. Sutton, Philip W. Wagner, Alison A. Balen, Harold Hickok, Kathleen K. Murphy, Patrick W. Crumb, Jeffrey M. Heutmaker, Michael A. Herbst, Carl R. Peterson, Mark S. Nadler, David Sislowski, Jeffrey A. James, John W. Miller** and **Marjorie R. Lamarre**.

Catherine S. Travis has become a shareholder of Weiss, DesCamp & Botteri. **Christopher R. Osborn** has become a partner at Short, Cressman & Burgess. **James E. Haney** has become a partner in Ogden, Murphy & Wallace. Helsell, Fetterman, Todd & Hokanson has named **Craig Dodel** counsel to the firm. **Michael Thorp** has joined Heller, Ehrman, White & McAuliffe as resident partner in Tacoma. **William Zoberst, Robert Scott Marconi, W. Michael Rose** and **Scott Breneman** have become partners at Stanislaw, Ashbaugh, Chism, Jacobson & Riper.

Lasher & Johnson has changed its name to Lasher, Holzapfel, Sperry & Ebberson. Carney, Stephenson, Badley, Smith & Spellman announces that the following have become shareholders: **Frederick M. Robinson, A. Richard Maloney, Clifford A. Webster, John C. Moore** and **Stuart C. Allen; Ted R. Katterheinrich** has become of counsel to the firm; and **Shane C. Carew** has associated with the firm. Prince, Kelley, Newsham & Marshall has moved to new offices at Suite 3250 of the Bank of California Center. **James A. Wexler** has become a partner at Mitchell, Lang & Smith. **Steven G. Lingenbrink** and **Neal T. Feinerman** have become shareholders in Trujillo & Peick, and **Gary E. Randall** has joined as an associate. **Bonnie Harrison, Michael O'Clair, Dave Petrich** and **Katie Troy** have become associates at Williams, Kastner & Gibbs.

Worthy Of Note. **J. David Andrews** has been elected president of the board of trustees of the Leukemia Society of America, Washington State Chapter. **John E. Iverson** heads the Seattle Children's Home board of trustees for the 1989-1991 term. **David Tang**, who is chairman of the board of trustees for The Evergreen State College, has been appointed to the Higher Education Coordinating Board. **Robert C. Mussehl** has been elected to serve a two-year term on

the Board of Directors of the United Nations Association of the United States of America (Seattle Chapter). **Michael D. Sandler** has been named to a panel of 24 Americans available to rule on disputes under the U.S.-Canada Free Trade Agreement. The Washington Athletic Club Men's Bridge Team led by **George Bennett, Clint Hattrup, Bill Creech** and U.S. Magistrate **John Weinberg** won the coveted Sir Thomas Lipton Trophy in the tournament, which was established by the English yachtsman and founder of the Lipton Tea empire during a visit to Seattle in 1915.

SPOKANE COUNTY REPORT
by **BERNARD McNALLEN**

Celebration: The Washington State Centennial has served as the impetus for a number of lawyers to go to their closets and dust off some interesting memorabilia. In that vein, **Neil Humphries** recently provided the Spokane County Bar Association with a photograph of the Spokane County Bar membership in 1933-1934. It is interesting to note that the entire membership of the Spokane Bar at that time was 92 attorneys. By way of comparison, current Spokane County Bar Association membership is 842 attorneys.

Redmond attorney **Robert Morse** is bringing his collection of photographs of rural courthouses throughout Washington state to Spokane. He will be exhibiting them at the Spokane Courthouse from May 19 through June 23 as part of the Centennial celebration.

Visitors: **Peter Murphy**, a British barrister and professor of law in Texas recently donned a silk wig and vestigial robe as the guest speaker at the Spokane chapter of the American Inns of Court. It is a rare experience to hear the King's English spoken with a Texas drawl. The dinner entree should have been Yorkshire pudding and ribs.

Kudos: **Tom Robinson** of the Cooney law office in Spokane has been instrumental in providing a free program on drafting wills for the elderly over the last two years. Tom conducts these seminars for senior citizens through the auspices of the Spokane Parks Department.

The Parks Department charges a $15 fee for the seminar and sends one-half of this amount to the Cooney law firm. In turn, the Cooney law firm contributes this $7.50 amount to the Spokane Bar Association to help defray the costs that other attorneys/firms have absorbed in providing pro bono legal services to indigents.

On the Move: **Frank Johnson** and **Pat Connolly** have joined the Paine Hamblem law firm in Spokane. Frank and Pat were formerly associated with the MacGillvray and Jones firm.

New Lawyers: New admittees to the Bar were sworn in on Friday, June 2, at 3 p.m. in superior court judge **Harold Clarke**'s courtroom.

NEWS FROM HOME

Timothy T. Black, Mary B. Foster, Susan A. Shyne and **Cynthia Thomas**, attorneys with the Seattle firm of Tousley, Brain have written portions of Bender's Federal Tax Service, a multivolume service published in May by New York publisher Matthew Bender & Company. The new tax reference, for accountants and attorneys, contains analysis of federal tax laws, internal revenue code and treasury regulations.

Seattle lawyer **Paul W. Steere** was honored as a new Life Fellow of the American Bar Foundation in February.

The Fellows is an honorary organization of practicing attorneys, judges and law teachers whose professional, public and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principals of the legal profession. Established in 1955, the Fellows program encourages and supports the research program of the American Bar Foundation.

A former Washington Attorney General, **Elsa Kircher Cole**, has been named General Counsel of the University of Michigan effective July 24, 1989. While with the Department of Justice, Cole was assigned to the University of Washington from 1976 to this year.

"The University of Michigan has chosen well," said University of Washington president William P. Gerberding. University of Michigan president James J. Duderstadt said, "Her current assignment involves primary responsibility for all legal matters arising in the area of business, finance, and administra-

tion. As such she carries a heavy practice with respect to construction and business law."

Cole is a graduate of Stanford University and Boston University School of Law. She is a past member of the WSBA Law School Liaison Committee, was president of the Seattle-King County Chapter of Washington Women Lawyers, and was vice president for membership of the WWL State Board in 1987-1988.

David A. Israel has been hired as comptroller of the Morris Piha Management Group. Headquartered in Bellevue, the company is one of the region's largest commercial property management firms. Prior to joining the company, Israel was associated with the tax department of Arthur Andersen and Company.

John Bridges has been appointed to the Chelan-Douglas County District Court bench by Governor Gardner. He fills a newly-created judgeship. At the time of his appointment, Bridges was a pro tem district judge and president of the Chelan-Douglas counties' bar association.

Jeffrey A. Meehan has joined the Vancouver firm of Morse & Bratt. A former clerk to bankruptcy judge Robert W. Skidmore, Meehan will concentrate on bankruptcy law and act as a Chapter 7 Trustee assisting current trustee **Robert Wiswall**.

Donald A. Greig and **Stephen D. Kinman** have joined the Vancouver firm of Landerholm, Memovich, Lansverk & Whitesides. Greig has been in practice in Clark County since 1973; Kinman has been a former assistant attorney general of Washington since 1985.

Marianne O'Bara has been elected president of the Northwest Women's Law Center in Seattle. O'Bara is a Seattle tax attorney and principal of the firm of LeSourd & Patten.

Seattle lawyer **Richard Manning** has been honored by the American Arbitration Association's highest award, the Whitney North Seymour, Jr. Medal. It is given to outstanding contributors to arbitration and mediation, and was presented to Manning by AAA president **Robert Coulson**, AAA regional vice president **Neal Blacker** and ABA president **Robert Raven** at the association's annual Arbitration Day conference in Seattle.

Manning has been active in arbitration and mediation efforts since 1970 and currently chairs the King County Superior Court's Mandatory Arbitration Administration Committee.

IN MEMORIAM

Charles J. Horowitz, 84, noted Washington lawyer and jurist, died March 25, 1989, in Seattle. Born in New York, Horowitz attended the University of Washington School of Law, where he was *Law Review* president in his final year. Upon graduating, Horowitz was elected a Rhodes Scholar at Brasenose College, Oxford, taking a degree in jurisprudence.

Returning to Seattle, Horowitz entered private practice with Preston, Thorgrimson, Ellis & Holman. He was a lecturer at the UW law school in 1932-1933, 1939 and 1945, and president of the Seattle-King County Bar Association (SKCBA) in 1957-1958. In 1960 he joined the Washington Uniform Legislation Commission; in 1972 he became a member of the Washington Judicial Council, chairing both in his tenures. His professional and civic involvements were remarkable in scope and number and included memberships in the American Law Institute, the National Conference of Commissioners of Uniform State Laws, the American College of Probate Council, and the boards of the Fred Hutchinson Cancer Center, the Washington Commission for the Humanities, Northwest Memorial Hospital, and Seattle Trust and Savings Bank.

Horowitz served on the Washington Court of Appeals from 1969 to 1974, and on the Supreme Court from 1974 to 1980. After leaving the Court, he returned to private practice until last year. In 1962 the WSBA honored him for "long and devoted service"; in 1983 SKCBA gave him its Outstanding Judge Award.

Survivors include two daughters and three grandchildren.

Matthew W. Hill, 94, former Chief Justice of Washington, died February 28, 1989, in Olympia. A native of Bozeman, Montana, Hill grew up in Illinois and east King County, Washington. He took his law degree from the University of Washington in 1917, and after service in World War I taught high school in Bellingham. From 1929 to 1944 he practiced law in Seattle, and in 1944 he was appointed to the King County Superior Court bench.

Three years later Hill was elected to the Supreme Court, a position he held until his retirement in 1969. Hill's tenure was one of the longest in the Court's history; he served four terms as Chief Justice and heard some 4,200 cases. Among his clerks were three current

members of the court, Chief Justice **Keith Callow** and Justices **Charles Smith** and **Robert Utter**.

Hill's survivors include a son and two daughters, seven grandchildren, and six great-grandchildren.

J. Lael Simmons, 88, died March 5, 1989, in Seattle. Born in a dirt-floored log cabin in Tetonia, Idaho, Simmons graduated from the University of Idaho and taught school before passing the bar.

Setting up in practice in 1928, Simmons practiced many years with the late **Richard G. McCann**, and later with his sons, **John** and **William Simmons**. A prominent trial lawyer, he was a candidate for the King County Superior Court bench in 1934 and King County Prosecuting Attorney in 1941.

Survivors include his wife, eight children, nearly two dozen grandchildren, and 17 great-grandchildren.

Joseph Moschetto, 72, died May 11, 1989, in Seattle. Active in practice and Democratic politics for nearly half a century, Moschetto was a leader of Seattle's Italian community and a passionate golfer, whose proudest achievement in life was obtaining three holes in one. Moschetto was a member of the ABA, WSTLA, Sons of Italy, and the Western Italian Golf Association.

Survivors include his wife, two daughters, three grandchildren, and four sisters.

NOTICES ADVERTISING

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

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

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

PROFESSIONAL

Gene Grantham announces his availability for consultation or referral of criminal defense matters, with emphasis on defense of sexual assault charges and drug offenses.

Gene Grantham
11058 Main Street
Suite 235
Bellevue, WA 98004
(206) 451-4447

Evidence

Do you anticipate evidentiary problems at trial or on appeal? **Karl B. Tegland** is available for consultation or association on issues relating to the admissibility of evidence. Author, *Tegland on Evidence (Washington Practice)*.

Karl B. Tegland
Treece, Richdale, Malone, Corning & Abbott
(206) 789-9168

Lender Liability

Charles Ferguson, an attorney with fifteen years' experience in commercial and investment banking, is available for consultation, referral, and association in lender liability matters.

Charles S. Ferguson
Attorney at Law
1001 Fourth Avenue
Suite 3200
Seattle, Washington 98154
(206) 223-0979

Law Offices
Mussehl & Rosenberg

We emphasize negotiated settlements of complex marital dissolution cases, and we welcome your referrals and consultations. We are also available for mediation and arbitration services for family law cases.

Robert C. Mussehl
Fellow, American Academy of Matrimonial Lawyers
Co-Editor, WSBA *Family Law Deskbook* 1987-1988
Member, Board of Arbitrators, American Arbitration Association

Morris H. Rosenberg
Co-Author: Chapter on "Debts," WSBA *Family Law Deskbook*
"Interstate Custody Disputes," *WSBA Bar News*, Vol. 41, No. 11, 1987

1111 Third Avenue
Suite 1010
Seattle, WA 98101-3202
(206) 622-3000

Referrals, Associations, and Consultations
in Immigration Law Matters

Robert H. Gibbs
(12 years' experience)

Gibbs, Douglas, Theiler & Drachler
1613 Smith Tower
Seattle, WA 98104
(206) 623-0900

Mark Alan Johnson
5120 Columbia Seafirst Center
701 Fifth Avenue
Seattle, Washington 98104
(206) 386-5566

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

Available for Referrals
and Consultations
Social Security Disability/SSI

James A. Douglas

Gibbs, Douglas, Theiler & Drachler
1613 Smith Tower
Seattle, WA 98104
(206) 623-0900

Pence & Dawson

Bob Dawson announces his availability for trial of personal injury lawsuits.

624-5000

Douglass A. North announces his availability for referral, consultation, or association on appellate arguments and briefs.

Douglass A. North

Maltman, Weber, Reed, North & Ahrens
1415 Norton Building
Seattle, Washington 98104
Telephone (206) 624-6271

Chemnick, Moen & Greenstreet

is available for referral or association in medical-legal matters, including obstetrical malpractice cases. The firm will review medical-legal cases without charge or obligation.

450 Market Place Two
2001 Western Ave.
Seattle, Washington 98121
Telephone (206) 443-8600

Referrals and Associations invited in

Workers' Compensation
and other disability matters

Aaby, Putnam, Albo & Causey

Seattle (206) 292-8627
Bellingham (206) 676-5225
Olympia (206) 754-7707

Experienced lawyer with new LLM in Estate Planning available for consultation, referral and association on estate, gift, trust and probate matters.

Laurence H. Shaw
500 - 108th N.E., Suite 400
Bellevue, WA 98004
(206) 453-8026

REED McCLURE
MOCERI
THONN & MORIARTY

Attorneys at Law

We are pleased to announce the appointment of

GUY TOWLE

as President and Managing Director
and the appointment of

WILLIAM L. HOLDER

and

ROGER L. STOUDER

to serve with Mr. Towle on the firm's Executive Committee.

3600 Columbia Center
701 Fifth Avenue
Seattle, Washington 98104-7081
(206) 292-4900

FOR SALE

For sale: Six secretarial partitions/workstations — $2,500 per station; Data General Desktop generation Model 20 computer with 38-megabyte hard disk, three terminals, single floppy disk drive and tape backup — $3,000 negotiable; one CPT 8525 with Rotary VIII printer — $4,500; executive desk, credenza, three chairs — $950; two Model 2880 dictaphones — $350 each. Call Lynn at (206) 473-0725.

West's Washington Reporter. Complete from 290 P.2d to 9/88. Asking *$1200*! (Current new price: $3400, used $2200.) Will deliver. R. Hansen. (509) 963-1305, (509) 925-6375 or (206) 788-0362.

Used law books — bought & sold — Washington-related law books our specialty — law library appraisals by qualified expert. John C. Teskey, Law Books/Law Library Services. Call Seattle, (206) 325-1331.

Give us a call. We will beat the competition. Free delivery; free pick up; free set up. Top Value Law Book Exchange. VISA/MC. (805) 965-7999.

SPACE AVAILABLE/WANTED

Downtown Seattle — Bank of California Building: new, professionally-planned suite with two offices available (I — 175.5 sf/1 — 121.5 sf). Many amenities including: conference room, kitchen, copier. telephone, fax machine, receptionist services and secretarial space. In-building parking available. Call Debbie at (206) 464-1435.

Office sharing: potential partnership. Commercial law firm with established client base looking to share office space with potential for partnership. Westlake and Century Square locations under consideration. Law Offices of Zachary Mosner, (206) 622-8449.

Westlake Center Tower. Two well-established Seattle attorneys now have deluxe offices located in the new Westlake Center Tower, a prestigious location in downtown Seattle. Two outside view offices available in four-attorney suite. ($775 and $825). Secretarial space included. Case overflow referrals will be available. Contact Steven J. Fields at (206) 340-2000 or Kimberlee A. McDonald at (206) 622-7322.

First Interstate Center, 32nd Floor, Seattle: View offices for one, two or three attorneys. Completely equipped law office at your disposal, including receptionist, two conference rooms, extensive library, kitchen, fax, secretarial stations. Call Harris, Orr & Wakayama, (206) 621-1818.

Downtown Seattle, 32nd Floor, 1001 Fourth Avenue Plaza. Close to courts. Furnished/unfurnished suites, short-/long-term leases. Receptionist, legal word processing/dictation, telephone answering, telex/facsimile, Kodak copier, mail service, law library, legal messenger. Contact Lillian Beegle, (206) 624-9188.

Prestige office sharing. Located in the new, unique Bellevue Place 42. Luxury suites for attorneys and CPAs only. Now open. Choose your space! Furnished/unfurnished suites, short-/long-term leases. Conference rooms, kitchen, file and storage cabinets. Receptionist, telephone answering, word processing, facsimile and photocopiers. Private secretarial stations and on-site paralegal service available. Call Ted Barr/Shari Perkins, (206) 451-3961.

Downtown Seattle — two view offices with reception service, 30th floor, Bank of California Center: secretarial space available, conference room, library. Contact Debbie, (206) 625-1212.

Congenial space-sharing. First Interstate Center, Seattle. One to four offices available in space with five-attorney, full-service firm. Two conference rooms, library, receptionist. Fax, Lexis, PC Network. Negotiable terms. (206) 382-2600.

Find out how easy it is to have a Seattle branch office. Law Office Management, in Seattle's prestigious Columbia Center, provides full legal support services and facilities to attorneys. For the cost of just a few days' billable time, you can have a tasteful Seattle office.

If you have considered downtown Seattle for a branch office, you cannot afford to miss Law Office Management. For more information call Brian Beaumont at (206) 386-5270.

Attractive, large (approximately 234 square feet) view office available August 31 in recently-remodeled suite occupied by three attorneys who seek fourth attorney with established practice to share office overhead. Thirtieth floor of 1001 Fourth Avenue Plaza, Seattle. All services and amenities available and negotiable. Call James Schermer, (206) 624-7600.

POSITION WANTED

Honors graduate with five years' trial experience in personal injury, product liability and medical malpractice cases seeks position with Seattle area firm. Send replies to Box 227, WSBA.

LL.M.-CPA, 15 years' experience, seeks opportunity to help build or expand law firm tax department estate planning and commercial practice. Reply to Box 267, WSBA.

Attorney seeks position practicing immigration or workers' compensation law with Western Washington firm. Have extensive administrative law and civil litigation experience. Member Washington Bar since 1978. Graduate, University of Washington, top third of class. Reply to Box 265, WSBA.

Experienced civil and criminal litigator seeks association with established firm in Pierce, Thurston, Mason or Lewis counties. Experience includes public sector as AAG and general private practice including misdemeanor and felony defense and dissolutions. Box 263, WSBA.

Attorney economist: Expert witness or consultation. Broad experience: personal injury, business valuation, environmental damage. Regan Whitworth, Ph.D., J.D., P.O. Box 8085, Missoula, MT 59807. (406) 721-4351.

Former law student seeks tutor/employer for law clerk program entrance under APR 6. APR 9 eligibility possible. Contact: (206) 562-8125.

Environmental Attorney, LL.M. (UW, 5/86); J.D. (Gonz., 12/82); WSBA (5/83); experienced in water resources development, wetlands, fish/wildlife, water, Indian law and federal agency practice; seeking related work in Washington (or elsewhere?). Advanced microcomputer and organizational skills. Please call or write: A. Reid Allison, III, 5133 Townsend Ave., Los Angeles, CA 90041; (213) 255-3413.

Ninth Circuit Court of Appeals — Attorney available to prepare Ninth Circuit briefs in submission form. High-quality, effective work product. Jay Rothstein, (415) 929-0107 or (415) 391-4221.

POSITION AVAILABLE

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

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

Attorney with lucrative Eastside litigation and general practice seeks partner to buy into business, including land and assets. Attorney seeks eventual full sale. Reply to P.O. Box 254, WSBA.

Eleven-attorney firm needs attorney with minimum of four years' trial experience. Exceptional opportunity. Please send resumé to Box 259, WSBA.

Large Seattle law firm seeks litigation attorney with experience in medical malpractice. Minimum of three years' experience required. Salary negotiable based upon experience. Replies to Box 260, WSBA.

The law firm of Bradbury, Bliss & Riordan has immediate openings for associate positions in its Anchorage office. Applicants should have a minimum of one to three years' experience in civil litigation, admiralty and/or commercial practice. Interested applicants should contact James K. Wilkens or A. Michael Zahare, 431 West 7th Avenue, Suite 201, Anchorage, AK 99501. (907) 278-4511.

Large Seattle law firm seeks experienced real estate attorney. Minimum of two years' experience required. Salary negotiable based upon experience. Replies to Box 261, WSBA.

Seven-member, general practice firm in Aberdeen seeks associate. Send resumé to Ingram, Zelasko & Goodwin, Attention: Dennis Colwell, P.O. Box 1106, Aberdeen, WA 98520.

Established, expanding, av law firm seeks governmental attorney with minimum of two years' experience in land use and related municipal liability matters. Position may also involve general litigation responsibilities. Reply to Box 262, WSBA.

Well-established Kitsap County firm seeks an experienced litigator to handle domestic, personal injury and other civil litigation which arises in a general practice. Contact Gary Cunningham at Bishop, Cunningham & Hartman, 3330 Kitsap Way, Bremerton, WA 98312.

Wanted: associate. Long-established general practice; Shoreline location; your clients welcome. Gradual buyout for right person. Reply to Box 264, WSBA.

Seattle firm with rapidly expanding litigation practice is now accepting applications for associate position. Strong academic credentials and excellent writing skills are essential. Send resumé to David M. Jacobi, Wilson Smith Cochran & Dickerson, 1700 Financial Center, Seattle, WA 98161-1007.

Five-attorney Seattle firm with an expanding general practice seeks additional attorneys with demonstrated excellence in one or more of the following areas: corporate, securities, estate planning, tax, intellectual property, maritime and construction law. Please send resumé to Hiring Coordinator, P.O. Box 1222, Seattle, WA 98111-1222. All inquiries will be kept confidential.

Business and litigation firm with Tacoma and Seattle offices seeks associate with banking and litigation experience. High-quality legal skills a must; entrepreneurial skills a plus. Please send resumé and cover letter to Box 266, WSBA.

Franklin County is accepting applications for a deputy prosecutor position. Applicant must be a member of Washington State Bar Association or be a July Bar candidate and Rule 9 eligible. Initial duties may include district court, juvenile court, and mental health and alcohol commitments. Felony and other matters may later be assigned. Salary will depend on experience with a range of $23,000 to $28,000 plus benefits. Send resumé to Franklin County Prosecuting Attorney, P.O. Box 1160, Pasco, WA 99301. Franklin County is an Equal Opportunity Employer.

Notice for hiring. Betts, Patterson & Mines, P.S., a 52-attorney Seattle firm seeks litigation associates. Attorneys with at least one year of legal experience, who possess excellent writing, research and oral advocacy skills are strongly encouraged to apply. The firm is committed to extensive training, a supportive work environment and career development opportunities.

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

Tax lawyer: Hillis, Clark, Martin & Peterson seeks tax lawyer with at least three years' experience and excellent academic credentials. Contact Barb Larimer, Hiring Coordinator, 1221 Second Avenue, Suite 500, Seattle, WA 98101-2925.

Riddell, Williams, Bullitt & Walkinshaw seeks a lateral attorney with at least four years of ERISA experience. Candidates for this position must have excellent academic credentials, writing skills and references. Send resumé to Paul J. Kundtz, Riddell, Williams, Bullitt & Walkinshaw, 1001 Fourth Avenue Plaza, Suite 4400, Seattle, WA 98154.

Small Bellevue firm with practice emphasizing business, real estate, commercial litigation, and creditor/debtor seeks lawyer with at least two years' experience and with partial client base. Send resumé in confidence to Jacobson & Snodgrass, 3015 - 112th Ave. N.E., Suite 203, Bellevue, WA 98004.

WILL SEARCH

Howard Halpin. Anyone with knowledge of last will of Howard Halpin, deceased 4/19/83, of Spokane, please contact Ernest Matthews, 800 Fifth Avenue, #4100, Seattle, WA 98104, (206) 628-5858.

William S. Roland. Anyone with knowledge of last will of William S. Roland, deceased 2/5/89, of Auburn, please contact Ernest Matthews, 800 Fifth Avenue, #4100, Seattle, WA 98104, (206) 628-5858.

SERVICES

Now open! *The Eastside Law and Tax Library*. The first of its kind for Eastside CPAs and attorneys is open in the new, luxurious Bellevue Place located on Bellevue Way and Northeast Eighth Street. This is a membership-only tax and law library for all attorneys and CPAs who live or work on the Eastside. Open 24 hours. Deposition rooms and conference rooms. Full service staff including law librarian. Free Westlaw training and Westlaw research with Westlaw main printer. Facsimile, photocopiers, microfilm and video cassettes. Call Ted Barr/Shari Perkins, (206) 451-3961.

Going on vacation? That brief you haven't had time to research, the deposition you couldn't reschedule, and other last-minute projects can still get done — with the help of an experienced contract attorney. We'll help you stay on top of your work while you take that well-deserved time off. Just call The Alexander & Thomas Group, Inc. at (206) 361-2707.

Urologist forensic consultant, M.D., J.D., boards, retired professor: (314) 361-7780, (800) 747-7341.

A Modest Proposal

by **Kris J. Sundberg**
and **J. Craig Rusk**

Much has been written recently about the declining health of our legal system. The system has been rightly criticized as too costly and too slow.

Various solutions have been proposed. Former Chief Justice Burger has long advocated a certification process (or second bar examination) in trial advocacy before a lawyer is allowed to handle cases in court. Others argue for alternative dispute resolution mechanisms, such as arbitration or mediation.

These proposals are well-meaning but misguided. They fail to take into account the real source of the problem with lawyers — there are simply too many for the good of nonlawyers. With only three percent of the world's population, the United States has ninety percent of the world's lawyers.

While we lack quantitative data, we find intuitive logic in the statement that no country ever achieved greatness through a law suit. The United States seems determined to prove otherwise.

The burning question is: What do we do with all these lawyers? We think the answer lies in another, fertile field where America has successfully dealt with similar problems.

The robust American agricultural system is the envy of the world. Its productivity and abundance are second to none, adding welcome black ink to our otherwise sorry balance-of-payments mess.

Why have we succeeded in agriculture and yet failed so miserably in our legal system? Why is our agricultural system producing vastly more today and with significantly fewer farmers than we had 100 years ago?

The answer is simple and straightforward. The American agricultural system is the product of years of carefully-thought-out government subsidy programs. While most of us instinctively balk at the (il)logic of paying farmers huge sums *not* to grow anything, no one can deny the results. Through government subsidies, Americans are provided with the best and cheapest food in the world by a very small number of farmers.

This is all well and good, but this article isn't intended to obsequiously pander to the Jeffersonian folk-image of American agriculture. After all, Willie Nelson and John Cougar Mellencamp do more than enough of this for most of us already.

No, the purpose of this article — and the crux of your writers' modest proposal — is that the American legal system and, therefore, society as a whole could benefit from a strong dose of government subsidies. We need fewer attorneys. This can be accomplished in a humane fashion by paying lawyers *not* to lawyer in the same way that farmers are paid not to farm.

In our plan, each year the government will limit the number of hours lawyers can bill just as limits are placed on the number of acres farmers can till. (An acceptable substitute will be to limit the number of lawsuits an attorney can file.)

Lawyers, like farmers, will be paid for the number of hours not billed or lawsuits not filed. One can easily see that in no time at all the problems with our legal system will disappear.

Lawyers (obedient slaves to forms that they are) will be kept busy filling out government time sheets documenting hours not billed. Endless hours will be spent preparing government-mandated reports (supported by affidavits, of course) documenting law suits that could have been filed but weren't.

Others will probably favor a variation of Shakespeare's idea. It *would* be cheaper (if not more expedient) to simply hang every third lawyer or so. While this idea has considerable appeal, it would probably exacerbate rather than alleviate the problem.

First, it is probably unconstitutional; at least, that's what the lawyers will argue. And, as everyone knows, arguing is how lawyers make their money (and how our legal system got into the sorry state it is in).

It is not too difficult to imagine that before each lawyer was hanged we would be subject to the appalling spectacle of endless appeals, petitions, etc. *ad nauseam* on a scale far larger than those on behalf of mere mass murderers awaiting execution on death row. No, the simple solution would unfortunately make our legal system more turgid, expensive and significantly less responsive to the needs of our society.

Our modest proposal should find broad, bipartisan support among the members of Congress who, notwithstanding the recent pay flap, long ago gave up lawyering for more profitable pursuits. At the risk of apostasy, your humble authors (as experienced attorneys) are willing to assist any of the fine members of Congress in drafting appropriate legislation.

Ronald Reagan or Jimmy Carter (or both) once said, "Why not the best?" We are obviously willing to pay the price to have the best agricultural system in the world. Why not have the best legal system money can buy as well?

CNA

For All the Commitments You Make®

CNA's enlightened idea for lawyer's insurance: financial stability.

CNA's financial stability provides the security you need in an insurer. CNA will be able next year, and in the years after that, to honor the commitments it has made because CNA has the resources to adequately finance your professional liability coverage.

Financial stability is one reason that CNA has been able to provide professionals with quality malpractice protection for over 30 years.

These years have been marked by stable, responsibly-priced programs attuned to professionals' changing needs.

As the 14th largest insurance organization, CNA offers you even more than financial stability. CNA's programs include comprehensive coverages, local claim service, legal defense, as well as expert underwriting.

CNA also believes in vigorously defending against all frivolous lawsuits, and has established panels of defense attorneys that specialize in legal defense for malpractice cases.

It's your professional reputation and your practice. Protect them with a company that has the financial stability you can depend on.

Contact your local Lawyer's Protector Plan Administrator:

Professional Insurance Corporation
Fourth & Vine Bldg. Suite 200
Seattle, Washington 98121-1253
(206) 441-7960

WASHINGTON STATE
BAR ASSOCIATION
500 Westin Building
2001 Sixth Avenue
Seattle, WA 98121-2599

Nonprofit Org.
U. S. POSTAGE
PAID
SEATTLE, WASH.
Permit No. 2204
ID No. 9-437