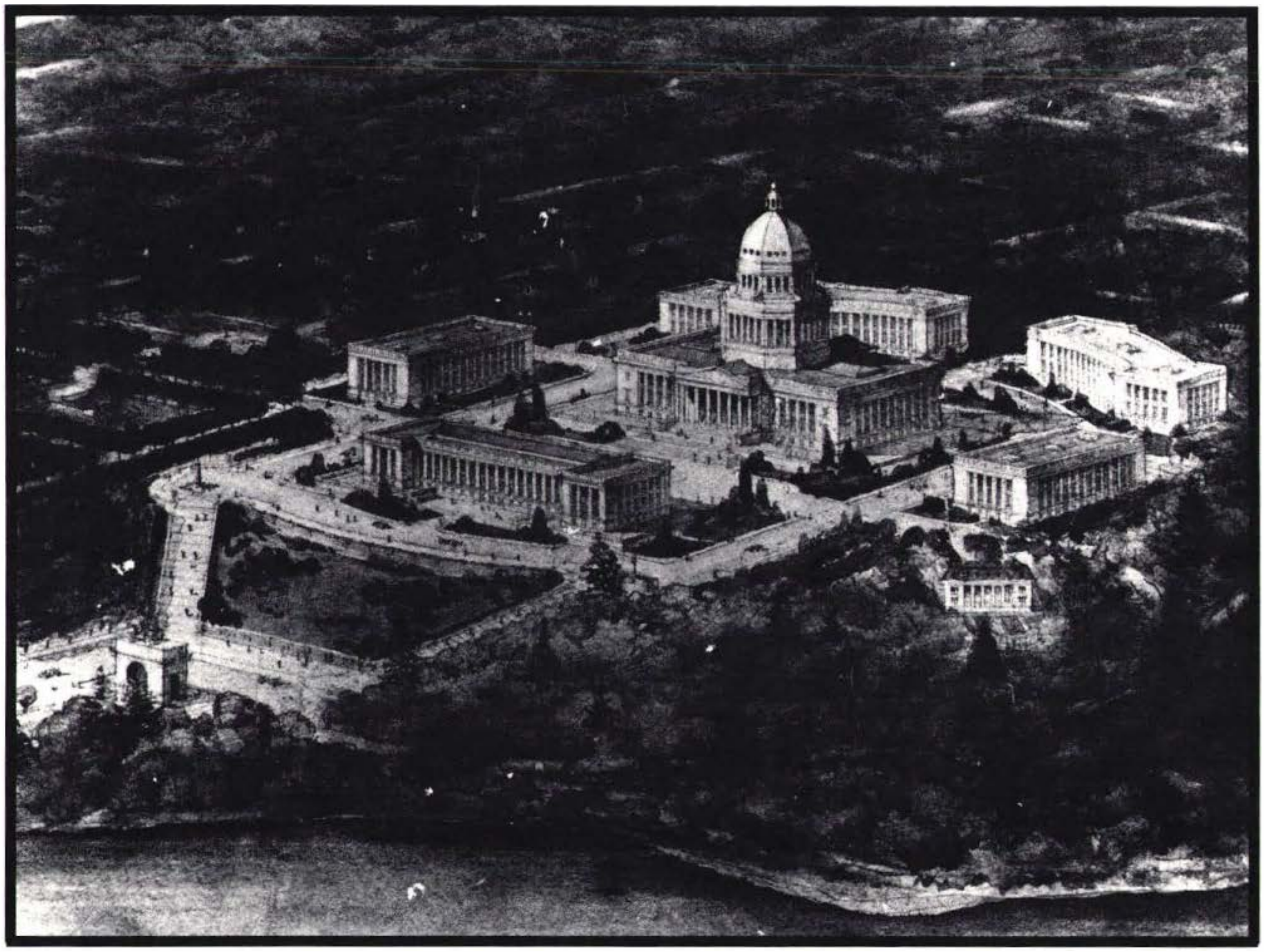
Washington State Bar News
Volume 43, No. 8, August 1989



State Capitol Group

Inside:

Voir Dire • Bankruptcy • Annual Meeting
Member Survey Results • Client's Security Program

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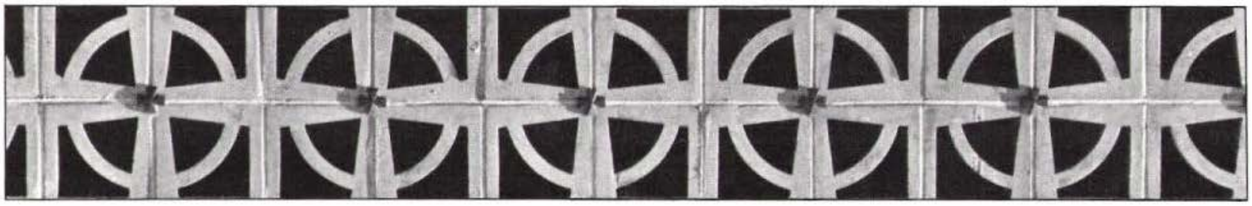

The voir dire controversy heats up ... see pages 4 and 7-11.

FEATURES

DEPARTMENTS

ART CREDITS

Cover: From a photo of the original rendering of the State Capitol Group, designed by Wilder and White, architects, circa 1911. The purpose of the "group plan" was 1) to have a collection of smaller buildings that would grow along with the expansion of state government, and 2) to give the effect of a single structure as seen from a distance — an impressive dome rising from a broad base. The proposal was never fully implemented.

Shown clockwise from "Capitol Lake" (actually the mouth of the Deschutes River as it enters the southern tip of Puget Sound) are the Temple of Justice, the Insurance Building, the John A. Cherberg Senate Office Building, the John L. O'Brien House Office Building, a building not built (the Governor's Mansion stands there), another building not built, and the domed Center Legislature Building. Neither the esplanade nor the arch fronting the water were realized.

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

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.

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Voir Dire

Editor:

A suggestion I have made to a legislator in my district is that six-person juries be made mandatory. I would like to see the same number of preempts and great latitude in questioning remain.

Though we would have fewer jurors, and spend less time on jury selection, the likelihood of an impartial panel would be better than if restrictive rules are imposed.

I personally think the reason a citizen has greater opportunity for a fair trial in state court than federal court is the existence of attorney-directed voir dire.

Finally, regardless of challenges for cause, I think that one cannot even intelligently exercise preemptory challenges without an opportunity to have a dialog with each juror. It is only after discussion with individuals that one can begin to make judgments about them. This basic fact of human relations enters into jury selection.

Please, no more rules.

K.R. ST. CLAIR
Mt. Vernon

(See related features articles on pages 7 and 11.)

More on Legal Writing: From Bad to Verse

Editor:

One of our staff considered improvements to our literary style.

Her conclusion, after much contemplation, is expressed in her original "Ode to Rhyme and Rhythm."

ROBERT A. BERST
Seattle

Ode to Rhyme and Rhythm
by S. Malmin

I've been working for days on a letter
Trying to get it to rhyme.
I have respect for poetic talent;
This is taking too much of my time!

I've noticed a hazard in doing this.
The boys have noticed it, too.
No matter the thought or the action,
It's done in rhythm all through.

"That's okay" you're prob'ly thinking
— adds style and grace to the page.
So thought I, while wildly typing
'Til they appeared in royal rage.

"It has to stop!" said they in ominous tones.
On my desk — 25 stapled, typewritten pages.
Wherefores, heretofores, furthermores and witnesseths —
All in lovely, lilting phrases.

"A case is won by forceful presentation.
The documents must persuade and convince.
The rhythm takes away persuasive action,
And the judges are laughing at the bench."

"Please," they said on bended knee,
"Don't rhyme our caref'ly planned statements.
We are losing credibility and clients,
And you'll be out on the hard, cold pavement."

And so, in the interest of sleeping in comfort,
Eating, and other things of that nature,
The absolute joy of spending money,
The . . . well, you get the picture.

No more will I think in rhyming phrases.
The lovely, lilting pages are gone.
Enjoy this ode to rhyme and rhythm,
I'm keepin' my job — justice rolls on!

New Opportunities For Public-Interest Litigation

Editor:

I am writing as the Washington State Coordinator for Trial Lawyers for Public Justice (TLPJ) to make sure my colleagues in the Bar know that TLPJ is available both to handle and to help plaintiffs' lawyers handle precedent-setting public-interest litigation. TLPJ's work helps advance realization of the ideal of "justice for all" — an ideal we lawyers in particular value so deeply.

TLPJ is the only public-interest organization in the country that specializes in bringing precedent-setting damage litigation. The goal of TLPJ litigation is to compensate victims of outrageous misconduct to make sure that the true cost of misconduct is borne by the malfeasor, not the victim. Implementation of this philosophy will bring about safer products, a cleaner environment, and justice for all.

Six hundred of the nation's top trial lawyers currently support and work the TLPJ as members of the TLPJ Foundation. This network of experienced and dedicated attorneys enables TLPJ to undertake novel and complex public-interest litigation. TLPJ welcomes requests for legal assistance in cases with a strong public-interest component and welcomes the addition of new members to expand TLPJ's effectiveness.

I invite persons interested in more information about TLPJ to contact me at (206) 623-0900 or TLPJ's Washington, D.C. office at (202) 463-8600 for more information about our efforts to bring about "justice for all."

THEODORE SPEARMAN
Seattle

Reversible Error

Editor:

The Legal Foundation of Washington extends our thanks to you and the Bar staff for the opportunity to provide the annual report of the Foundation to the WSBA membership as an insert in the *Bar News*. I regret that the Spokane Bar Association's pro bono grant was reported as $10,000. In fact, they received $35,000 to provide coordination for the more than 550 lawyers that participate in their very successful program.

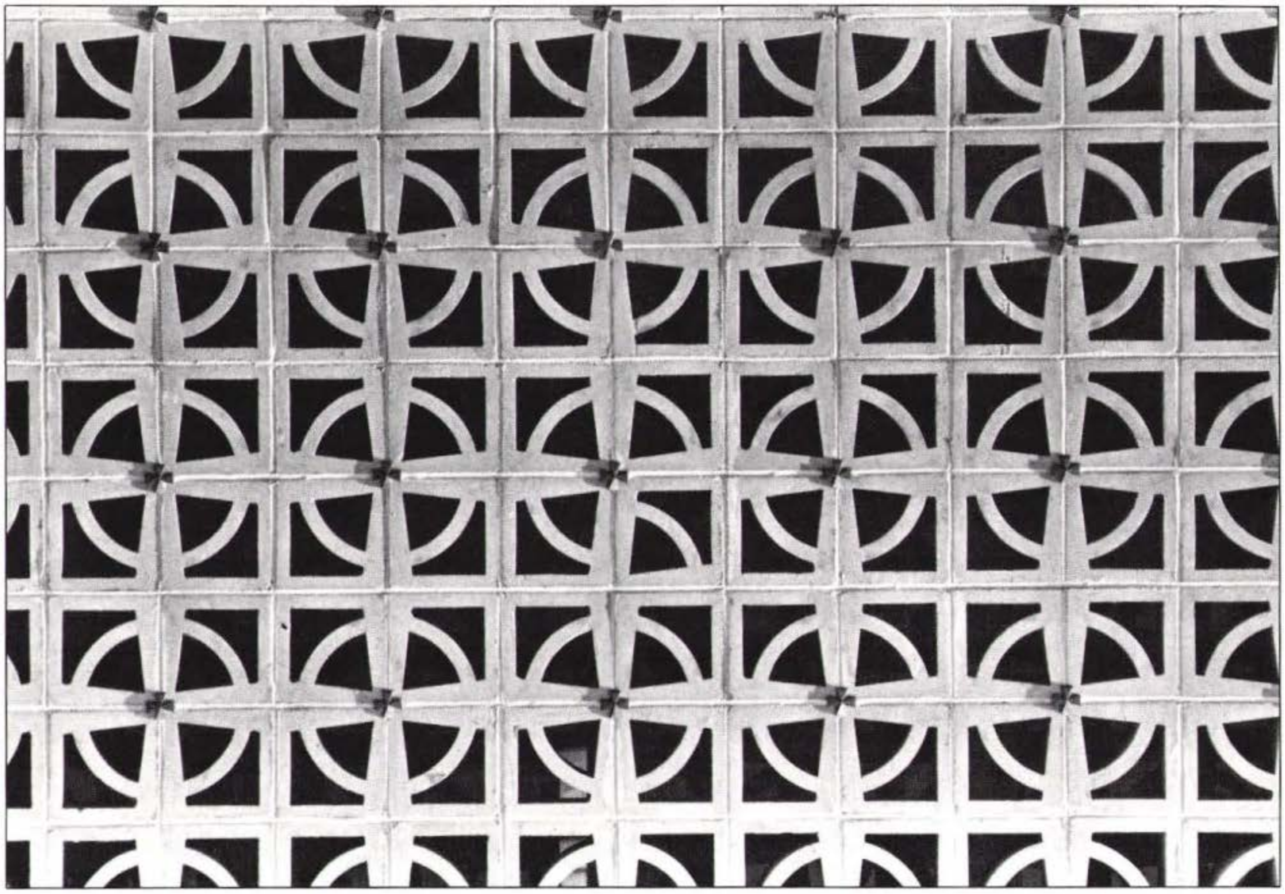
BARBARA C. CLARK,
Executive Director
Legal Foundation of Washington
Seattle

Coliseum, Not Kingdome

The illuminated roof under the fireworks on the July *Bar News* cover is that of the Seattle Center Coliseum, not of the Kingdome, as stated.

Truth or Consequences —— Is Voir Dire Really a Waste of Time?

—a Judge's Rebuttal



Good voir dire can bring out the details you might otherwise miss. (Photo: architectural screen, St. Andrews Presbyterian College, Laurinburg, North Carolina, designed by A.G. Odell and Associates)

by **David A. Nichols,** *Judge*
Whatcom County Superior Court

Like a trout rising to a fallen fly on the mirrored surface of a lake, I take the bait tossed out by Paul Luvera in his article in the May 1989 *Bar News*. Alas, I fear he pictures an Eden which I hope we achieve but which is far from reality at present.

The benefits of voir dire, *properly and skillfully done*, are undeniable; but unhappily the practical reality is that virtually no lawyers practice as Paul Luvera preaches. Would judges be better than lawyers conducting voir dire? Maybe not. But the present misuse of the device, usually characterized by long lectures on the law and facts, rhetorical, repetitive and meaningless questioning; and a failure to elicit more than a yes or no answer from any juror, is worse. I think we are forced to the conclusion that lawyers and judges alike lack the training necessary to conduct meaningful voir dire.

Let us accept as given what so many of the trial practice books say: that jurors' opinions are often formed at the time of voir dire, that it is important that the jury be sensitized from the beginning to crucial points in the case, whether good or bad for one's side. Accept further that it *does* make some difference who sits on a jury, and trial attorneys need to know their jurors to be able to challenge sensibly. Why, then, does the trial bar fail to adopt a true strategy and expertise to achieve these goals? Paul Luvera calls for "the education of all involved in the voir dire process about proper procedure. That, in turn, requires knowledge of the modern principles of human behavior." Amen. But I have not talked to anyone who has ever been to a seminar which *taught* voir dire technique. If there is a good curriculum somewhere, we should get hold of it and teach it.

Some suggestions: Before a trial begins I invite counsel each to make a five-minute summation to the jury panel about what they expect the case to be about. These summations are not in lieu of opening but to lay out for the venire the general nature of the parties' evidence. That way, there is no subterfuge when a juror is questioned later. Attorneys usually do not take me up on this, but I am thinking of making it mandatory. Right away, then, we get up front the essentials of the case. As defense counsel I might say:

> We admit we caused the accident. We do not accept the plaintiff's position that her damages flow from our collision which the evidence will show is minimal; nor do we believe in any case that she was injured to the extent she claims.

Once the jury has a pretty good idea what the case is about, counsel can and should employ all the sound *interviewing* techniques developed and perfected by other professions like mental health. The questions should allow the jurors to express their personalities and life-styles. I could not agree more with Paul Luvera that we know an increasingly greater amount about the human personality and how it affects deliberations. Lawyers *must* become familiar with how to achieve the kinds of answers which are helpful, and they must understand how to use the information which they get to form a personality profile. Even a five-minute interrogation, skillfully conducted, can be very informative. It will not, however, be achieved with questions like: "The fact that my client is Hispanic will not affect your decision, will it?" Answer: "Of course not!" And yet almost all voir dire I have heard is characterized by exactly that kind of question and answer.

As Paul Luvera says, how a question is asked suggests the answer. If you want usable information, rhetorical questions should not be in your repertoire. But more than that, in my view counsel approach voir dire from a wrong premise, viz: *I must condition the jury to my case and remove anyone unfavorable.* Instead, the premise should be: I know jurors are biased by their value systems and their life experience. Therefore, I want fair-minded, self-appraising, relatively objective people who will not jump to conclusions and are *good listeners*, who will reserve their opinions.

So, here I am, the plaintiff who plans to ask for a lot of money against a popular defendant like the community hospital. Typical question: "Mr. Jones, I plan to ask for a large amount of money from St. Sebastian Hospital. Assuming the evidence supports it, will you have any problem returning a substantial verdict against a hospital?" Answer: "No." Aside from keeping the jurors from getting the vapors when you ask for $2,000,000, what have you learned about Mr. Jones? Nothing. Why not at least *try* another tack:

— When you go shopping, what reaction do you have to prices?
— Are you a conserver or a spender by nature?
— How often do you get a new car?
— Do you think the government spends too much?
— If I gave you $10,000 right now what would you do with it? How much to church, savings, the family, mortgages and bills, new

toys, etc?

— Ever sat on a committee or board responsible for spending money? Do you favor cutting the budget to the bare essentials or do you like to see the organization work for more money to expand its work?
— As an employer, what is your feeling about overtime?
— If your kid were arrested, would you go right down and bail him out, or would you let him stew overnight?

Answers to such questions may give you an idea how Mr. Jones thinks and acts in his own life, which is a far better indicator about how he will deal with your case than his *statement* that he will consider a big verdict.

I think you want to know how a juror *makes decisions*. Few voir dires I hear ever gain any insight into this aspect of personality. Since voir dire time is usually limited, I would devote most of it to this aspect and ask questions like:

— Are you an influential person? If so, what causes people to be influenced by you, do you think?
— Are you an assertive or passive person?
— How do you function in a group? Are you the kind of person who will mostly listen, or will you be right in there in the center of the discussion?
— Suppose I give you a new proposal. Are you likely to react immediately or will you want time to mull it over?
— Do you say, it probably won't work; or do you say, "That sounds neat; let's go for it."?
— Suppose we go on a trip. How will you want to plan it, in fine detail or mostly spontaneously?

And, when you get a provocative answer, run with it and *engage in a dialogue*. To me that is far better than trying to cover a voir dire agenda with each juror which means ignoring good answers which are really insightful.

To underscore, get some good, open-minded people who are reasonably cautious, and do not settle for just weeding out people who cannot answer yes to every proposition you put before them. And do not conduct voir dire with boilerplate rhetorical questions. Continue to ask open-ended questions which will get the juror talking and reveal personality which will give you a rational basis for challenge. In my experience voir dire, when it is conducted in this manner, is of great interest to everyone: other jurors, counsel, and the court, because people are interested in other people. I would be genuinely surprised if any of my colleagues cut off such a dialogue. If a lawyer does encounter a hostile court, a restive panel, and a feeling of pressure to finish, my view is that the lawyer should make a harsh self-examination as to whether the voir dire is being properly conducted.

In sum, I would not like to see judges take over voir dire any more than Paul Luvera would, but I can assure that the hue and cry which he accurately sees in the judiciary to eliminate voir dire is real and is a direct result of poorly-contrived voir dire as it is presently practiced by the large majority of the trial bar. That is a harsh condemnation, and I am sure that as a lawyer I was no better than the next person; but what the bar is seeing is immense judicial frustration with the present state of affairs. Confronted with the press of cases, only a concerted effort by the bar to train its trial practitioners will, in my opinion, avert severe curtailment, and possible elimination, of this very valuable trial opportunity.

By the way, Paul Luvera and I engage in frequent friendly debate on a variety of issues. I hope he takes the voir dire course when it is offered . . . ☐

WANT TO LEARN MORE ABOUT VOIR DIRE?

Attend **What Makes Jurors Tick: Strategies for Jury Persuasion** at Whistler, Friday, September 15, 2-5 p.m.

The Purpose

The following article was signed by King County Superior Court judges Terrence A. Carroll, George T. Mattson, Gerard Shellan, Jerome M. Johnson, John M. Darrah, Marsha Pechman, Susan R. Agid, Frank L. Sullivan, Charles Johnson, Warren Chan, James D. McCutcheon** and **Peter K. Steere.

"As is evident we take strong issue with the tone and substance of that article and have taken the extremely unusual step of reacting publicly," Judge Carroll wrote in a letter to the editor. We are pleased to present their views.

We believe that the recent article, "Truth or Consequences — Is Voir Dire Really a Waste of Time?", by Paul Luvera, requires a response. Our concern is not only with the substance of the writing but its tone as well. There can be no doubt that the subject of voir dire, its purpose and scope, will continue to be debated. However, to attack the motives and abilities of members of the judiciary is not useful. For example Luvera states:

> Should a trial judge ignorant of principles of psychology exercise the authority to exclude such important and relevant questions? Too many judges are still operating with a belief system formed while they were trying cases many years before coming to the bench.
>
> . . . Some federal judges maintain that because they have been selected by the President of the United States and confirmed by the Senate, they therefore are qualified to determine the suitability of jurors. . . .
>
> . . . We should not adopt tyrannical rules about what questions will be permitted, based upon a judicial bias that all attorneys, especially plaintiff attorneys, will automatically abuse voir dire. . . .

Such language is counterproductive and somewhat surprising from one who has been a part of the system for which he carries such distrust. Constructive criticism is useful — overstated, if not inaccurate, generalities are not.

With reference to the substance of this issue it is important to understand the purpose of voir dire. Fundamentally, it is a process to assist counsel and the court in the selection of a group of persons with diverse backgrounds who can be fair to both sides. It is not an opportunity to try the lawsuit ahead of time, gain rapport with jurors or to tediously cross-examine them on irrelevant minutiae. There will remain an inevitable and healthy discussion between lawyers and judges over the scope of questioning during voir dire. Certainly the nature of the case and particular issues therein will dictate much of the questioning. Furthermore, these same considerations will affect the length of voir dire as well.

With this in mind King County Superior Court has developed a rule which attempts to establish reasonable expectations for the litigants.[1] It needs to be understood that the necessity for the rule grew out of too many instances where counsel took advantage of the lack of court direction of voir dire. As Luvera indicates: "... Many of us, including me, are guilty of taking improper advantage of the voir dire procedure."

We need to keep in mind that jurors have rights, too — not the least of which is to avoid facing intense interrogation with the potential for giving a 'wrong' answer. Every experienced judge has received feedback from jurors complaining about lengthy and/or inappropriate voir dire. (See below letter from a juror.)[2] In addition one judge, who exercises relatively strict control over questioning during voir dire, has polled the jurors in his court at the completion of the case regarding several issues, including jury selection.[3] The results are not reassuring to those who promote a rather wide-open approach to voir dire. If the audience, *i.e.* the jury, is reacting negatively to a protracted voir dire, counsel may want to reassess the psychology of the jury selection process.

Luvera discusses in his article some interesting approaches to the questioning of prospective jurors. He is obviously an able advocate. The advice that attorneys prepare ahead of time for voir dire is indispensable to competent jury selection. As judges we support an intelligent and meaningful voir dire. We want to work with the bar in developing the expertise to ensure such quality. We are not your adversaries. But we will not countenance meaningless questioning of our citizen jurors which is merely an exploitation of the invaluable right to a jury trial.

Our experience would suggest that the following are instructive for counsel to keep in mind prior to jury selection:

1. Plan your questions ahead of time;
2. Think about the type(s) of person you want on the jury;
3. Ask yourself what general questions you want the judge to ask and put them in writing (especially difficult or unusual questions);
4. *Listen* to the responses from jurors to all inquiries (not just yours);
5. Develop a system for keeping track of the information you receive during voir dire;
6. Be sensitive to what you are asking. Ask yourself, would you want to answer this question in a room of strangers?
7. If you are going to talk about legal concepts, make sure you obtain court approval and make sure you can articulate the concepts correctly and not at odds with the WPI definitions;
8. Don't appear to be cross-examining a juror.

We hope to continue to work in a cordial and professional manner with you to reach our mutual goal of achieving fair trials before impartial juries for our communities. ☐

[1]K.C. Local Rule 47

... (5) Examination of Jurors

The voir dire examination of jurors shall be conducted under the direction and control of the court with the following guidelines:

(a) It is expected that voir dire, in most cases will consume one-half day of trial time or less;

(b) The court shall ask all general questions and thereafter shall give leave to the respective parties to ask such supplementary questions as may be deemed proper and necessary by the court. The parties shall submit all proposed general questions in writing prior to voir dire.

(c) The court may intervene without objection in instances of inappropriate questioning and may limit the amount of time each party has to examine a juror or jury panel.

[2]March 7, 1989

Dear Judge Shellan,

A few weeks ago I was called for Jury Duty on the Superior Court for a 2-week period. I am a recently retired teacher and school librarian; have lived in the Seattle area for 31 years, and have never in my life been called for Jury Duty heretofore. I had always wanted to do this and had at times even considered writing to ask if I could be put on. So ... as you can surmise, I was looking forward to it with great anticipation and interest. The resulting outcome prompts me to write, expressing critical comments which I feel should be considered seriously.

Approximately one week ago I heard a news report on the radio which stated that the King County Court system had a backlog of some 70,000 cases and if something isn't done soon to alleviate it, the whole system will break down.

I could offer some very pertinent advice regarding this, which would speed up the processing of cases 100%. That is to *change or rid the system of this long, time-consuming process of "choosing a jury"*. I sat there for hour after hour on the few cases to which I was called, while these young lawyers ask all manner of ridiculous personal questions to each and every prospective juror. Most of these questions have no bearing at all on the case in question. For example where the person lived all their lives, what they did, and even down to what hobbies they engaged in! One young lawyer got so far astray that even the prosecuting attorney objected, and the judge agreed and told her to go on to the next question. When I went down there I was expecting to be *assigned to a case* and with *no further delay*, the trial would begin. Not so, NOT SO, I soon learned!

It is IN NO WAY FAIR to call people down there and have them be put through a course in lowering self esteem! I heard this mentioned by several. What is one to think when they are continually "dismissed" from case after case just because they are 50+ or in some other "category"?? I am an educated person, with two degrees; have been in responsible business positions the first half of my career and in education the last half and am certainly capable of making an unbiased judgment. I am a science major and trained in using the scientific method of drawing conclusions based on the evidence. Why would I not be more capable of making an unprejudiced decision in a case than a young student just 5 months out of high school who was sitting next to me? As far as I know she was kept on the jury for the Fox case. Person after person was dismissed solely because of some little factor in their life which had nothing whatever to do with the case at hand.

Getting back to the question of saving money, can't the Courts see that if they just assigned people to the jury at random, regardless of their background unless of course they were a friend or relative, that all in all it would balance out and the case would be decided much *more fairly* than actually PICKING PEOPLE WHO ARE PREJUDICED IN THE *WAY* THE ATTORNEY *WANTS*! That is what it actually amounts to and I'm sure you can see and agree that this is TRUE. And think of the millions of dollars that would be saved because of *wasted time*!

I *know* there are a lot of others who feel the same way, and I think it is time the Courts started treating people in a more kind and *considerate* manner!

Sincerely,

Betty P. Dean

Panel #27, Juror #48

[3]Judge Terrence A. Carroll, King County Superior Court, follows fairly strict guidelines in jury selection. Even so his poll shows that the jurors, by overwhelming percentages in civil and criminal cases, would reduce attorney questions, increase the judge's role and shorten the length of voir dire.

The Client's Security Program: Past, Present and Future

by **Robert D. Welden**
WSBA General Counsel

Lawyers who steal money from their clients are few, but when they do, everyone notices. Unfortunately, in most cases by the time the theft or failure to account for client funds is discovered, the lawyer is broke, in prison, has disappeared or is dead. Even so, the victim of a theft or failure to account for client funds is not without some hope because of the Client's Security Program established by the Washington State Bar Association.

The WSBA first created a "Client's Indemnity Fund" in 1960 by dedicating funds from the Association's general fund for the purpose of "relieving or mitigating a pecuniary loss sustained by any person by reason of the dishonesty of, or failure to account for money or property entrusted to, any active member of the Association, in connection with the lawyer's practice of law, or while acting as a fiduciary in a matter related to the member's practice of law."[1] The Association does not, however, compensate for negligent acts, lawyer malpractice, or other forms of damages. Neither does it pay interest on funds withheld from a client, nor compensate for excessive fees. There must be a specific finding that the financial loss was due to a lawyer's dishonesty or failure to account for client money or property.

Over the years many changes were made including changing the name to "Client's Security Fund." Recently the Board of Governors amended the bylaws to change the name to the Client's Security Program. Funding for the program comes from the Association general fund created from member dues. Previously, the Association had dedicated up to $500,000 as the Client's Security Fund. However, in those years when the "Fund" paid out more than it earned in interest and recovered in restitution, the excess payouts contributed to a budget deficit. In the future, a specific amount, sufficient to pay all anticipated claims in any given year, will be part of the Association's annual budget.

During 1988, the Board of Governors approved a variety of applications for reimbursement, for example:

- Client paid an advance fee to a lawyer of $850. Lawyer billed client $178.50, and was then suspended and disappeared without refunding unearned fee. Client was given $671.50.
- Lawyer was convicted of first-degree theft of client funds from 15 clients. Clients were given a total of $50,000.
- Lawyer who had been suspended one year earlier accepted $168 from client as fees. When suspended lawyer refused to return money, client was given $168.

Client's security funds were first created in New Zealand in the 1920s, and the idea slowly spread until the first security program in the United States was established in Vermont in 1958. In 1959 the American Bar Association recommended that all bars establish client's security funds. Today all states except for Maine have some form of client's security program. They operate in a variety of forms. Some, like Washington's, are established by a bar association and financed through member dues. Others are established by court rule or statute and are financed by mandatory assessments on lawyers. A few have attempted to rely upon voluntary contributions.

The underlying philosophy for client's security programs is that the legal profession has an obligation for the protection of clients who place their trust in lawyers and are, therefore, vulnerable to the rare dishonest lawyer who breaches that trust. Such dishonesty taints the public trust on which the profession depends. Client's security programs help to maintain the profession's reputation for honesty and trustworthiness in handling client money and property.

Where possible, the Bar Association seeks to recover those funds paid out to clients from the lawyers involved. Restitution has been collected in some instances, approximately $65,000 to date. Restitution generally occurs only when a disbarred lawyer seeks reinstatement or as the result of court-ordered restitution following a criminal conviction. Partners of dishonest lawyers may also be liable for restitution. Although the Association requires subrogation agreements from all beneficiaries of the fund, other avenues of recovery from lawyers for whom claims are paid are seldom worthwhile pursuing.

Payments are made solely at the discretion of the Board of Governors. The

Board appoints the Client's Security Program Committee to review applications and to make recommendations to the Board. The committee currently consists of ten lawyers and two nonlawyers. Applications are investigated by Bar counsel, since any allegation of dishonest conduct by a lawyer involving pecuniary loss to a client would also be the subject of a disciplinary investigation. However, since many applications are received after a disciplinary investigation has been resolved by disbarment of the lawyer, they require independent investigation. In most instances, no recommendation will be made by the committee until a disciplinary proceeding has been concluded. Also, the committee will not consider an application until the applicant has exhausted other avenues of recovery which may be available, such as recovery from a bank which honored an instrument with a forged endorsement.

No claimant has a right to recover anything from the program, and any payments made are deemed gifts. There are limitations on the amount that may be paid out. Originally, there was a limit of $10,000 that could be paid as to any one lawyer, and $5,000 that could be paid to one applicant. Over the years, the applicant limitation was abolished, and the limitation on the amount paid as to any one lawyer gradually increased to the present $50,000 limit. If the claims against a lawyer exceed $50,000, the payments are prorated. Since the $50,000 limitation was set in 1980, there have been four instances in which the total amount of approved claims exceeded the $50,000 limit, the most recent in 1988 when the approved claims concerning one lawyer totaled more than $105,000. Even though the Bar Association may not be able to fully compensate clients for losses sustained as a result of a lawyer's dishonesty, persons who receive gifts from the Association are always grateful that the Bar Association is able to give them even limited assistance.

In 1988, when WSBA active membership approximated 14,500 lawyers, 36 applications were made concerning 22 lawyers. During that year, 41 applications were decided upon, with 27 being approved for payment, and with a total of $75,776.94 being approved for payment.

By comparison, Oregon, an integrated bar with about 9,000 active members, has a Client's Security Fund which is regulated by the Legislature. The Oregon Statute provides that each active member may be assessed up to $15 per year, and at present the annual assessment is $13, up from $8 last year (the actual assessment is set by the Board of Governors and must be approved by the bar members). The Fund balance is about $300,000, and they have a limit of $25,000 per claim with no per-lawyer limitation. During 1988, Oregon resolved 12 Fund applications and paid out a total of $101,724.

Idaho, an integrated bar with about 2,500 lawyers, also has a statute directing that the Bar Association maintain a Client's Security Fund. That fund was established from member dues and has a balance of $30,000. If the balance becomes less than $30,000, each bar member may be assessed up to $10 per year. Payments from the Fund are limited to $5,000 per incident and $10,000 cumulative per lawyer. During 1988, Idaho decided eight fund applications and paid out a total of $11,084 to three of the applicants.

California, the largest integrated bar with more than 100,000 members, has a Client's Security Fund which is also regulated by the state Legislature. Each bar member is assessed $25 annually, and the Fund now has a balance of about $4,000,000, which also finances a full-time staff of three attorneys, one paralegal and support staff. They limit payments to $50,000 "per course of dishonest transaction," with no per-client or per-lawyer limit. They had 820 CSF applications in 1988, resolved 613 applications and awarded approximately $1.4 million to 257 applicants.

Since the first gift was made from the WSBA Fund in 1962 to the present, more than $525,000 has been given to clients of 74 lawyers. At the date these gifts were paid, the lawyers ranged in age from 32 to 81 and had practiced in Washington from four to 51 years. Most were disbarred, although 13 were suspended, four transferred to inactive status; one was permitted to resign, and six were deceased.

The ability of the Bar Association to provide an avenue of recovery for victims of the rare dishonest lawyer is important to the continuing public faith in the legal profession. "Discipline without reimbursement of victims does not meet the profession's responsibility to itself and the public."[2] □

[1] WSBA bylaws Art. XI, §2.

[2] Comment, ABA Proposed Model Rules for Clients' Security Funds, draft February 25, 1989.

1989 WSBA Member

by **George Scott**
WSBA Director of Public Affairs

In April the Board of Governors mailed a comprehensive six-page survey to all 14,634 members of the Bar to get an evaluation of 42 WSBA programs ranging from legislative lobbying to Tel-Law, the *Bar News*, *Resources*, *Olympia Report*, CLEs, and group buying services. By the March 30 cut-off, 3,908 had been returned, a 26.7 percent response. There were 20 "closed-end" questions with stipulated alternatives, two of which had 20 subparts, for a total of 172 possible alternatives. There were six "open-end" questions to which any response could be made, and four queries had both features. CLEs — which everyone is exposed to, the *Bar News* — which 88 percent read regularly, *Resources* — the WSBA directory, and *Olympia Report* on the Legislature (with readerships of 59 and 57 percent, respectively), are of general interest. Most "internal" programs are designed for a broad array of member needs and are used by smaller segments of the Bar. For instance, six percent use the WSBA Credit Union, 18 percent the "Citizen Rights" pamphlets, 4.8 percent the Lawyers' Assistance Program, and 9.7 percent the Fee Arbitration Service. Some respondees were "amazed" at the range of programs available to support and improve their practices. The Board's three prime objectives, gaining an appraisal of offerings, learning of unmet needs and letting members know of the services available to them, were fully met.

Not surprisingly, offerings for the profession (like the *Bar News*) are better understood than those directed at the public (like the Speakers Bureau, or Tel-Law). Virtually all of WSBA's programs got commendable to superior rat-

Part I
Closed-end Questions on Member Services
(Percentages Rounded)

	Percentage of Respondents Using Program	*Perceived Importance* (Percent Placing Program in the Top 3 of 7 Possible Ratings)
Bar News	88	65
Credit Union	9	12
Citizen Rights Pamphlets	18	34
Lawyers' Assistance Program	5	43
Lawyer Referral Service	22	53
Fee Arbitration Service	10	47
Legislative Lobbying	22	41
Ethics Hotline	20	52
Resources	57	65
Speakers Bureau	7	19
Olympia Report	57	41
Mentor Program	10	27
DeNovo	51	27
WSBA-Sponsored Malpractice Insurance	32	53
Group-Buying Services	31	20
Computer Network	33	34
Credit Cards	18	12

Survey: What We Learned

ings, and some "outstanding" ones. The validity of the poll was confirmed by the facts that demographic ratios of age, location, gender and practice emphasis corresponded closely with what was already known. It may be that trial lawyers participated more, in part because of concern with social issues, tort reform and the Novack Commission's recommendations. In reviewing a 45-page analysis on Saturday, May 20, the Board was careful to evaluate responses to each subject individually, recognizing WSBA's programs are not comparable to the extent that they serve distinctly different needs and opportunities.

Part II, on the Convention, confirmed Seattle, Vancouver and Honolulu as the best-liked places for the Convention. Some sentiment was shown for keeping the meeting in the state to save time and expense, and out of loyalty to the local economy.

There is growing interest in seminars on support systems and law office management, coordinating careers and family life, and requests for "current topics" and "update" sessions. Pensions, profit-sharing, personnel management, personal investments, marketing, and the "law office of the future" may not have been touched on in law school but are now seen as necessities of the successful practice.

A question which asked respondents to name two issues facing the profession in the immediate future, drew the most dramatic and decisive results. Sustaining professionalism and maintaining credibility with the public, and complimentary calls for sophisticated public relations by the WSBA to educate and orient the public led the list of concerns. Preserving the independence of the profession by "avoiding fee regulation," and the more dubious aspects of tort "reform," or calls for rejection of the Novack Commission's recommendations were also at the forefront.

Another question asked, "What would you like to tell the Board of Governors?" A significant segment of the Bar is worried about the affordability of legal services for both the poor and the middle class, and urged a redoubling of pro bono services.

Court congestion is a primary frustration, especially in the largest counties. Another is the performance demands of large firms. Eighteen percent of the Bar is now in firms of 50 or more, up perhaps ten times in a decade. Advice on adjusting to practice area concentration and requests from small firms and solo practitioners on how to survive it point to a widening span of needs across the WSBA spectrum.

The questionnaire was an excellent reminder of what the Bar offers. It will aid the Board in building the new budget, and focused key concerns. The survey confirmed a more competitive, diverse and diffuse "market," and intensified pressures from the public.

The Board will keep current by topical "mini-polls" on tear-out sheets you will periodically find in the *Bar News*. The Board and staff now have a broad and revealing agenda of opinions to act on. We thank you. ☐

Part II
Open-end Questions

Q. 11 *Favored Topics for Annual Meeting*
(The most preferred subjects, in order of demand)

Personal Injury
Trial Practice
Computers
Business
Evidence
Family Law
Insurance
Law Office Management
"Nuts and Bolts"
Real Estate
Taxation
Updates

Q.22 *"What are the two major issues facing our profession you believe the WSBA should respond to over the next few years?"* (In rank order)

Professionalism/ Public Confidence
The need for expanded public relations (by WSBA)
The availability of malpractice insurance
Recommendations of the Novack Commission
(most respondents opposed them)
Challenges to fee-setting, or, fee regulation
Questionable tries at "tort reform"
The need for renewed emphasis on ethics
An "excess" of attorneys
Unauthorized practice of law
"Legislative dominance"
Regulation

Q.29 *"Please list your two primary areas of practice."*

28 % Trial Practice
21 % Corporation/ Banking/ Business
25 % Real Property, Probate and Trust
11 % Family Law
7 % Criminal
4.7% Insurance
4.2% Labor
3.7% Environmental, Land Use
3.2% General
1.8% Municipal
1.8% Creditor/ Debtor

Lawyer, Save Thyself

by **Another Metropolitan Lawyer**

A few years ago, personality issues didn't just inhibit my practice of law — they stopped it. Work and love meant problems, not fulfillment. The order of the day was panic at work and fear of failure. I saw my calm and courteous colleagues as odd; those who had a pretty good sense of humor and fun seemed strange. I assumed that they were blind to the anxiety in what they did, that they had no feelings for — or desire to serve or rescue — their clients.

What I didn't know was that if anyone needed to be rescued, I did. I chose abusive bosses and stuck it out, loyal to the bitter end. I kept pushing myself, since I had "so much to learn." I was constantly over-committed without handling it well. The resulting anxiety provoked irritation in others, so I would drive myself harder in order to please them and make up for the irritation. This cycle literally drove me to distraction, and it was compounded by personal losses.

Not much later, I married an abused friend, in part to rescue her. The marriage never got off the ground. I finally realized something important was wrong. The only other thing I knew was that I lacked confidence, although my friends said I was smart, alert, and could think on my feet — in short, that I could be a good courtroom attorney. All I needed was more experience and "more confidence." I had a problem, but I didn't know what to do about it.

I talked about this with a friend and mentioned that one of my relatives, a grandparent, had an alcohol problem. His ears perked up. When I joked that with my problems maybe I should emulate my grandparent, he didn't laugh much, but his eyes got bigger.

"Just a minute," he said. He walked to his room and brought back a plain brochure entitled *Adult Children of Alcoholics*.

"My parents aren't alcoholic!"

"But your father's pretty up and down, isn't he, and that doesn't help you. And now I hear your grandfather drank."

I looked the brochure over. The text defined lack of confidence (and panic and insecurity) through a list of character traits. I "won," with a score of 12 out of 13 traits.

I began to attend some large general ACOA meetings. There I met people as diverse as unhappy executives and street addicts trying to avoid the last overdose, all of whom shared a common problem: Somewhere, parents or close caretakers had had emotional problems which they had passed on to us. We learned those problems in our guts; it was beyond our conscious control. Now we needed to change. This was a raw democracy that few acknowledged.

I soon attended smaller ACOA meetings for lawyers, since I had started to feel self-conscious in the general meetings — How could my problems compare with those of the addict fighting for his life or the exec fighting for his company? (I now think we were all fighting for much the same thing, but that's another story.)

The lawyer group was most helpful, after an initial period of terror — I kept thinking, "I'll never get a better job when the grapevine finds out I have a problem. They are going to laugh at this, and I'll never be respected again." The terror passed. The confidentiality of the meetings has been strictly respected, a new model of trust for me. The shared stories have provided common themes and contacts for difficult times and a better sense of perspective to ease anxieties. And now I'm working with lawyers who reward my good qualities with genuine interest in my development, in part because I've had another place to discuss and leave my problems for a time.

Together with the meetings, some therapy and a friend's observations have helped. My friend believes that we act on our self-image much like any other symbol, but that it maps out much of our behavior because we learn it instinctually. Instinct helps insure our species' survival, but when basic learning includes self-abuse, it is counterproductive and has to be relearned. We can't easily see ourselves on this level, though, so we often need the reports of others to help us do that relearning.

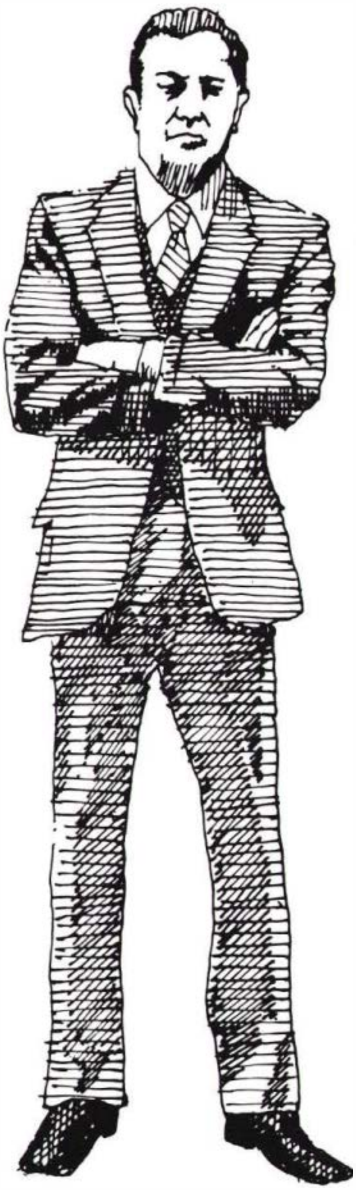
It is on this level that the lawyer's ACOA group has helped me the most: to learn how I feel about myself; to see my family with the help of other, similar eyes; to begin to replace my old self-image with a healthier one; to learn the limits of what I can realistically do so that I am not rescuing others and myself most of the time. The idea that, in part, our family problems stem from a natural process of survival has also helped reduce resentment towards my ancestors and lessen ideas of blame and shame.

I'm not out of the woods yet, but I'm finding some good paths in the forest. I see a better life ahead. I see the possibility of becoming a calm, courteous lawyer — who even has some fun. How strange.

A weekly noon meeting of Adult Children Anonymous (ACA) for lawyers is being held on Thursdays, 12:15-1:15 in the Bishop's Room of the First United Methodist Church, 811 Fifth Avenue. To get to the Bishop's Room, proceed up the stairs on the right-hand side of the entrance foyer. At the top of the stairs, go right (south) to the end of the second floor hall.

If this behavior pattern sounds familiar, LAP can provide additional assistance — for either you or your fellow lawyer. We are at (206) 448-0605.

Attorney Avoiding Power Liability



by **Kurt Becker**

The implication of liability on attorneys in the decision from the Bankruptcy Appellate Panel for the Ninth Circuit (the "BAP") in *Commercial Recovery, Inc. v. Mill Street, Inc. (In re Mill Street, Inc.)*, 96 Bankr. 268 (Bankr. 9th Cir. 1989), should pique the interest of many practitioners in the Ninth Circuit and will no doubt simply pique others. *Mill Street* lends support toward imposing so-called "attorney avoiding power liability" under the preference and fraudulent transfer provisions of the United States Bankruptcy Code (the "Bankruptcy Code"), 11 U.S.C. §§ 101-1330, in common situations where attorneys handle funds on behalf of a client.

1. Common Situations.

It is not at all unusual for an attorney to collect funds on behalf of a client from a defendant of dubious solvency. The defendant's check is either forwarded directly to the client or deposited by the attorney in an account maintained pursuant to the Rules of Professional Conduct, in general, and RPC 1.15, in particular. In the latter situation, the attorney often remits a portion of the deposited funds to the client after deducting his or her fee in compliance with that rule. If the defendant who wrote the check later files a bankruptcy petition, the attorney is at risk under the preference and fraudulent transfer provisions of the Bankruptcy Code.

An attorney may similarly be at risk if (s)he receives funds from a client and then forwards the funds on behalf of the client to a third party. As an example, an attorney may represent the selling shareholders of a corporation. Just before a sale of their shares must close for tax purposes, a dispute arises concerning the corporation's obligation to a particular creditor. In order to close, the parties agree that the corporation will transfer funds to the trust account of the attorney for the selling shareholders pursuant to an escrow understanding. The purchase price for the shares is adjusted accordingly, and the funds are then to be disbursed once the dispute is resolved.

Because of the risk involved in such last-minute escrow situations, the attorney will frequently want to step out of the dual role as escrow agent and attorney as soon as possible. Nevertheless, by accepting the funds initially, the attorney remains at risk if the corporation later files a bankruptcy petition and the transfer of funds is set aside under the Bankruptcy Code.

2. Avoiding Powers.

Under the Bankruptcy Code, the principal avoidance provisions are the preference and fraudulent transfer provisions in sections 547, 548 and 544(b), respectively. The preference provisions place at risk transfers from the bankruptcy debtor to creditors made within certain periods in advance of the bankruptcy filing: 90 days, or one year if to an insider. The grant of a security interest without a contemporaneous exchange for new value or payments on stale invoices are common transfers that may be challenged if made within the preference period. The fraudulent transfer provisions of the Bankruptcy Code permit a trustee or debtor in possession ("DIP") to set aside transfers that are actually fraudulent and certain transfers deemed constructively fraudulent. Transfers facilitated by attorneys would most often be challenged under the constructive fraud provisions that allow the trustee or DIP to avoid preferential transfers to insiders and transfers that are made without any corresponding receipt of reasonably equivalent value.

3. Recovery Under Section 550.

Unlike the prior Bankruptcy Act, the post-1978 Bankruptcy Code distinguishes between the *avoidance* of transactions under the Bankruptcy Code and *recovery* from various potential defendants once a transaction is avoided. Section 550 of the Bankruptcy Code fingers the persons from whom avoided transfers may be recovered. Broadly speaking, it permits a trustee or DIP to attempt to recover from anyone who touches the money or property in the avoided transaction. Under section 550(a)(1) of the Bankruptcy Code, a trustee or DIP may recover a judgment for the property or its value from either the "initial transferee" or the "entity for whose benefit such transfer was made." Section 550(a)(2) permits recovery from any "immediate or mediate transferee of such initial transferee."

Section 550(b) provides a defense in actions under section 550(a)(2) against mediate or immediate transferees. The trustee or DIP cannot recover a judgment from such subsequent transferees who take for value in good faith and without knowledge of the avoidability of the transfer. Section 550(b), however, does not provide such a BFP defense for "initial transferees" sued under section 550(a)(1).

4. Case Law and the Drift Toward "Plain Meaning."

In the past, cases under section 550 frequently refused to apply the plain meeting of section 550 against innocents who fell within the "initial transferee" vise. Various judge-made doctrines were invoked to read a BFP-type defense into section 550 and to avoid harsh results. Certain cases labeled innocent defendants "mere conduits." *See, e.g., Nordberg v. Societé Generale (In re Chase & Sanborn Corp.)*, 848 F.2d 1196, 1201 (11th Cir. 1988). *Cf. In re Harbour*, 845 F.2d 1254, 1258 (4th Cir. 1988) (refusing to ignore "literal meaning" of section 550(a)(1) of Bankruptcy Code where defendant did not act in good faith). The BAP sometimes recognized the "mere conduit" defense "where a transfer is *solely for the purpose of benefiting the eventual transferee*." *John Mitchell, Inc. v. Beckman (In re Dietz)*, 94 Bankr. 637, 643 (Bankr. 9th Cir. 1988) (emphasis in original). In preference cases, the BAP also implicitly recognized an "earmarking" defense to exculpate certain preference defendants. *In re Sierra Steel, Inc.*, 96 Bankr. 271, 274-75 (Bankr. 9th Cir. 1989).

Current decisions under section 550 of the Bankruptcy Code, however, are drifting toward today's premier approach to statutory interpretation: plain meaning. This drift is most prominent in the insider-guarantor preference case.

In the typical insider-guarantor case, before any bankruptcy filing, a guarantor-president makes sure that a loan to the bank that holds his guaranty gets paid by the corporation. Where payments to the bank fall within the window from one year to 91 days in advance of the bankruptcy filing, trustees or DIPs may sue the bank to recover the payments. The theory is that the payments to the bank discharged the insider from his contingent liability on the guaranty to the detriment of unsecured creditors.

Most courts have been unable to stomach the consequences resulting from a literal application of section 550 of the Bankruptcy Code: the bank, as an "initial transferee," must disgorge payments on a loan guaranteed by the insider. An increasing minority of cases, however, permits the trustee or DIP to recover from the bank under the literal language of section 550(a)(1). *See, e.g., Levit v. Ingersoll Rand Financial Corp. (In re V.N. DePrizio Construction Co.)*, 86 Bankr. 545, 551-552 (N.D. Ill. 1988) ("clear language . . . literal meaning of section 550(a)(1)" permits recovery from all initial transferees); *aff'd*, 1989 U.S. App. LEXIS 6965 (7th Cir. 1989); *Lowrey v. First National Bank of Bethaney (In re Robinson Bros. Drilling, Inc.)*, 97 Bankr. 77, 82 (W.D. Okla. 1988) ("literal interpretation of Bankruptcy Code ... most persuasive and compelling"), *appeal docketed*, No. 88-8069 (10th Cir.); *Coastal Petroleum Corp. v. Union Bank & Trust Co. (In re Coastal Petroleum Corp.)*, 91 Bankr. 35, 37-38 (Bankr. N.D. Ohio 1988) ("unambiguous language of § 550 ... clear ... also unconditional" and bank must pay); *Mixon v. Mid-Continent Systems, Inc. (In re Big Three Transportation, Inc.)*, 41 Bankr. 16, 20-21 (Bankr. W.D. Ark. 1983) ("unambiguous language ... literal meaning" and lender liable).

In light of this drift of the insider-guarantor cases toward literal application of the "initial transferee" language of section 550, attorneys have reason for alarm in those situations where they could be labeled "initial transferees." In the ensuing preference or fraudulent transfer actions, judge-made defenses such as "mere conduit" or "earmarking" may not spare attorneys or may disappear altogether under the plain-meaning thrust of interpretation of the Bankruptcy Code.

5. *Mill Street.*

In *Mill Street*, the BAP refused to permit a collection agency to say that it was a "mere conduit." The collection agency had received $5,317.66 by executing on a bank account of a debtor corporation shortly before bankruptcy and subsequently remitted $3,722.37 to the creditor it serviced. The creditor later returned the $3,722.37 to the DIP, but the collection agency held on to the rest as its fee. The DIP sued to recover the collection agency's $1,595.29 fee.

The BAP stated that, because the account was assigned to the collection agency, the underlying creditor retained only a beneficial interest in the funds and the collection agency was the legal owner of the claim. The BAP held that the collection agency was an "initial transferee" under section 550(a)(1) and affirmed the judgment requiring the collection agency to disgorge its fee to the DIP. *Mill Street*, 96 Bankr. at 271.

No doubt the arguments are stronger in the attorney trust fund situations for application of judge-made defenses, such as "mere conduit" or "earmarking." Attorneys in the Ninth Circuit, however, will have some difficulty distinguishing situations where they hold legal title to funds in their trust accounts for the benefit of their clients from a *Mill Street* situation where a collection agency holds a legal interest in the claim for the benefit of its client. Even where successful, the attempts to distinguish the thrust of *Mill Street* may prove unavailing as the onslaught of plain-meaning cases continues to erode the possible judge-made defenses to attorney avoiding power liability under section 550.

6. The Way Out.

Without ignoring the plain meaning of the Bankruptcy Code, the Seventh Circuit has suggested a way to avoid the absurd results created by a wooden application of section 550 against conduits such as attorneys or banks who do nothing more than receive and forward funds. The Seventh Circuit parses the word "transferee" in section 550 and refuses to impose liability on those parties to a transaction who merely touch the money:

> [W]e think the minimum requirement of status as a "transferee" is dominion over the money or other asset, the right to put the money to one's own purposes. When A gives a check to B as agent for C, then C is the "initial transferee"; the agent may be disregarded....
>
> We are aware that some courts say that an agent ... is an "initial transferee" but that courts may excuse the transferee from repaying using equitable powers. This is misleading. "Transferee" is not a self-defining term, it must mean something different from "possessor" or "holder" or "agent." To treat the "transferee" as "anyone who touches the money" and then to escape the absurd results that follow is to introduce useless steps.

Bonded Financial Services, Inc. v. European American Bank, 838 F.2d 890, 893-94 (7th Cir. 1988). When the Ninth Circuit makes a similar pronouncement, attorneys in Washington will rest easier. They may even once again not hesitate to facilitate transactions by depositing moneys in their trust accounts for later distribution on behalf of their clients. □

***Kurt Becker** is an associate with the firm of Perkins Coie in Seattle. He was graduated with honors from the University of Michigan Law School in 1986 and the University of Illinois at Urbana-Champaign in 1981. Becker represents debtors and creditors in the areas of insolvency, business reorganizations, and bankruptcy.*

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

Community property. Parties to dissolution action had lived together before marriage, then were married. While they lived together five months before marriage, husband purchased land for their home with down payment from his separate funds, and both parties contributed separate funds to improvements before and after marriage and community funds during marriage. Wife, having much larger income and savings than husband, contributed far more of both kinds of funds than he did. They separated and dissolved marriage after some 18 months. Trial judge, adopting doctrine of ***In re Marriage of Lindsey***, 101 Wn.2d 299, 678 P.2d 328 (1984), treated above realty as if it were community property, ordered it sold, and ordered wife to be guaranteed proceeds of some $4,000 more than her separate contributions. Balance of proceeds to be distributed according to separate-community nature of contributions. *Held*, affirmed in principle, but modified and remanded for reduction in wife's guaranteed allowance, so that it will not be more than her separate contributions. ***In re Marriage of DeHollander***, 53 Wn.App. 695, 770 P.2d 638 (1989).

— *T. R. Andrews*

Hunters Run Revisited: The Ninth Circuit Speaks

by **Mark J. Giske**

What must a lien claimant do to protect its rights in bankruptcy? That was the issue raised in a recent article in the *Bar News* entitled, "On the Run After Hunters Run: Perfecting Mechanic's/Materialmen's Liens in Bankruptcy." The author criticized a reported decision by Judge Steiner, bankruptcy judge for the Western District of Washington in Seattle.

In the absence of an intervening bankruptcy, a statutory lien claimant must file the notice of lien within a time certain, usually with the county auditor, and has a narrow window of opportunity to bring a foreclosure action before the lien expires. Judge Steiner held in *In Re Hunters Run Ltd. Partnership* that a mechanic's lien claimant who had properly filed a notice of claim of lien on the debtor's property before the debtor filed bankruptcy, but failed to enforce within the statutory eight-month period, had lost his lien rights. 70 B.R. 297 (Bankr. W.D. Wash., 1987). The court suggested that the lien claimant should have obtained a lift of stay to timely commence a foreclosure action in state court. *Id* at 300. The case was particularly significant because it was followed by a majority of the bankruptcy judges in the Western District of Washington.

Before the ink dried on the *Bar News* article, the Ninth Circuit reversed the district court, which had upheld Judge Steiner's decision. *Miner Corp v. Hunters Run Ltd. Partnership* (9th Cir. Opinion No. 88-3735, filed May 26, 1989). The panel held that regardless of the distinction made in the lower courts between a pure statute of limitations and a statute of duration, by its plain language, Section 108(c) of the Bankruptcy Code tolls the running of either, so that an intervening bankruptcy by the debtor tolls the statutory eight-month period for enforcing a mechanic's lien. The court found unavailing the argument that 108(c) operates only to toll "claims against the debtor" and not liens against the debtor's property.

The limits of *Hunters Run* are already being tested. A factually similar case, but involving a timber lien, awaits the panel's decision. *Jackson v. Rainier National Bank, et al.* (9th Cir., No. 88-3597, argued and submitted June 8, 1989). A ruling in favor of the lien claimant in *Jackson* virtually assures that the nearly two dozen various types of statutory liens in Washington that have an enforcement "window" will be similarly treated.* Title 60 RCW.

Hunters Run is good news for other creditors as well. The IRS, notorious for inactivity except in its collection department, can breathe easier knowing that its special liens for estate and gift taxes are immune from attack as statutes of duration, not tolled by an intervening bankruptcy. I.R.C. §6324.

Hunters Run, however, does not excuse a statutory lien creditor or creditor's counsel from diligence. When a debtor's bankruptcy precedes the filing of a notice of claim of lien, reliance on §108(c) to toll that time period is misplaced. The good news is that most statutory liens fall within the limited exception that allows a claimant to file his or her notice postpetition without a lift of stay. *See*, §362(b)(3) and §546(b) of the Bankruptcy Code. Counsel should also be aware that there are several events which will again trigger the running of the statutory period such as abandonment of the property, a lift of stay, dismissal, case closure or discharge, in which case the lien creditor may have only 30 days to act. ☐

***Mark J. Giske**, a Tacoma attorney with Mann & King, concentrates his practice in creditor/debtor litigation. He represented the appellant in* Jackson v. Rainier National Bank.

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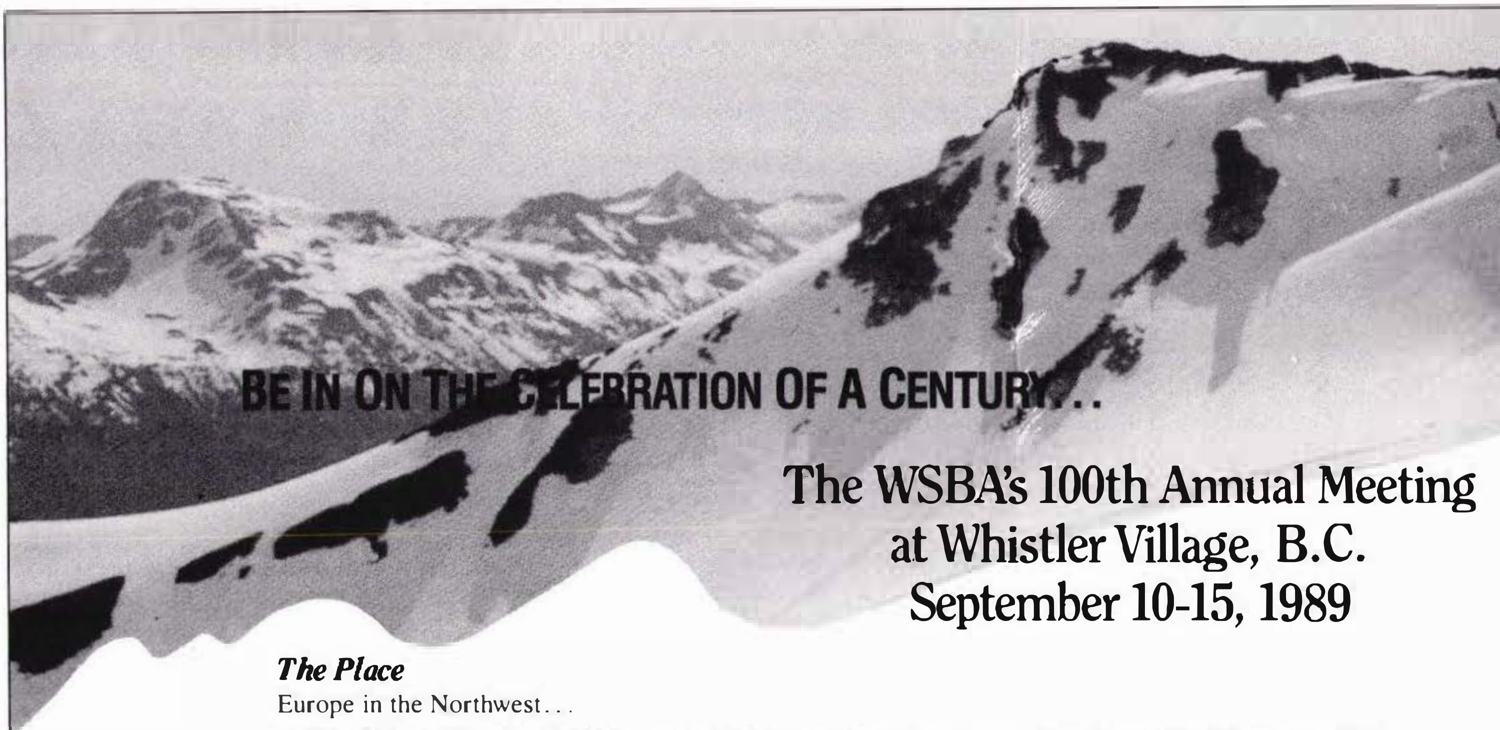
*At press, the author received a Ninth Circuit memo, ruling in favor of *Jackson* and reversing the Western District of Washington (Tacoma).



BE IN ON THE CELEBRATION OF A CENTURY...

The WSBA's 100th Annual Meeting at Whistler Village, B.C. September 10-15, 1989

The Place

Europe in the Northwest...

We will be celebrating the WSBA's 100th birthday at Whistler Village, 75 miles north of Vancouver, B.C. — less than a five-hour drive from Seattle.

The drive along Howe Sound — a quarter of the distance between Vancouver and Whistler, a fjord banked by 6,000-foot snowcapped peaks — makes the trip worth it. Whistler is *the* destination ski resort in the Northwest, a $400 million architectural marvel — as close as you can come to Europe in the Northwest.

You can ride at water level by B.C. Rail; (604) 984-5246 for information. Trains leave from the North Vancouver station just east of the Lions Gate Bridge and arrive at a rustic terminal a mile from your hotel in Whistler. Shuttles are available.

Programs

Need to know about "getting, keeping, billing" clients? "Tax tips"? "Criminal law in the courtroom"? The latest information in your practice emphasis? The program meets your demands for practical help voiced in the March *Member Survey*.

Featured Speaker

Fred Graham, former CBS senior legal correspondent, will offer an overview of developments in the profession.

Special Events

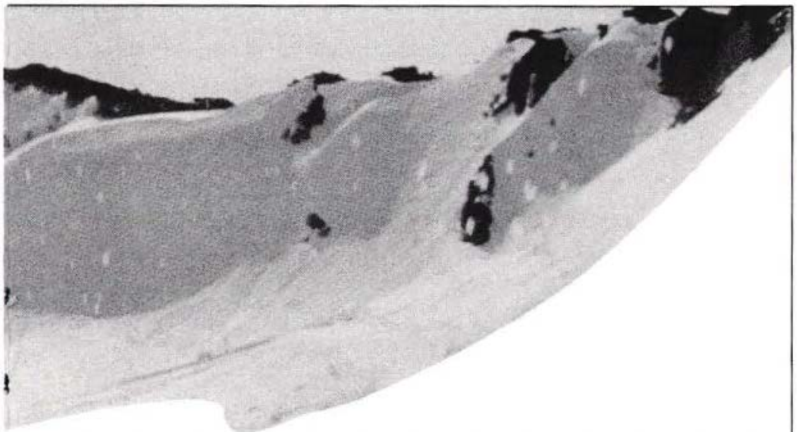
On the serious side, Dr. Andy Benjamin (Ph.D., LL.D.) Director of WSBA's Lawyers' Assistance Program will give insights on how to identify alcohol and substance abuse by your spouse and colleagues, and what to do about it (Monday, September 11).

The Village Square Busker Street Festival, featuring continuous entertainment, begins mid-afternoon (Tuesday, September 12). This is Whistler's answer to the "Bite of Seattle" — and more!

Begin at the Whistler Conference Center September 10 at 5:30 p.m. How can you challenge Robert Fulghums' assertion — "All I Really Need to Know I Learned in Kindergarten" — if you haven't heard him? (Thursday, September 14).

Adventurers will want to take in the mile-high mountain top barbecue, or a trip on the Lillcoet Express to the gold mines of the Caribou. There will be minibus tours to Whistler's cliffhanging chalets. See the state of the art in mountain architecture in a "village" which has grown to 10,000 people.

For golfers there's the WSBA championship (Tuesday, September 12), and there's the Baseball Tournament (Friday, September 15). It all ends when the Centre becomes a mining village complete with Klondike Kate's Dance Hall Show.



Reservations

Reservations are a must. There is an incredible variety of accommodations, from stone-clad hotels to chalets, but only 2,000 rooms. Reservations are available only through the State Bar (206) 448-0441 in the order received as long as space is available. Ask for the WSBA "second notice" brochure if you need it to review prices and options — and be present at something that will happen only once in our LIFETIME.

Why go to the annual meeting? There are literally a hundred good reasons . . . even if you don't need the rest, refreshment, time away. . .

1989 WSBA Convention CLE Seminar Schedule

Monday, September 11

8:30 a.m. - 11:30 a.m. Law Office Economics & Management Section **1**

Clients: Getting, Keeping and Billing

Section Chair:
Lawrence B. McNerthney, Tacoma
Program Chair:
W. L. Weigand, Jr., Yakima
Topics and Speakers:
"Law Firm Marketing—How to Attract Clients"
Jay B. Roof, Poulsbo
"Practical Tips on How To Keep Clients"
Stephen W. Horenstein, Vancouver
"Legal Basis for Billing of Legal Fees in British Columbia"
Jack Edwards, Vancouver, B.C.
"Rethinking Hourly Billings: Alternative Methods of Valuing Legal Services"
Richard C. Reed, Seattle

8:30 a.m. - 11:30 a.m. International Law & Practice Section and Intellectual & Industrial Property and Practice Section **2**

International Business Transactions: Pitfalls and Practice Tips

Section Chairs:
International Law:
John M. Monahan, Seattle
Intellectual and Industrial Property:
Lynne E. Graybeal, Seattle
Program Chairs:
International Law & Practice Section:
Richard M. Rawson, Seattle and
Robert H. Huneke, Spokane
Intellectual & Industrial Property Section:
Lynne E. Graybeal, Seattle
Topics and Speakers:
"Laws and Regulations You Need to Know When Dealing in International Transactions"
Richard M. Rawson, Seattle
"Tips for Drafting Successful Agreements for Clients with International Business Partners"
Melvyn J. Simburg, Seattle
"Going Into the World Market: Protecting Intellectual and Industrial Property Rights"
Jerry E. Nagae, Seattle
David H. Deits, Seattle
"Impact of the U.S.-Canada Free Trade Agreement"
John M. Monahan, Seattle
Panelists:
Alan C. Rither, Richland
Robert H. Huneke, Spokane
Lynne E. Graybeal, Seattle

2:00 p.m. - 5:00 p.m. Taxation Section **3**

Tax Pitfalls for the NonTax Lawyer

Section Chair:
Alan H. Kane, Seattle

Program Chair:
James H. Bush, Tacoma
Topics and Speakers:
"Advising the Retirement Plan Fiduciary"
Devitt D. Barnett, Seattle
"Retirement Planning for Lawyers and Law Firms"
Richard J. Birmingham, Seattle
"I.R.C. Section 89 Compliance"
James H. Bush, Tacoma

Tuesday, September 12

9:00 a.m. - Noon Corporation, Business & Banking Section 4

The New Corporations Act

Section Chair:
Andrew H. Zuccotti, Bellevue
Program Chair:
Kevin C. McMahon, Seattle
Topics and Speakers:
"Overview of Philosophy and Process or CARC in Regard to the RMA; Spotlight on Major Differences"
Kevin C. McMahon, Seattle
"*Chapters 1-6:* General; Incorporation; Purposes and Powers; Name; Office and Agent; Shares and Distribution"
Bert H. Weinrich, Jr., Seattle
"*Chapter 7:* Shareholders"
Professor Douglas M. Branson, University of Puget Sound School of Law, Tacoma
"*Chapter 8:* (Officers and Directors) Except Conflicts and Indemnification"
Professor Douglas Branson, University of Puget Sound School of Law, Tacoma
"*Chapter 8:* Indemnification"
Bert H. Weinrich, Jr., Seattle
"*Chapter 8:* Conflicts"
Karl J. Ege, Seattle
"*Chapters 10 - 13:* Amendment; Merger and Share Exchange; Sale of Assets"
Karl J. Ege, Seattle
"*Chapters 14 - 16:* Dissolution; Foreign Corporations; Records and Reports"
Kevin C. McMahon, Seattle

9:00 a.m. - Noon Administrative Law Section 5

Presenting an Effective Case Before An Administrative Agency

Section & Program Chair:
Richard A. Finnigan, Tacoma
Topics and Speakers:
"Administrative Law: Update 1989"
Dean James M. Vaché, Spokane
"Discovery in Administrative Proceedings"
Patrick H. McIntyre, Seattle
"Effective Oral Advocacy"
Jack R. Davis, Seattle
"The Administrative Record and Preparation of Findings and Conclusions"
Richard A. Finnigan, Tacoma

Wednesday, September 13

8:30 a.m. - 11:30 a.m. Family Law Section 6

Taxation Issues in Divorce Proceedings

Section Chair:
Mary H. Wechsler, Seattle
Program Chair:
John R. Stichman, Vancouver
Topics and Speakers:
"Tax Aspects of Divorce"
Professor Gary C. Randall, Gonzaga University School of Law, Spokane
"Strategies and Approaches to Property Division and Maintenance Issues from the Perspective of Husband and Wife, Including an Analysis of Tax Issues for Various Fact Patterns"
John R. Stichman, Vancouver
W. James Kennedy, Yakima
Professor Gary C. Randall, Spokane

8:30 a.m. - 11:30 a.m. Public Procurement & Private Construction Law Section 7

Recent Developments in Washington Construction Law

Section Chair:
Geoffrey P. Chism, Seattle
Program Chair:
Christopher J. Soelling, Seattle
Topics and Speakers:
"Use of Construction Schedules in Proving Damages"
John P. Ahlers, Seattle
"AAA Construction Rules and Practices of Interest to the Advocate"
Patrick Mead, Seattle
"Minority and Women in Business Set-asides After *City of Richmond v. Croson*"
William G. Jeffery, Seattle
"Legislative Changes Affecting the Construction Industry"
Kenneth G. Yalowitz, Seattle
"Construction Case Law Update"
Christopher J. Soelling, Seattle

2:00 p.m. - 5:00 p.m. Criminal Law Section 8

Criminal Law in the Courtroom

Section & Program Chair:
Professor John A. Strait, Seattle
Topics and Speakers:
A Dramatization of the *State of California v. Clarence Darrow* For Attempted Bribery—Los Angeles Superior Court No. 7373 (1912)
"Introduction"
Gilbert H. Levy, Seattle
"Opening For the State"
William H. Redkey, Jr., Seattle
"Direct Examination of Bert Franklin"
Robert H. Whaley, Spokane
William H. Redkey, Jr., Seattle
"Cross Examination"
Michael A. Frost, Seattle
Robert H. Whaley, Spokane

"Direct Examination of John Harrington"
Mark E. Vovos, Spokane
William H. Redkey, Jr., Seattle
"Cross Examination of John Harrington"
Michael A. Frost, Seattle
Mark E. Vovos, Spokane
"Brief Discussion of Trial Tactics"
"Direct Examination of Clarence Darrow"
J. Adam Moore, Yakima
Michael A. Frost, Seattle
"Cross Examination of Clarence Darrow"
William H. Redkey, Jr., Seattle
J. Adam Moore, Yakima
"Closing Arguments for the State"
William H. Redkey, Jr., Seattle
"Closing Argument for the Defense"
J. Adam Moore, Yakima
"Brief Summary and Conclusion"
Gilbert H. Levy, Seattle
"Panel Discussion Regarding Ethics"
Professor John A. Strait, Seattle
Steven L. Olsen, Port Townsend
William H. Redkey, Jr., Seattle

Thursday, September 14

8:30 a.m. - 11:30 a.m. Creditor/Debtor Section **9**

What the Nonbankruptcy Lawyer Needs to Know About Bankruptcy

Section Chair:
Irvin W. Sandman, Seattle
Program Co-Chairs:
Frank L. Kurtz, Yakima
Irvin W. Sandman, Seattle
Topics and Speakers:
"General Issue Spotting/Leases/Contracts/Licenses/Suppliers
Irvin W. Sandman, Seattle
Mark D. Northrup, Seattle
"Lending Relationships/Documentation/Workouts/Remedies"
Peter L. Slinn, Seattle
"Bringing and Settling Lawsuits/Domestic Relations/Clients in Trouble"
Matthew J. Anderton, Yakima
Frank L. Kurtz, Yakima

8:30 a.m. - 11:30 a.m. Indian Law Section **10**

Protection of the Reservation Environment and Treaty Resources

Section Chair:
Richard A. Du Bey, Seattle
Program Chair:
Professor Ralph W. Johnson, University of Washington School of Law, Seattle
Topics and Speakers:
"Tribal Civil Authority Within Reservation Borders and *Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation*"
Michael P. Mirande, Seattle
"Protecting the Reservation Environment Under Federal Law"
Richard A. Du Bey, Seattle
"How Indian Tribes Can Veto Off-Reservation Development"
Mason D. Morisset, Seattle
"Torts Involving Nonindians on Indian Reservations"
Michael E. Taylor, Nespelem

Friday, September 15

2:00 p.m. - 5:00 p.m. Litigation Section and Consumer Protection, Antitrust & Unfair Business Practices Section **11**

What Makes Jurors Tick: Strategies for Jury Persuasion

Section Chairs:
Litigation: Donald L. Law, Olympia
Consumer Protection, Antitrust & Unfair Business Practices: Hugh F. Bangasser, Seattle
Program Chairs:
Litigation Section:
Donald L. Law, Olympia
Consumer Protection, Antitrust & Unfair Business Practices Section:
Phillip D. Noble, Seattle and
Richard C. Siefert, Seattle
Topics and Speakers:
"How Do Jurors Make Decisions?"
"Juror Attitude and Experience Relevant to Contracts; Products Liability; Antitrust; Personal Injury; and Lender Liability Issues"
"Who Are Positive Jurors and How Do You Identify Them?"
"Demonstrative Exhibits—How to Make *Your* Exhibits Better (Five Factors to Consider; Developments in Video and Computer Animation for the Courtroom)"
Lead Commentator:
Dr. Dan Gallipeau, Rolling Hills Estates, California
Responding Panel:
The Hon. Robert J. Bryan, U.S. District Court, Tacoma
James M. Danielson, Wenatchee
Jerry R. McNaul, Seattle

2:00 p.m. - 5:00 p.m. Environmental & Land Use Law Section **12**

Recent Developments: Initiative 97; Sensitive Area Regulation; Municipal Liability

Section Chair:
Robert D. Johns, Seattle
Program Chair:
Richard L. Andrews, Bellevue
Topics and Speakers:
"Initiative 97 for the General Practitioner"
Jeffrey D. Goltz, Olympia
"Sensitive-Area Regulation"
James K. Pharris, Olympia
"Regulatory Takings"
Brent Carson, Seattle
"Recent Developments in Municipal Liability and SEPA"
Linda M. Youngs, Bellevue

CALENDAR

August 1989

11 Gender and Justice Task Force and The Minorities and Justice Task Force, Crystal Mountain Resort. *Sponsored by*: Washington Administrative Law Judges' Association. *For information*: (206) 464-7095.

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

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

September 1989

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

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

Events:

Whitewater canoe and kayak enthusiasts planning to attend the Convention are invited to contact attorney Sean Sheehan at (206) 684-8223 (office) or (206) 632-1301 (home) to make plans for some river time in the Whistler area.

Christian Legal Society will once again be holding a breakfast in conjunction with the Bar Convention, Friday, September 15 at 7 a.m. The location will be announced in the Convention program. As in past years, there will be a guest speaker. Make reservations by September 11 with Lyle Wilson, 910 - 164th Street Southeast, Mill Creek, WA 98012; telephone (206) 742-9100.

18 World Peace Through Law Section Meeting, The College Club, 505 Madison Street, Seattle. *For information*: Brian Linn, (206) 242-9876.

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 for the second issue following.)

Supreme Court of the State of Washington
Olympia, Washington 98504-0511

Each member of the Washington State Bar
is cordially invited to attend a
Ceremony of the Re-Dedication of the
Temple of Justice

The ceremony will be held in the Courtroom
Temple of Justice, Olympia, Washington
commencing at 2:00 o'clock in the afternoon
Monday, September 25, 1989

Reception Following

Bellingham, Washington, July 14-15, 1989

Present: President Bracelin and the Governors. Governor Bill Bergsten was absent the afternoon of July 15. *Also present:* C.C. Bridgewater, Jr. (Prosecuting Attorneys' Association); Frank Edmondson (Government Lawyers); Judge Francis Gavin (Superior Court Judges' Association); Dan Gottlieb (SKCBA Young Lawyers Division); Lowell Halverson (Legal Foundation of Washington); Lucy Isaki (SKCBA Trustees); John McKay (Young Lawyers Division); John J. Michalik (WSBA Executive Director); Judge Edward Reed (Court of Appeals); Lindsay Thompson (*Bar News* Editor); Gregg Tinker (WSTLA); and Robert Welden (WSBA General Counsel).

No Way, Novack: The big news this month was the most cryptic. Executive Director John Michalik told the Board he'd received word the Supreme Court had rejected the findings of the Novack Commission, exhaustively reported in this space over the last year, but had no particulars to report. Details should be available for next month's issue of the *Bar News*.

You Had To Be There: The Governors began their meeting with their customary executive session. Some write about it in their newsletters. The inquisitive should check around.

Good News For the *Bar News*' Ad Base: 908 people have signed up to sit the summer Bar examination.

Coming This Fall: The Six-Million-Dollar Bar Association: Governors Julie Weston, Bill Bergsten and Ron Gould unveiled the 1989-1990 WSBA budget. Out of several hundred pages of material, here are some highlights:

- *A surplus.* From last year's book deficit of $165,000, the new budget projects a turnaround to a surplus of $170,000, to be contributed to reserves. The '88-'89 budget has turned up a $280,000 surplus, which will also go into reserves.
- *A change in bookkeeping method.* From a cash basis to accrual basis accounting we go. This makes it easier to keep up with the actual state of the budget through the year, advocates say. Those of a suspicious turn of mind will doubtless say it's just to help cover the tracks of past excesses by making comparisons harder.

The new budget projects income of $6.28 million. Dependence on dues income has dropped below the 50% mark for the first time. $3 million will come from us. We'll contribute another $1.7 million indirectly, through the CLE department. The Bar exam will generate $477,000. Those are the big money makers. On the expense side, not much has changed from last year. The new budget is a hold-the-line affair designed to generate surpluses to put in reserve. However, there are a few changes. Three and a half staff positions will be added to the Association office staff: a part-time clinician for the Lawyers' Assistance Program, a desktop publishing person to bring more graphic design work in-house and maybe save some money now going to outsiders; another CPA for the spot audit and trust account review program, and a clerical person.

The big loser was the Young Lawyers Division, which took a $6,000 hit from the Budgeteers. Governor Jeff Tolman moved to restore the cuts, arguing that the YLD gets a tremendous amount done for less than the Governors spend on their monthly peregrinations each year. To no avail; this budget was wired. The motion failed for want of a second. Tolman also tried to restore a raise requested by the editor of the *Bar News* from the fraction granted to the full amount requested. That failed, 3-7. Then the budget was adopted. A fuller account of the budget will appear in a future issue of the *Bar News*.

Rule Changes: The Rules of Professional Conduct Committee came up with an amendment to RLD 1.1, which prohibits lawyers from hiring disbarred or suspended lawyers. They wanted to amend it to allow some hiring situations, and to replace Ethics Opinion 171 with one reflecting this change.

The rationale was that the rule was too Draconian. It could preclude a lawyer from representing a disbarred lawyer as a client. It could prevent disbarred lawyers from finding work by shutting them out of lesser positions in the legal system, and would prevent lawyers from keeping their skills honed in case they sought reinstatement.

Moving approval of the changes, Governor Don Curran noted that it would encourage rehabilitation of disbarred lawyers, while the rule's safeguards would still protect the interests of the public. Governors Jeff Tolman and Steve DeForest disagreed. "When you're out, you're out," DeForest said. "We need a bright line for this." Cowlitz County Prosecuting Attorney C.C. Bridgewater thought it would make dealing with the unauthorized practice of law harder. The Governors sent the proposal back for further work.

Next came amendments to RPC 1.14 and RLD Title 13, which would require trust accounts be kept in "approved" financial institutions. "Approved" means places which agree to report trust account overdrafts to the WSBA. The Governors approved it.

Where Is Senator Aiken When You Need Him? Grappling with the problem of the unauthorized practice of law continued. The UPL Committee had proposed a UPL office under the aegis of the Supreme Court some months ago. At this meeting the Committee reported the estimated cost of such an enforcement operation is projected to be $210,000 a year, and the Chief Justice thinks the WSBA should staff and fund it.

UPL Committee member Rick Ockerman said the proposal was intended to avoid antitrust, conflict of interest and PR problems by keeping the WSBA out of prosecuting competition. But with the Supreme Court tossing the issue back to the Association and county prosecutors disinclined to go after the unlicensed, Ockerman said, "There is no recourse for someone who has been injured by a UPL case."

Governor Ron Gould moved to take no action, though the Committee should be encouraged to continue its half-century-old quest. "We don't have the money to tackle the problem, and if we did, I don't think it would be appropriate to spend it on this proposal. There hasn't been an adequate showing of a need for this Board. Virtually all the complaints we've seen have been from lawyers."

Governors Weston and Stritmatter said as long as there are people not being served by the Bar, there will be unlicensed practitioners. Both felt limited-practice rules legitimizing the arrangement and protecting the public were called for, even though there would be a howl from lawyers. Gould's motion passed, as did one to tell the Family Law Section to get on the ball and bring back a report requested by the Governors months ago on whether a limited practice rule would work in domestic relations.

Appealing Prospects: A stellar pair of lawyers debated

whether the Ninth Circuit should be divided and a Twelfth Circuit created out of the Northwest. Senator Slade Gorton appeared in support of his legislation to divide; Ninth Circuit Judge James Browning spoke against division, introduced by former Board of Governors member and Ninth Circuit Judge Betty Fletcher.

"The Ninth Circuit has 28 active judges, and is waiting to go to 38," Gorton said. "The next largest circuit has 15. With the Ninth Circuit's volume of judges, there are 3,276 possible frivolous appeals and a lottery atmosphere for appellants, he said. And with half the judges in the Ninth Circuit from California, they dominate most panels. The growth of the Northwest warrants the creation of a new circuit, he concluded.

Judge Browning spoke at great length against the proposal. He said the Ninth Circuit Judicial Conference had voted heavily against it. So had the Board of the Hawaii State Bar and the federal judges there. Ninth Circuit judges oppose division, as did U.S. Supreme Court Justice John Paul Stevens when he appeared at the Judicial Conference meeting. He also said the Ninth Circuit was on top of its workload and was constantly developing new computer and administrative methods to stay there. At one time the Circuit had divided into administrative regions which created a sort of Northwest circuit, and after six months the judges didn't like it. Finally, Browning said, as other circuits grow, if some notional maximum size requires division, there will be lots of new circuits and maybe a new sub-Supreme Court to resolve multiplying conflicts between the multiplying circuits.

The debate went on for nearly two hours. Governor Jim Turner then moved to support S.948, the Gorton bill to create the new circuit. Governor Ron Gould said he liked smaller circuits, having clerked for the Sixth. He thinks big circuits reduce the collegial effectiveness of a circuit court. But he wondered if Gorton's argument that the new circuit would better reflect Northwest values seemed at odds with federalism. Governor Ed Shea thought action should be delayed, so it could be debated at length. He also felt it was essentially a political matter that Governors should support on their own if they choose. Governor Don Curran was succinct: "If it ain't broke, don't fix it." Governor Turner thought it would be good for Washington, and that smaller circuits work better. Others expressed similar sentiments, pro and con.

Though there was a motion on the floor, the urge not to decide anything just yet, always lurking at these meetings, reared its head. The Governors decided to poll themselves on how they would vote if they voted, to help decide whether to vote. Governor Bill Bergsten had left the meeting, and the straw poll indicated a 5-4 vote in favor of the motion. The president then announced that if people voted the way they said they would, she would vote against the motion to create a tie. Governor Steve DeForest said, "We'll look pretty silly if we don't take a position on a matter of judicial administration." Governor Mike Carlson preferred taking the matter up another time, and moved to table. The vote was 4-5 to table; the president voted in favor to create a tie and the motion to table failed. On the motion to support S.948, the final vote was 6-4 in favor.

The Wrap-up: In other action at Bellingham, the Board:

- voted to send the ABA delegation from Washington uninstructed to the next House of Delegates meeting;
- considered amendments to a variety of court rules proposed by the Court Rules and Procedures Committee, to be reviewed in a future issue of the *Bar News*;
- heard reports from the staff and committee arms of the WSBA disciplinary apparatus;
- approved the conferral of awards for distinguished service to the Association and the public at the Annual Meeting; and
- completed the first round of committee appointments by naming the chairs of committees.

Next month the Governors meet at Alderbrook, near Union, Washington, August 18-19.

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

Notices of Interest to Association Members

Disciplinary Notices

Reprimanded: Tacoma attorney **Mark S. Treyz** (admitted 1986) has been ordered reprimanded pursuant to a stipulation for discipline, based upon his actions as a deputy prosecutor in providing false information about a defendant to another deputy prosecutor and requesting a delay in prosecution of a misdemeanor citation which had been issued to that defendant.

Suspended: Spokane attorney **Victor J. Felice** (admitted 1951) was ordered suspended from the practice of law for 30 days by order of the Supreme Court dated May 11, 1989 and effective immediately. The discipline was based on Felice's neglect, as the court appointed guardian, of an incompetent ward. Additionally, the court affirmed the Disciplinary Board's order, published in the September 1988 *Bar News*, that Felice be censured for his willful disregard of a court order.

Disbarred: Woodinville attorney **Thornton P. Percival** (admitted 1972) was ordered disbarred by the Supreme Court on May 31, 1989. The disbarment order was based on Percival's conversion of more than $40,000 in client trust funds to his own use.

Disbarred: Seattle attorney **James M. Jerge** (admitted 1976) was disbarred by the Supreme Court on June 6, 1989, pursuant to a stipulation following his pleas of guilty to four counts of first degree theft. Jerge stipulated that he had misappropriated $95,335.19 from his client trust account and used the stolen funds to support his addiction to cocaine.

Nondisciplinary Notices

Interim Suspension: Seattle attorney **Michael D. Mullison** (admitted 1987) was ordered suspended from the practice of law, pending the outcome of disciplinary proceedings based on his conviction of attempted second degree theft, by Supreme Court order entered May 25, 1989.

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

Deaths

Charles F. Scanlan, former member of the Board of Governors (1958-1961), in Spokane.

Public Notices

Magistrate: Public comment is sought regarding the reappointment of Tacoma Magistrate Franklin D. Burgess, whose term expires December 22, 1989. Responses should be sent to Bruce Rifkin, Clerk of the U.S. District Court, 308 U.S. Courthouse, Seattle, WA 98104, by September 8, 1989.

Goldmark Award Nominations Sought: The trustees of the Legal Foundation of Washington seek nominations for the Charles A. Goldmark Distinguished Service Award. The award honors the memory of Goldmark, who was chairman of the Legal Foundation at his death in 1986. It is presented each January to an individual, group or organization best realizing the goal of equal access to justice for all.

In assessing the candidates the trustees will recognize outstanding work accomplished outside the ordinary duties of the nominee's employment, that has a recognizable positive impact on residents of Washington state, and that furthers the goals and objectives of the Foundation.

Nominations, which may include supporting materials, should be sent by October 15, 1989 to Edward G. Holm, Chair, Goldmark Award Committee, Legal Foundation of Washington, 600 Central Building, 810 Third Avenue, Seattle, WA 98104.

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 July 1989 is 8.05 percent. The maximum allowable interest permissible for **August 1989** is therefore **12.05 percent**. Compilations of the average coupon equivalent yields from auctions of 26-week treasury bills appear on page 39 in the October 1987 *Bar News* for 1982-1984, and on page 37 of the June 1989 *Bar News* for 1984-1989.

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

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, WA 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).

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.

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, 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, 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.

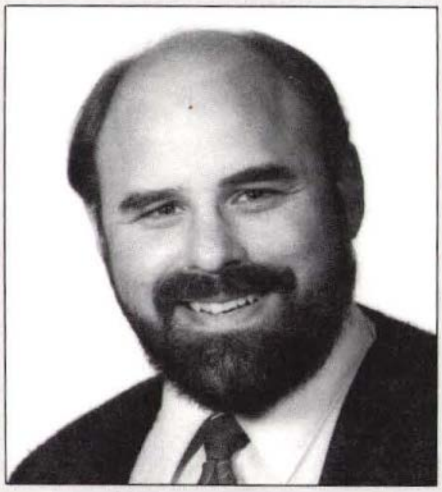
At the conclusion of the hearings on each resolution, the Resolutions Committee will recommend approval or rejection of any such resolution (with any amendment deemed appropriate).

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.

ABA Pro Bono Awards: Bellingham Attorney Wins National Award

Third-generation Bellingham attorney Joe Pemberton has won one of four National American Bar Association Pro Bono Publico Awards given this year to lawyers who exemplify the volunteer tradition of the legal profession.

The award was established by the ABA in 1984 to recognize lawyers and law firms who have demonstrated outstanding contributions to extending legal services to the poor and disadvantaged. This year the recipients will be honored at a special ceremony during the ABA Annual Meeting in Honolulu, Hawaii.



Joe Pemberton

Joe received this award for his persistence and dedication to the development of Whatcom County's first organized pro bono program. It is the first time the award has been given to an attorney from a small relatively rural community who worked to address the unmet legal needs in his community.

Pemberton's nomination was made by his fellow pro bono board members "who documented his four years of tireless enthusiasm and leadership in organizing the pro bono program," said program administrator Cheryl Boal. "In 1986 he traveled to the National Pro Bono Conference in Dallas, on his own time and away from his own law practice. The following spring he invited ABA Private Bar Involvement Consultants to speak to members of the Whatcom County Bar Association. Joe then initiated months of meetings with attorneys in the community, bar offices, judges, legal service attorneys, IOLTA representatives, social service providers, and pro bono coordinators who were already working in established programs in other parts of Washington."

In 1987 Pemberton's efforts culminated in a proposal to combine the resources of the Whatcom County Bar Association, Evergreen Legal Services and the Opportunity Council, a local community action agency, to offer legal services to low-income people. The Whatcom County Volunteer Lawyer Program (VLP) was launched.

Today, the program provides direct representation to individual clients, a clinic for uncontested pro se dissolutions, and a Lawyer-of-the-Day Program where lawyers work in the pro bono office providing legal advice and consultation and assisting the coordinator in referring cases to pro bono panel members. The VLP is in its third year of operation, has received national recognition for its extensive use of nonattorney volunteers, and was honored in 1988 for being one of only three pro bono programs in the country to receive a grant from the ABA.

In addition to his work with the Volunteer Lawyer Program, Pemberton has sought to foster the development of other pro bono programs around the state. He recently served on the WSBA's Pro Bono Task Force, which produced a report in 1988 outlining the legal needs of the poor in Washington state and recommendations for meeting those needs.

"Joe has shown what a dedicated lawyer with a private practice in a semi-rural community can do to expand legal services available to poor people and encourage other lawyers to meet their pro bono obligations through organized programs," Boal commented.

Electromagnetic Radiation: Asbestos In a Wire?

Suits to prevent the construction of large electric power lines have been springing up all over the country. Some 50 cases are pending in the nation's courts. But a Florida trial judge has taken matters further and, in a first-time ruling, has found that electromagnetic radiation from power line fields affect the human body and may well cause cancer.

Palm Beach County Circuit Judge Timothy Poulton used his findings to justify issuing restrictions on the use of the playground at Sandpiper Shores Elementary School, near Boca Raton, Florida.

Parents in the school district filed suit to prevent the opening of the school, built near some overhead power lines. Refusing to go that far on grounds that research on the health effects of electromagnetic radiation is embryonic, Judge Poulton directed that the radiation levels in the schoolyard be regularly tested and reserved the right to alter his order if other, more reliable scientific data become available.

Litigation and other challenges to the construction of power lines has frustrated attempts by utilities to find a way around their inability to build new power plants by importing power from other regions. At least a dozen power line and supporting utility projects have been canceled or held up in recent years as public opposition to the lines grows. But the national power grid, as these high-powered lines are known, wasn't built with large, regular, interregional power transfers in mind. Successful integration of the national power supply will depend, utilities say, on construction of new lines to link up sellers and users of electricity. In the meantime, everyone seems to agree this is an area of legal action to watch.

GRANT COUNTY REPORT

by **EVAN E. SPERLINE**

At the urging of several lawyers, who obviously don't care if I'm subjected to statewide ridicule and embarrassment, I enclose "You Can Tell the Lawyers," a poem written for the recent Grant County Bar Association annual dinner.

Believe it or not, I intended the gentle satire lovingly, and hope to offend no one. The impersonal references are male simply because I haven't sufficient skill to incorporate both genders.

You Can Tell the Lawyers

You can tell the young lawyers: they're dripping with clues,
From the length of their briefs to the shine of their shoes,
From their corduroy jackets with elbows of suede
To the way that their trial objections are made.

"I object!" a young lawyer will cry with a flair,
As he rises to speak then sinks back in his chair.
Then arises anew, and as silence resounds,
The judge finally growls, "All right, on what grounds?"

Then summoning all of his evidence classes,
And wiping the sweat from his tortoiseshell glasses,
He says in a manner both grand and official,
"Your honor, that question is too prejudicial!"

"And whatsmore, your honor, it's hearsay, and worse,
The question is leading, the witness adverse.
He's looking to counsel for cues, he's evasive,
His conduct is undignified and abrasive!"

"Irrelevant, vague and repetitive! And,
It goes to the ultimate issue at hand!
Improper foundation! It's based on conjecture!
No personal knowledge; he just wants to lecture!"

"Immaterial, self-serving, unresponsive and calling
For things not in evidence, patently stalling!
And lastly, your honor, it doesn't comply
With the standard laid down in *U.S. vs. Frye!*"

Ev'ry soul in the gallery yearns to applaud,
For the brilliance and skill of this young demigod.
"What a mind!" says his mom to his aunt with a hiss,
"I'd like to see smarty pants overrule this!"

"You're right!" says his honor, "Sustained" he decrees,
And the young lawyer rises, amazed, from his knees.
"But counsel, permit me this humble suggestion:
You shouldn't object when you've asked the question."

You can tell the young lawyers, oh you certainly can,
Whether big firm or solo or woman or man.
You feel their hearts pounding, you see their eyes glisten;
You can tell the young lawyers, but you can't make 'em listen.

You can tell the old lawyers, the veterans of law,
By the steel in their eye and the set of their jaw,
From the way their opinions get steadily stronger,
As their cars and their naps grow progressively longer.

An old lawyer knows that he knows what he knows,
And commands the respect of his partners and foes,
Just raise any subject, from bailments to bonds
And he'll deftly recite all the pros and the cons.

He'll relive professional vict'ries with pride,

Regale you with each of the cases he's tried,
The greats of the practice he knew in his youth —
And at times, he may even remember the truth.

I wonder how long one must work at the bar
Before one is entitled to smoke a cigar,
Or hire an intern to carry the file,
Or flash to the jury a wink and a smile.

If senior attorneys can still find their way
To the courthouse, they know it's just wasting a day.
And few can remember the last time they saw
Any benefit gained from researching the law.

Don't mention the "R" word to lawyers of years —
Provoking their egos, inciting their fears —
Say "taking time off" or "reducing the pace"
Or "selective control of one's clientele base."

It seems universal — attorneys aspire
To practice forever, they'll never retire.
Deep down in their souls, the vets truly feel:
Old lawyers don't die, they just lose their appeal.

You can tell the old lawyers, by the bills that they send,
By the swing of their clubs and the money they spend,
By the grey hair and flannel, the garters and such,
You can tell the old lawyers, but you can't tell 'em much.

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

Bonsoir.

The last golden rays of daylight coruscate on the waters, and distant glass monoliths shimmer as the sun descends behind the western hills. Caressed by June's first breath of summer, some 30 couples wine and whirl on the upper deck of this private pleasure craft. *Alors, si jeunesse savait, si vieillesse pouvait!* (If youth only knew, if age only could!) Some, preferring the quiet intimacy of a tête-a-tête to Les Beach Boys move forward to watch the ship's bow churn the water into warm snow. Who are these blessed, young Sybarites, drinking and dancing to their hearts' content? The idle sons and daughters of wealth? *Mais, non.*

Let us look more closely.

We recognize some faces not unfamiliar to us. Is that not president **Barry** et Mme. **Annette Hasson** greeting the guests? And there, do we not see president-elect **Ken Davidson** and Mme. **Linda Davidson** leading the revels on the dance floor? In the center of a dance floor, vibrant with life, we catch a glance of (can it be?) the inimitable Monsieur Trustee **James Trujillo** and his lovely dance partner, and a dozen others. Messieurs **Terrence Leahy** and **Will Roarty** each form the center of overlapping circles of conversation. Mme. Trustee **Diane VanDerBeek** and her handsome escort hold court by the railing. We make our way through the group to congratulate Monsieur Trustee **Bruce Gardiner** for making the arrangements for the festivities. The pasta, with sauce prepared on the main deck by caterer, The Upper Crust, and hors d'oeuvres are simply magnifique.

Sampling the appetizers we find ourselves alongside Monsieur **Ronald Syria** who promptly introduces us to his lovely wife, **Maureen**. The pleasure is ours. It seems that Monsieur Syria has left Murray, Dunham & Murray to help form a small firm, Lawrence, Knight & Syria, at 2200 - 112th Avenue N.E., Suite 200, in a small city named for its beautiful view, where he will pursue his land use practice. Mme. Syria continues in real estate sales in the same small city. We see Monsieur Will Roarty helping himself to the delightful hors d'oeuvres and fresh fruit selection and approach to inquire of Monsieur Roarty whether, as rumored, he is formally a candidate for the district court seat to be vacated midterm by the Honorable **James Kaiser**, a position nearly captured by him in the last election. But, *s'il vous plait*! Discretion forbids. Is not Judge Kaiser still seated? And has he formally announced his intentions? And this is, after all, no time to discuss business. It is, how do you say it, a social occasion.

And what is this resplendent affair, this 2nd day of June? Why, the annual summer cruise of the East King County Bar Association, *bien sur*!

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

The State Highway Department has honored the University of Puget Sound School of Law with an off-ramp directional sign on the new mini-freeway connecting downtown Tacoma with I-5. There may be requests for similar signs from Griffith Business College, Bob's Beauty and Barber School and other institutions of higher learning.

Dick Smith, who missed the opening game of the slow-pitch baseball season to get married (dumb excuse, Dick) suffered a mild heart attack and will be on injured reserve for the season. Coach **Larry Couture** in a recent pre-game pep talk, urged the team to "win one for the Smither." Several unearned runs later, the team's current losing streak was extended.

Joe Gordon, Sr. is contacting senior members of the bar to update a history of the Pierce County Bar. The original historical work was authored by **Harold Broomell**, who covered the period from 1853, the building of the territory's first courthouse at Steilacoom, to the early 1950s. I am sure that, if you have any input, Joe would be happy to hear from you. One would suspect, however, given some of the colorful characters who practiced law in the days before the practice became a business, that most of the good stories will not be written.

Tony Froehling, president of a local school board, was observed in his academic doctor-of-jurisprudence robes at a recent high school graduation ceremony. He should try wearing them to court, as this attire might add a little dignity to the courtroom decorum — especially at a time when at least one attorney was observed wearing high-top red sneakers to a jury trial.

Charlotte Chalker, a 1977 graduate of the University of Puget Sound School of Law, and member of the Gordon, Thomas, et al. law firm, has been named the 1989 Distinguished Graduate by the Law Alumni Society Board.

Tracey H. Rockwell has joined the firm of McGovern, Imler and Rockwell. **Ben F. Barcus** has opened an office on Ruston Way in Tacoma's jogging and restaurant area.

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

Office Moves. New principals at Garvey, Schubert & Barer are: **Jeffrey E. Boly, Christine P. Brown, Stephen J. Connolly, Mark E. Friedman, Gregory S. Hathaway** and **Robert C. Weaver, Jr.**; new associates are **Peter J. Burger, Frank X. Curci, Virginia L. Gustafson, W. Eugene Jessup** and **Brian G. Waliser**; and **Randall K. Bogrand, Edward J. Murphy, Jr.** and **Russell R. Niehaus** are now of counsel to the firm.

Thomas R. Merrick and **Patrick J. Donnelly** are new partners at Bullivant, Houser, Bailey, Pendergrass & Hoffman;

Merrilee A. MacLean joins the firm as counsel. **Michael B. Crutcher** has been named senior vice president, general counsel and secretary at Brown-Forman Corp. of Louisville, Ky. Casey & Gordon and **Ronald L. Cohen** have merged and now practice under the name of Casey, Gordon & Cohen. **William Reeves** has been named counsel at Taylor & Hintze, and **Bradley G. Taylor** is a new associate there. **Mark Busto** and **Anthony Shapiro** have become members of Schweppe, Krug and Tausend, and **C. James Frush** is counsel. **Steven R. Secrist** has joined Washington Natural Gas as staff counsel.

Diane J. Kero has been named a partner in the Seattle office of Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim. **Nick S. Verwolf** has become a member of Davis, Wright & Jones. **Thomas A. Thompson** has merged his practice with Walthew, Warner, Costello, Thompson & Eagan. **Brian J. Linn** and **Julie M. Schisel** have formed a partnership in Burien, with **Susan Silveira-Schuman** and **Barbara A. Ridgeway** as associates. **Ervin A. DeSmet** and **Keith C. Thomson** have become shareholders in Clinton, Fleck, Glein, DeSmet & Thomson; **Mark Lorbiecki** has become an associate of the firm. **George Hunter** has joined Lane Powell Moss & Miller. **Terry Thompson Preshaw** and **Karen Sutherland** have become associates of Ogden, Murphy & Wallace.

Stephen I. Pentz and **Darryl S. Vhugen** have become partners at Bennett & Bigelow; **Sanford E. Pitler, Anne M. Redman** and **David B. Robbins** have joined the firm. **Ann W. Speckman** has now associated with Stoel, Rives, Boley, Jones & Grey. **Donald A. Mallett** and **Gary L. Brown** (UW Law School 1971) have formed a partnership with offices in the IBM Building. **John J. Keough** is of counsel to Mallett & Brown. **Bradley J. Berg, John C. McCullough, Daniel L. Thieme** and **Judee A. Wells** have become partners at Foster, Pepper & Shefelman.

Worthy of Note. The Seattle-King County Bar Association has announced its annual awards: Outstanding Judge — **Gary N. Utigard** of the Southwest District Court; Outstanding Lawyer — **William A. Helsell**; the Geisness Award, established in memory of Helen M. Geisness, former executive director of the SKCBA — **Helen Pulsifer**; a special award to **Kenneth L. LeMaster** for his leadership in the alternative-dispute resolution program "Settlement Month"; and awards to **Richard Butler, Jay White** and **Mark McPherson** for pro bono work. **Alice C. Paine** has been named the executive director of SKCBA succeeding the retiring Helen Pulsifer.

Field of Dreams. Once again, lawyer-dominated teams are competing in local Seattle Parks Department softball leagues. Some of the premier teams and players include: *Pro Se* with **Clem "The Gem" Barnes, Tom "Heat" Clark, David "Stroke" Wilson, Leonard Kerr, John Weinberg, Terry "The Rifle" Cullen**, and newcomers

Gil Smith and Slick Watts; *Nolo Contendere* with Rick "The Rocket" Troberman, George Luhrs, Scott Smouse, George Newsham and Alex Friedrich; the venerable *Drifters* starring George Mack, Rod Pierce, and everybody's favorite, Keith "Carolina Blue" McClelland; and *Redball*, featuring Fred Bonner.

SPOKANE COUNTY REPORT

by BERNIE McNALLEN *and* RICH KUHLING

The Spokane County Bar Association is attempting to construct a history. We have collected many fine photographs which are now on display in the bar office. If you have photographs, interesting documents, or anecdotes, please contact Gary Gainer.

Thanks to all the Spokane County lawyers who contributed to the county bar association computer drive. With the help of Steve Eugster, who's getting the bugs out, the bar association's computer system should be up and running by September 1.

All appreciate the efforts of Dutch Wetzel and Mike Perrizo in organizing the tennis tournament held June 2. Winners in the open classification were Julie Harrington (former tennis pro) and Tom Roberts. In doubles, Dan McKelvey and Bruce Nelson edged out Julie and partner Lynn McKinney.

Golf Czar Dave Thorn reports a huge throng of 122 golfers and hackers turned out earlier this month for the bar tourney. Connie Stamper won the high score award with an amazing 128. Jim Sloan shot a real 71; but after adding in an outrageous handicap, G-Prep's ex-quarterback, Tim Cronin, had a low gross — 61. Mary Schultz and Judith Corbin led the ladies with 98 each.

Congratulations to Mike Ormsby, elected treasurer of the county bar association. Serving in their second year as trustees are Cynthia Imbrogno and John T. Powers, Jr. John Riley, III was appointed to Ormsby's remaining year as trustee. Newly elected trustees are Pat Connelly, Bill Etter and Karen Sayre.

WHATCOM COUNTY REPORT

by MICK (NOT MIKE) MOYNIHAN

Resident sage and philosopher Sam Peach has coined another truism. In a recent brief to the court, Sam remarked, "The intricacies of a lawsuit are bewildering to laymen and indeed often bewildering to lawyers."

Phil Sharpe, on a recent visit to Bellingham, took part in a golf tournament and scored a hole-in-one. Unfortunately for him, he was the second person to do so that day, so he did not win the new car, nor did he win the trip to Hawaii. In fact, being mentioned in this column is about all that he is going to get.

After a spirited contest, John Slater was elected as our representative from the second congressional district to the WSBA Board of Governors. John, who practices with his son **Tim Slater**, has earned the respect of the Bar during the many years he has practiced, and this election is a fitting tribute.

And, speaking of tributes and accolades, **Joe Pemberton** was a recipient of the National Pro Bono Publico award. This came for services that he performed in establishing the pro bono program here in Whatcom County. The award really becomes significant when it is noted that Joe was the only recipient from west of the Mississippi, and the other recipients were either politicians or from large Eastern law firms. Joe receives a free trip to Hawaii for the presentation, plus a free lunch from Phil Sharpe.

Bruce Jorgensen has changed the spelling of his last name again, while everyone wishes **Jon Komorowski** would.

Fred Heydrich, formerly of the Skagit County public defender and formerly-formerly of the Whatcom County public defender, has entered into the private practice of law with **Michael Bobbink**, who will now seek active OJR (on-the-job retirement), and **Matt Elich**, formerly of Boos and Elich, has now gone out into practice on his own.

NEWS FROM HOME

- The law firm of Martin, Bischoff, Templeton, Ericsson & Langslet is pleased and proud to announce that **Lloyd B. Ericsson**, a senior partner of the firm, has been elected vice president of the Aviation Insurance Association, which was formed to promote the general welfare of the aviation insurance industry. Membership includes aviation underwriters and reinsurers; agents, brokers and adjusting firms specializing in aviation; and major law firms involved with aviation litigation.

Ericsson earned his undergraduate degree from the University of Kansas and his LL.B. from the University of Virginia. He is a member of the Order of the Coif. He has been practicing law since 1965 and is admitted in Oregon, Washington, Alaska and Virginia. His practice is concentrated in insurance defense and coverage matters relating to aviation and product liability.

- **Charlotte Chalker**, a 1977 graduate of the University of Puget Sound School of Law, has been named the 1989 Distinguished Graduate by the Law Alumni Society Board.

Currently a partner in Gordon, Thomas, Honeywell, she was cited for her significant contribution to her profession, her community, and the school of law.

Chalker was appointed by Governor Gardner to the Board of Regents at Western Washington University and is also on the Board of Visitors at Puget Sound. She has served on the boards of directors for the Tacoma Art Museum (president), Steilacoom Community College, YMCA, Planning Division of the Pierce County Building Department (appeals board), and the American Leadership Foundation for Tacoma-Pierce County.

Her professional service roles include chairing the Pierce County Bar committee that studied mandatory arbitration issues, membership in the State Bar Professional Ethics Committee, serving as judge for moot court, judging student writing competitions at the school of law, and counseling entering Puget Sound law students about their legal studies.

IN MEMORIAM

S. Fred Bruhn, senior vice president and general counsel for SAFECO Corporation, and secretary of the SAFECO Board of Directors, died in Seattle.

Born May 24, 1928, in Enumclaw, Bruhn received a B.A. degree and teacher's certificate from the University of Washington in 1953, and returned to the University in 1956 to earn his J.D. degree. While there, he served as associate editor of the *Washington Law Review*.

Prior to joining SAFECO, he was assistant attorney general and then became chief deputy insurance commissioner for the state of Washington. He joined SAFECO's legal staff as an attorney, became associate general counsel, corporate general counsel, vice president of the corporation and a director of SAFECO's property and casualty and life insurance companies.

Bruhn was a member of the American Bar, the Washington Bar, and the Seattle-King County Bar associations. He was a member of the board of directors of the Association of Washington Business and the Washington Council for Economic Education. He also served as a deputy to the Washington Roundtable.

He was a past trustee of the Washington Insurance Council, and past director of the Washington Insurance Guaranty Association. He was a member of the Sand Point Country Club.

Bruhn is survived by his wife, Nola, of Seattle; four daughters, Tracy Weaver and Robin Eckmann, of Pullman, Rebecca Hellyer, and Amy of Seattle; and three grandsons.

(The following remembrance was contributed by attorney Ronald M. Gould of Seattle.)

Timothy J. Tracy's friends and colleagues in law practice were deeply saddened to learn that he died Tuesday night, June 13, after a courageous battle with illness. Tim was born on January 6, 1957 in Spokane. He earned his B.A. in International Relations from Northwestern University in 1979 and was a member of Phi Beta Kappa. Before enrolling in the University of Washington School of Law, he spent five years as an ensign and lieutenant in the U.S. Navy. Following law school graduation near the top of his class, he joined the firm of Perkins Coie.

It was my privilege to work with Tim as he began his career in the practice of law. Indeed, all of those who worked with Tim knew that he had all of the attributes of a great lawyer. Had it not been for his tragic and untimely illness, there is no doubt that he would have achieved great standing in the law as he helped others with his generous spirit and his exceptional talents. He had a keen intellect, directed not merely to personal gain but to understanding and expressing the broader dimensions of law. He had a balanced judgment, and this balance always included consideration of reason, fairness and justice. He had the integrity of a person who cares deeply for his family, friends and values; and he had a great deal of energy to help those whose causes he would represent. Perhaps most important, he cared about people; he wanted to help others. Even after his illness raised questions about his own survival, he endeavored to continue to help people to solve their legal problems. Beyond all of these great attributes, he never failed to impress those with whom he worked with his humanity and generous spirit. It was always a pleasure to interact with Tim Tracy, whether as his client, as a colleague advancing the same cause, or as a lawyer representing a person with conflicting interests. Not only his analysis but also his smile and good cheer might illuminate a problem. All of those in the Bar who encountered Tim Tracy will miss him very much. His colleagues and friends all extend their deepest sympathy to his father and mother, John and Doreen Tracy, and to his family. They, and the Bar, have suffered a tragic loss. Tim will be remembered by all of us as a bright spirit and an outstanding young lawyer. Remembrances may be sent to the Virginia Mason Medical Foundation for Clinical Oncology, P.O. Box 1930, Seattle, WA 98111.

PROFESSIONAL

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FOR SALE

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.

For sale: Bancroft-Whitney's U.S. Code, Lawyers Edition; ALR, Series 1, 2, 3, 4 with later case service and blue books; and West's Pacific Digest 367 P.2d. All currently supplemented. CJS, last supplemented 1976. Call Monica Smith, Chicago Title, (206) 628-3842.

Law books: Am. Jur. 2nd $1,750; USCS $1,100; Am. Jur. trials $500; Restatement law of torts 2nd (17 vols) $300; Trauma (18 vols) $300; Wn2d $1,750; Wn. App. $700; Wn. Shep. $100. Contact (206) 577-1411.

Books for sale — Current, complete: Am. Jur. Trials, $600 or reasonable offer; Am. Jur. Proof of Facts, $850 or reasonable offer. Call (206) 747-9252.

For sale: Northeast, Atlantic, Southern and Northwest 1st, complete sets. Also portions of 2nd and American State Reports. Call Judge Penoyar at (206) 875-9326.

Books for sale: 1965-1988; Internal Revenue Code, Federal Tax Regulations, Internal Revenue Act. All complete sets! $1,500 obo. Contact Katy at (206) 455-1234.

For sale: Ten secretarial workstations/partitions — $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; 1 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.

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House, Madison Park, Seattle. Four bedrooms, 2 3/4 bathrooms, living room, dining room, family room, two-car garage, patio and pool. No agents. Reply to Box 270, WSBA.

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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 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.

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

Hyatt Legal Services, the nation's largest general-practice law firm, seeks an associate attorney with one or more years' experience. Compensation is commensurate with experience. Full benefits include salary incentive program. A management career track exists for qualified attorneys. Reply in confidence to: Katherine Johnson, Regional Partner, Hyatt Legal Services, 1525 Fourth Avenue, Suite 610, Seattle, WA 98101.

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OVERCAST'S DICTIONARY OF LATIN FOR LAWYERS or Goodbye to the Law Blues[1]

by **Thomas D. Overcast**

Let me begin by stating an assumption I think amply supported by the facts — nobody respects lawyers or the legal system. As a result, lawyers are unhappy; they are unhappy with the system in which they work, do not like the things they have to do and often do not like themselves. This generally unhappy state of affairs manifests itself in many different ways. The American Bar Association reports that lawyers are leaving the profession in unprecedented numbers, and the *ABA Journal* now has a regular feature article on alternative lifestyles for lawyers. In Washington, we have a Lawyers' Assistance Program whose caseload of unhappy lawyers may soon bulge at the seams. All in all a pretty sorry state of affairs for lawyers and the legal profession. However, a little clear-headed reasoning can point us in the direction of a solution to our problems.

The first step in our analysis is to find out when in our history lawyers really were happy. A little research will quickly demonstrate that the apex of legal pride occurred sometime around 1820 — everything since then has been pretty much downhill. Prior to 1820 lawyers were happy: They made a fair income without too much work. The legal system was a positive, important and integral part of the social fabric of the time. And of most importance, people respected lawyers and looked to them for guidance and protection.

What happened in 1820 to lead our profession off the primrose path? Even to the casual student of legal history the answer is intuitively obvious — we stopped using Latin in our professional conversation and writing. My analysis shows a strong positive correlation between the use of Latin and lawyer happiness — Latin goes up, so does lawyer happiness; Latin goes down and, we are personally and professionally on the skids. Although we cannot impute causation to this finding, the evidence supports a very strong relationship.

My complete analysis is too lengthy to present here, but the conclusion can be summed up in one word. It is simple, really — intelligibility. When we used a lot of Latin no one could understand what we said or meant, but people were generally happy with what they could not understand. If a client lost an important case, the lawyer simply said "res ipsa loquitur" or "tempus fugit" or somesuch, and the client went away happy — confused, but happy. And the lawyer was also happy.

Today there is almost no Latin in the law, and we have even stooped so low as to embrace something called "plain English" in many of our documents and contracts. If a client loses a case now, we are obliged to explain the loss; and what is worse, clients have come to expect an intelligible explanation. Clients lose cases and lawyers lose respect. Unhappiness. Unhappy clients and unhappy lawyers, hardly a tolerable circumstance. So much for analysis, because understanding a problem is only the first step. The real rewards accrue to those who propose solutions, to which I now move.

The astute reader will have discerned the direction my argument now takes and will be prepared to assert an objection — "So you have identified the problem and are going to tell me that learning and using Latin is the solution. But Latin is hard, what with declensions and verb tenses and all that. I am not sure that it would really be worth all the effort. Anyway, I am thinking about going back to barber school. Can you really help me?"

Of course I can help you. Picture the following scenario in your mind's eye: You have allowed an associate to argue a motion in a case involving one of your wealthiest clients. The associate botches the argument and a critical ruling goes against you. You rise and solemnly intone, "Your Honor, I move for reconsideration of that ruling on the basis of *clericus parochialis*." The judge reconsiders, you end up with a favorable judgment, a fat fee, and feel good about yourself. Even if you lose, you explain to the client that you brought in all the big gun arguments, including *clericus parochialis* but the judge just didn't buy it. The client doesn't understand it, and is not happy about losing but is happy about the job that you did. You still get a fat fee and feel good about yourself. Clearly, my new Latin for Lawyers is made to order for the personal and professional crises that we confront.

As I demonstrate in the selected examples below, my new Latin for Lawyers is the very essence of common sense and simplicity, both to learn and to use. You need only be attuned to opportunities to drop the appropriate phrase into your next brief or oral argument. I am sure that you will be pleasantly surprised at the results that you get.[2] In the meantime, remember that *nemo debet locupletari ex alterius incommodo*![3]

Causa belli. The sudden appearance of a lawyer, usually attributed to a high visibility, multi-plaintiff catastrophe. "A catastrophic industrial accident in India, or an airline disaster will *causa belli*." Variants include high visibility criminal cases, which *causa bailey* and left-wing civil liberties cases, which *causa kunstler*.

Causa mortis. A momentary condition of panic-stricken paralysis common to lawyers. "The realization that you missed a filing deadline will *causa mortis*."

Causa mortis donatio. A collection taken up in a law office. "When you miss a filing deadline, your partners will *causa mortis donatio* to help defray the costs of defending the malpractice suit."

Causa non proxima remota spectatur. The seating arrangements that result from (1) being the most-junior member of a law firm, or (2) having missed an important filing deadline.

Clam factum id videtur esse. "Deep-fried clams look better on television than they taste in person." A principle little-known to the general public but skillfully exploited by Ivar Haglund.

Cognitionibus mittendis. A level of maturity and reasoning slightly beyond *non compos mentis*. Generally occurs at the time a child no longer has to wear "idiot mittens."

Collateralis et socii. In admiralty law, a boat full of salmon held as security for a debt.

Collegialiter. A bottle of wine shared among friends, generally among lawyers at a bar convention. "Hey Counselor! Let someone else have a pull at that *collegialiter*."

Collegium illicitum. A diploma mill. "Often Honest Al's Aurora Avenue Law School is a *collegium illicitum*."

Colligendum bona defuncti. (1) The ultimate fate of a collegium illicitum. "Often Honest Al's Aurora Avenue Law School is *colligendum bona defuncti*" (literally, "good and dead"). (2) Less perjoratively, "Seahawk's quarterback Dave Krieg's alma mater, Milton College, is *colligendum bona defuncti*."

Combustio pecuniae. A U.S. Department of Justice term applied to the attorneys fees paid by organized crime defendants (literally, "hot money").

Concubaria. An increasingly popular term of art in divorce practice to describe the residence of the "other man" or "other woman."

Confiscare. Modeled on the federal Medicare program, *confiscare* provides protection against forfeiture losses suffered by drug dealers. "Hey man! The DEA took my freighter. Glad I paid my *confiscare* premiums."

Contractus est quasi actus contra actum. A subtle but powerful legal principle moribund since the time of Blackstone, only recently revived by Oliver North.

Contrafactio; Contraligatio; Contramandatio; Contraplacatum. Additional Blackstone "moribunds" raised by Oliver North. "I am sure if the American people knew the *contrafactio* there would be none of this *contraligatio*. I had a *contramandatio* from the President and a directive from Congress to *contraplacatum*."

Contrarotulator. General Secord's shipping manifest description of an attack helicopter.

Homo exercitalis. Descriptor applied to attorneys who work out during their lunch hours.

Homo ingenuus. Descriptor connoting begrudging admiration for opposing counsel after you have lost one that you thought you should have won.

Homo novus. An attorney who also fixes windshields.

Impossibilium nulla obligatio est. A post-judgment pleading. Literally, "My client can't possibly pay that much."

In articulo mortis. A speechless condition often accompanied by momentary paralysis. See above, *causa mortis*.

In lecto mortali. A remedial strategy frequently used by an attorney following a *causa mortis* and *in articulo mortis*. Literally, "to talk to death."

In nullius bonis. A useful phrase from the lexicon of partners, especially when talking with associates about salary levels and raises — particularly in the context of billable hours and the firm's year-end financial condition. ☐

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[1] With apologies to Fred Rodell.

[2] Future installments will include a multiple-choice exercise so that you can try your own hand at translations.

[3] Literally, "Jules Verne would lose money if he threw this in the toilet."

Thomas D. Overcast *practices in Edmonds. It is not known whether he wears a toga to court.*

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