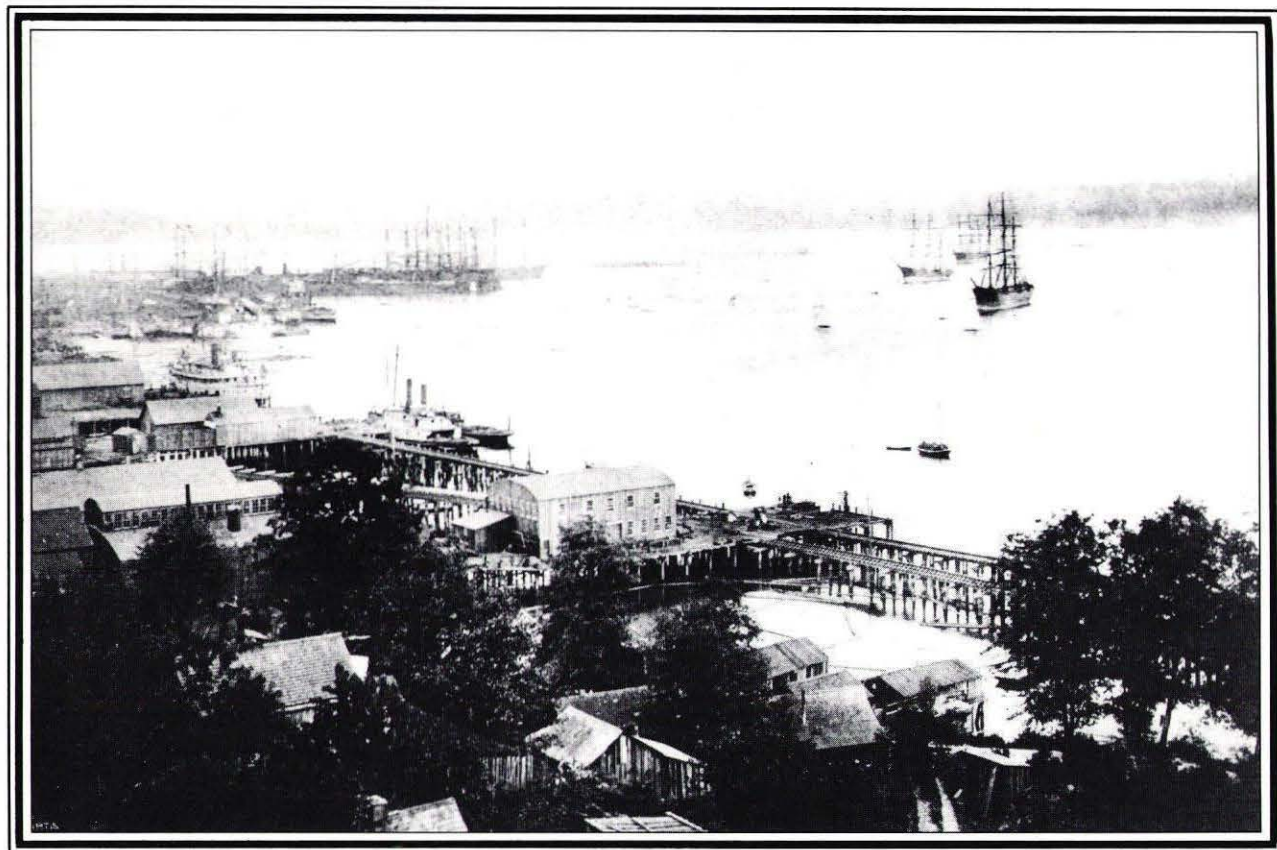


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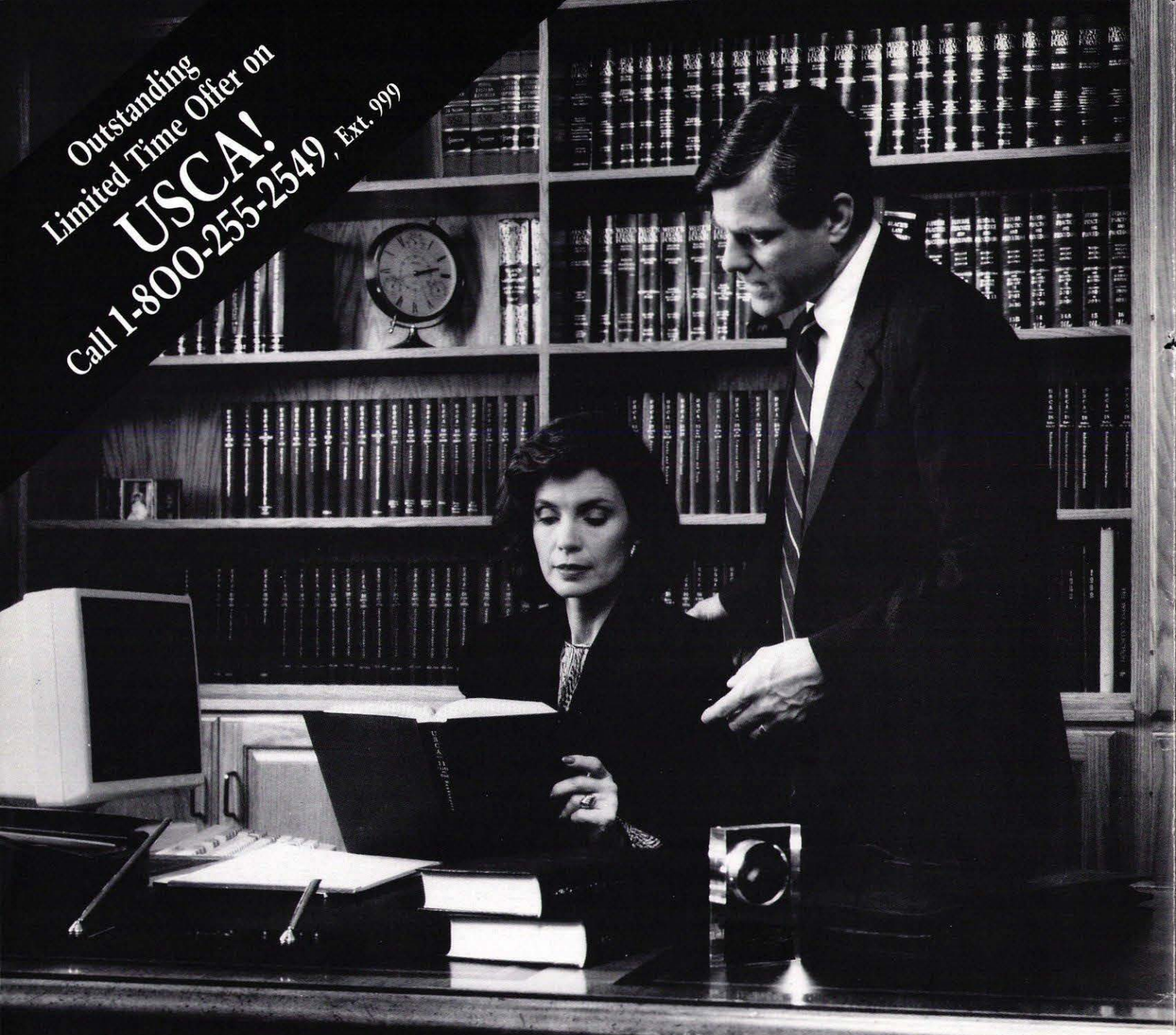
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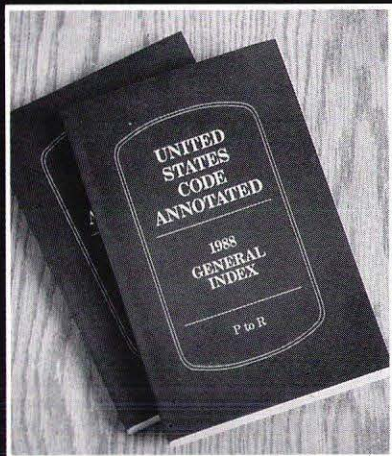
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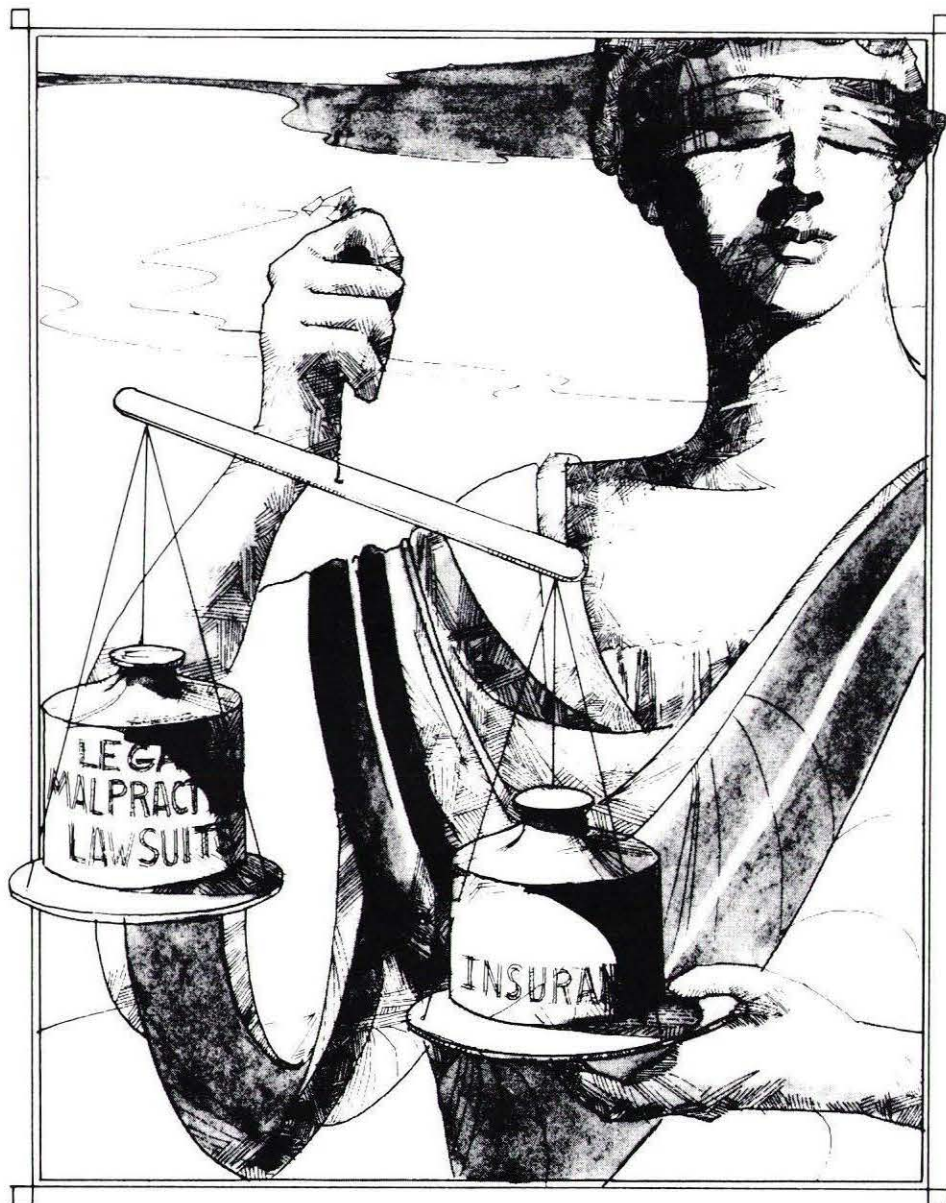
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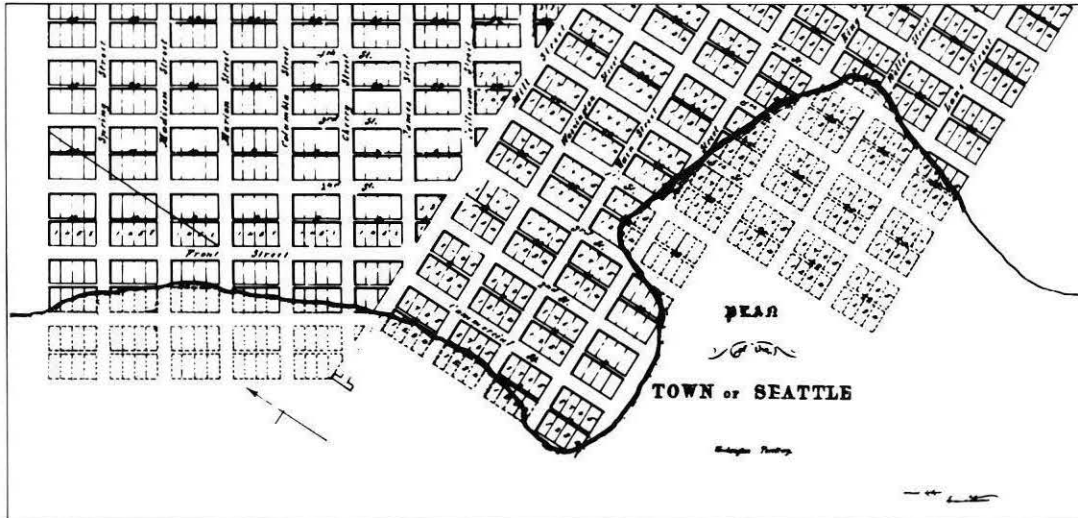


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Washington State **Bar News**

Vol. 44, No. 3, March 1990



1855-1856 plan for Seattle shoreline fill and development (see page 15). Photo courtesy of Special Collections Division, University of Washington Libraries, Maps & Charts, Negative No. 4100 #2A.

FEATURES

- AIDS AND FAMILY LAW** by *John W. Kydd* 9
 This article discusses how courts confronted by this issue can handle cases sensitively — and fairly.
- THE BATTLE FOR THE TIDELANDS IN THE CONSTITUTIONAL CONVENTION** 15
 by *Charles K. Wiggins*
 Unsatisfied with merely one waterfront, ambitious Seattle built a second. This and other decisions affect life in Washington a century later.

DEPARTMENTS

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

Support Your Local Law Libraries

Editor:

Your editorial in the January 1990 edition of the *Bar News* about the decline in the county law library system is right on the mark. Washington attorneys need to support a new funding plan for the county law libraries as these libraries are essential to the administration of justice.

It has been my experience that the county law libraries in King and Snohomish counties are staffed with dedicated and hard-working librarians. The librarians are holding the law library system together through creative methods such as inter-library loans to provide needed materials. The allocated funding does not, however, allow sufficient flexibility to provide the materials or staff support needed by the bench or the bar. As we all know, the loser when research facilities are inadequate is the client, who is not well served if the attorney does not have immediate access to up-to-date research materials. For

small firms and solo practitioners this problem becomes especially acute. Ideally, as more research is done through electronic data bases, the county law libraries will become centers for these services as well as traditional research libraries.

I hope that your editorial will strike a responsive chord with many attorneys, and that the bar will be unified in strongly supporting a modern, progressive approach to providing legal research capabilities through the county law library system. Such capabilities are, it seems to me, essential to the proper delivery of legal services and the administration of justice.

GREGORY A. DAHL
Edmonds

Make It An Even Two Dozen

Editor:

In his excellent article, "The Twenty-Three Lawyer-Delegates to the Constitutional Convention" (*Bar News*, November 1989), Charles Wiggins may have missed one attorney. While he properly questions the credentials of a couple of guys who claimed to be lawyers, the enclosed copy of my grandfather's law degree from Michigan on March 24, 1880 is the real thing, as professors Campbell and Cooley attest to by their signatures.

The Skagit County Historical Society (copy enclosed) documents my grandpa not only going to Olympia in 1889 for the Constitutional Convention, but also that they gave him the pen and let him come home only after he had written our constitution.

My grandfather, with his magnificent degree, came West and taught school, was superintendent of schools, farmed, built houses, was county treasurer and, oh, yes, did write the constitution. But he never practiced law, so he was smarter than his kid, R. V. Welts (Bar president 1951) and his kid's kid, yours truly.

Don't tell the Supreme Court. They already think the constitution was written by someone who never practiced law.

DAVID A. WELTS
Mount Vernon

(The documents enclosed by Welts, too large to reproduce here, appear admissible under ER 803(a) (13), (16) and (19); ER 804(b)(4); ER 901(b)(8) and ER 902(f). Welts, modest fellow, doesn't mention that he followed in his family's footsteps, serving as WSBA president in 1981-1982. — The Editor)

"Just Say, 'Disinherited'"

Editor:

What else can we lawyers do about the war on drugs (*Bar News*, December 1989)? One avenue is to keep inheritances out of the hands of drug users. I pass along a recent provision in a will drafted for a client who was adamant that no child who was using drugs would inherit from him:

Any child who has used illegal drugs to any extent within six (6) months prior to my death shall forfeit all bequests made to him, and shall be treated as if he had predeceased me for purposes of this will. This condition shall apply without regard that the child may have ceased using drugs prior to the date of my death. If, however, I die within the first six months after the date of this will, this condition shall only apply to use of drugs after the date of signing of this will.

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sentative with the duty to thoroughly investigate the facts and circumstances, and to make a written determination of drug usage or nonusage, including a statement of the sources of information on which the determination is based, and to deliver to each child a copy of the report. In the event that a child disagrees with the determination of the Personal Representative, he shall request a hearing before the court. If no request for hearing is made, the determination of the Personal Representative shall be final. In the event of a hearing, I authorize the court to charge the costs and attorney fees to individual shares, or to my estate in general, as the court determines appropriate.

I authorize the Personal Representative to obtain written statements from any of my children. Any other child who fails to cooperate with the Personal Representative in this investigation shall likewise forfeit his share of my estate.

My client intends to make each of his children aware that this provision has been put into his will. They run the risk of losing their share of the estate, unless they keep away from drugs.

Strict, but it gets the point across.

DOUGLAS A. EDMUNDS
Vancouver

A Skamania Bulletin

Editor:

Complements and compliments on your improvements to the *Bar News*.

In your inaugural letter, you promised to efface yourself, and have done this so successfully that I soon expect to see your face on the cover. I am reminded of a recent book which, in over 500 pages, explained *How to Get Your Point Across in Sixty Seconds or Less*.

One can, however, see increasing attention to quality of language, to the daily work of real lawyers, to the history of the bar, and to both the glory and honor of the profession.

As you follow the Board to its meetings, you must feel yourself a sort of roads scholar. Shall we expect from you an update, based on I-5

signs, of Holmes' *The Path of the Law*?

Such a work would be useful, because I conclude that one's location in Washington relative to I-5 is an important predictor of legal and financial success. With the new economics and law movement, I conclude: Where V equals probability of victory, $V \rightarrow \$ (I-5) > V \rightarrow \$ (-I-5)$.

How remote Klickitat and Skamania counties seem to some. A drive to the bluebird capital of the United States (Bickleton in eastern Klickitat County) seems to those from Portland or Seattle like a drive to Nebraska. We applied to foundations for funds. One from Seattle replied: we don't fund projects in eastern Washington. One from Spokane replied: we don't fund projects in western Washington. One from Oregon replied: we don't fund Washington projects.

But the *Bar News* still gets here, though it has contained no report on the hibernating Klickitat-Skamania County Bar Association in recent memory. That association, incidentally, recently elected a new president, Brian Altman of Goldendale, in a hotly contested election. We expect that its energies will fill your pages (unless you exercise editorial judgment).

ALAN L. GALLAGHER
Stevenson

Hoaxes Are Not New

Editor:

The recent hoax involving abusive letters written on stationery taken from the office of Whatcom County Bar Association president John Erickson (*Bar News*, The Board's Work, October 1989) reminded me of a similar incident which happened to me about ten years ago.

It was my practice on motion hearings to prepare orders going both ways before hearings and, unfortunately, sign both.

After one such hearing I presented the order made (going against my client). My client came to the office the next day to "review" his file, removed the original of the order which had been denied, and presented it to the ex parte department as an "agreed order," representing me as the opposing counsel.

The matter was straightened out forthwith when the sham order became known, I dumped the client as soon as possible, salvaged what dignity could be salvaged, and have since sharply restricted client access to their own files.

I can certainly understand Erickson's situation.

CHARLES L. SMITH
Seattle

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Hoffer v. State, 110 Wn.2d 415 (1988) Reversal of trial court dismissal of WPPSS bondholder's suit on CR 12 (b) (6) motion.

Dennis v. Dept. of Labor & Ind., 109 Wn.2d 467 (1987) Reversal of trial court's dismissal of arthritis claim as not constituting an occupational disease.

American Federal Savings v. McCaffery, 107 Wn.2d 181 (1986) Affirmance of trial court's determination of upset price in mortgage foreclosure.

In Re Marriage of Landry, 103 Wn.2d 807 (1985) Affirmance of trial court's division of military retirement pension.

In Re Dombrowski, 41 Wn.App. 753 (1985) Reversal of trial court's dismissal of non-parent's petition for custody.

Jensen v. Beaird, 40 Wn.App. 1 (1985) Modification of computation of set-off for settlement with one defendant.

In Re Marriage of Lindsey, 101 Wn.2d 299 (1984) Reversal of trial court's refusal to divide property acquired by couple while living together before marriage.

Gammon v. Clark Equipment Co., 38 Wn. App. 274 (1984) Reversal of defense verdict in personal injury case because of defendant's violation of discovery orders.

Campbell v. A.H. Robins, 32 Wn.App. 98 (1982) Reversal of trial court's order refusing to compel attendance at trial of out-of-state officers of defendant corporation.

In Re Health Estate, 30 Wn.App. 115 (1981) Reversal of trial court's award to bank which mis-handled stop payment order.

In Re Puget Sound Power & Light, 28 Wn.App. 615 (1981) Reversal of trial court's order of public use and necessity in condemnation case.

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The Attorney Assistance Manual for Persons with AIDS/ARC is available from the WSBA CLE Department. Contact Dan Keller at (206) 448-0433.



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Bar Presidency

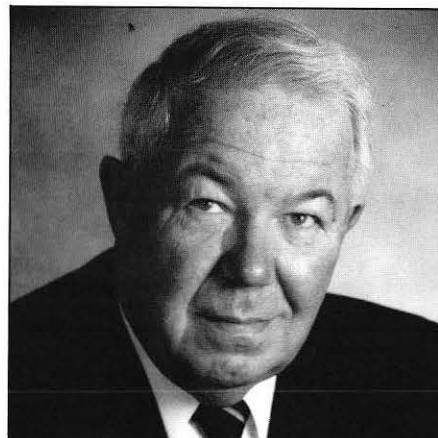
Last month I addressed the subject of the Board of Governors — how it is elected by lawyers from the eight congressional districts plus two King County at-large members, so as to approach the one person-one vote concept.

There have been views expressed that the Bar president should be elected by statewide, open, popular election, as this is the only truly democratic process. That is certainly an understandable point of view.

Neighboring states have a variety of systems. Oregon has 9,800 lawyers, and the board of governors elects the bar president from its own incumbent board members. Idaho, with 2,500 members, has a five-member board of commissioners, which is elected by judicial district. The senior member of the board is president of the state bar association. Wyoming, with 1,700 members, elects its president by statewide ballot.

Washington has 15,000 members, and our process is somewhat of a mixture of the foregoing. As indicated, over 50% of our members are from King County. In recognition of this, there is an unwritten — but observed — practice of rotating the presidency: King County, eastern Washington, King County, western Washington outside King County. Thus, every other year the president is from King County. This takes geography into consideration, whereas a statewide, open, popular election would not. It also depoliticizes elections. Wyoming is reportedly very political.

In November, three Governors were appointed as the Presidential Search Committee. The rotational practice referred to was employed with 1990-1991 being a King County year. Although prior service on the Board of Governors has been regarded as an extremely useful experience for the presidency, the Committee was encouraged to look not only at former Board members but also to other qualified candidates. Current Board members were excluded from consideration. The Committee contacted sixteen persons, male and fe-



James A. Vander Stoep

male, of whom nine had served on the Board and seven had not. Six persons indicated interest and submitted resumés. The Committee interviewed the six, and all current Governors were invited to sit in on the interviews. The Committee reported to the full Board at its January meeting. Discussion by the Board regarding the six candidates was in executive session in order to encourage a frank dialogue and sensitivity to the privacy interests of the candidates. This was not a politicized process. In going into the meeting, the outcome was anything but predetermined and, like most decisions of the Board, the selection was the result of vigorous exchanges. Seattle attorney Lowell K. Halverson was elected. He is from a two-lawyer firm, forty-seven years old and has a history of devoted and effective service to both the Washington State and the Seattle-King County bar associations. President-elect Halverson served on the Board of Governors from 1977 to 1980 and in 1988 received the WSBA Award of Merit — the highest service award of our Association. As Governor Curran of the Fifth District said, "Lowell Halverson has the skills, aptitude and desire to be an outstanding president."

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6. Minutes of all meetings of shareholders and directors (partners); five years.
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8. Loan applications; five years.
9. W-2's (or equivalent) for the five highest-paid employees; three years.
10. Documents describing the company's products, services, operations, facilities, customers/clients, and competition, etc., including: promotional literature, product brochures, newsletters, business plans, offering memorandums, leases, production schedules, staff time/billing records, backlog data, management reports and other such documents.

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AIDS

AND FAMILY LAW

by John W. Kydd

Discrimination against AIDS sufferers often has unintended effects. This article reviews the Association of Family and Conciliation Courts' Policy on AIDS as it affects children and families, in and out of court proceedings.

Challenges for the Legal Community

Presently almost 120,000 people in the United States have AIDS, and 70,000 have died from it; 1.0 to 1.5 million people may be seropositive. The incidence of new infection is decreasing among homosexuals. In San Francisco, the incidence of new infection among gay men is close to zero. AIDS is increasing among heterosexual males, women and their children. In 1992, 80,000 new cases are expected, and 60,000 will die of AIDS. The Public Health Service anticipates 365,000 diagnosed cases by the end of 1992.¹

No Magic Bullet. There is no magic bullet of law or medicine that will "cure" AIDS. *Cure* is a medical issue; *prevention* is a social and legal issue. Prevention demands that we face our moral qualms regarding sex education, contraception, homosexuality and drug abuse. The U.S. is alone amongst western industrialized countries in its reluctance to fund the frank, safe sex education necessary for AIDS prevention. Britain has had graphic television and billboard advertisements for condoms for years. Britain's AIDS population is approximately 3% of the U.S. population. Our reluctance to strike down laws penalizing private sexual behavior and our historical discrimination against gay persons, minorities and the poor has crippled our capacity to prevent the spread of AIDS. We are alone, among our European and Ca-

nadian neighbors, in having no comprehensive national health care program. A number of Canadian life insurance companies are paying out benefits *before* death to assist those unable to work and provide for themselves. American insurers refuse this humane approach and focus on excluding or penalizing large groups of people to minimize risk. The insurance section of the ABA has demanded mandatory testing in order to minimize the risk to their clients. Such testing could destroy the earning capacity of tested individuals and directly penalize children of said individuals. Interestingly, the insurance section of the ABA did not take this position during the early years of the polio epidemic.

Costs. The direct hospital cost of a death by AIDS is estimated to be \$20,000 a person.² In their rush to minimize risk groups, many insurance companies are pushing a disproportionate percentage of infected parents and children into underfunded state hospital sources. In a rational health care insurance system, AIDS treatment should not bankrupt hospitals or insurers. The projected direct medical costs of AIDS for 1991 is less than that for heart conditions, for auto accidents, for cancer or for infectious and parasitic diseases.³ In more graphic terms, the direct medical cost of a death by AIDS is less than that of the average cost of a death by heart attack or kidney failure.⁴ The way we "provide" health care creates needless exacerbation

of the AIDS epidemic. We must take a hard look at our penchant for penalizing addicts, ignoring poverty, and denying the protection and benefits of marriage to same sex parents. As family lawyers, we must assume the affirmative duty to protect and defend all children, regardless of race, class and affiliation. They are our future.

Association of Family and Conciliation Courts AIDS Policy (5/89)

There is no evidence of AIDS being transmitted through normal parent-child contact. Such contact includes kissing both on the cheek and on the lips, hugging, holding, bathing, sharing utensils, etc. The AIDS virus is transmitted through blood-to-blood contact and sexual contact through semen and vaginal secretions. There is no evidence of transmission through tears, saliva, cuts, bites or insects. Knowledge of Human Immunodeficiency Virus (HIV) transmission and detection is constantly changing. The court should follow the current guidelines of the Centers for Disease Control (CDC).

1. **Courtroom procedure.** Since there is no evidence of risk of transmission in normal courtroom settings, any measures taken by courtroom personnel, such as wearing gloves or gauze masks are both unnecessary and potentially prejudicial to the person with AIDS (PWA).

2. **Parenting Capacity.** There is no evidence that infection with the AIDS virus alone affects the capacity to parent. HIV status is not a basis for restricting parental rights. The unwarranted discrimination against a parent with AIDS is detrimental to the child. Contributing to the stigma of AIDS contributes to the spread of the disease.

3. **Prevention.** Preventing the further spread of AIDS is most effectively achieved, a) through enactment and enforcement of strong anti-discrimination laws, b) through thorough drug education, prevention and treatment programs, and c) through comprehensive safe sex education and explicit instruction in condom usage. Education, not testing, is key to AIDS prevention.

4. **HIV allegations against parents.** No allegations regarding AIDS infection should be made in any court proceeding prior to sealing the court file. Absent a demonstrated medical risk to the child, any public accusation of HIV infection should be considered detrimental to the child and the child's relationship to the accused parent.

5. **Limiting access.** Parental access to a child should be rejected when:

A. Any parent willfully exposes their child to high risk behaviors for HIV infection as defined by the Centers for Disease Control. Existence of such behaviors

which places the child at risk shall be confirmed by a physician with demonstrated expertise in epidemiology and the treatment of AIDS; or

B. The parent develops a degree of physical or mental incapacity which prevents them from meeting the parenting needs of the child. In this context, every effort should be made to assist the child to deal with the imminent death of their parent. Time spent between the child and their terminally ill parent should be structured to maximize the best interests of the child.

6. **HIV testing.** Testing should be performed *only* according to current CDC protocols. In the absence of clear and convincing evidence of medical necessity, HIV antibody testing of the parent or the newborn child is unwarranted and not in the best interests of the child. Where an HIV+ parent is accused of sexually abusing a child, testing the accused parent is unwarranted since the results do not prove transmission, and the disclosure of HIV status could significantly harm that parent's capacity to support the family. Testing the child immediately after the alleged abuse is ineffective, since the virus antibody is not detectable until at least two to six months after exposure, and sometimes not detectable for years. However, if there is clear evidence of a

possible transmission, a short course of AZT or other appropriate medication may be prescribed for the child to reduce the possibility of transmission.

7. **The right to conceive.** The HIV status of a mother should be considered grounds for limiting her right to conceive or her right to parent her child.

8. **Unmarried parents.** The vast majority of parents with AIDS are unmarried. As practitioners we must choose between defending the statutory sanctity of marriage and exercising our manifest responsibility for children. Two steps should be taken. *First*, we need to retire our tired taboo against same-sex marriage, particularly where one of the spouses is an active parent. *Second*, we need to make family court services available to divorcing parents available to unmarried parents. Family court services need to be expanded to include safe-sex education, drug screening and drug treatment. Much of the cost of drug treatment could be borne by insurers.

9. **Adoption and foster parenting.** Serious diseases such as hepatitis, AIDS, and the HIV status of a foster child should be disclosed to the potential parent. Plainly, foster and adoptive parents need to have prior AIDS education about the very low risk of transmissibility.

10. **Anti-discrimination legislation.** Being HIV+ vastly limits the right to travel, to be insured, to maintain work and most importantly, to provide for one's family. Without clear anti-discrimination legislation, such as that adopted in Washington state, seropositive parents become economic lepers unable to sustain their marriage or provide for their children.

11. **Universal health care.** Since most children and adults with AIDS live at or below the poverty line, adequate care is rarely available. Some form of universal health care should be available to all in need.

12. **Universal drug treatment programs.** Since most HIV+ women of child-bearing age are IV drug users or the sexual partners of IV drug users, comprehensive drug treatment programs and post-treatment monitoring should be freely available to family courts. Bleach kits and sterilized needles should be provided to IV

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drug addicts, and other measures should be taken which reduce the number of children born with AIDS.

Factual Background

AIDS: What is it? There is substantial agreement in the scientific community that AIDS is caused by the HIV virus. Testing positive to the presence of the virus antibody means only that the individual has been exposed. Many individuals have tested positive to the virus for over ten years without showing any signs of AIDS or ARC (AIDS Related Complex). AIDS may be likened to forms of cancer which may be "in remission" for many years. One new strain of AIDS (HIV-II) has been discovered. Our blood supply has been screened for only the first strain of AIDS. HIV-II is increasing in some African countries. A few cases have now been reported in the U.S.

AIDS: How is it transmitted? AIDS is transmitted through blood-to-blood contact or sexual intercourse through semen and vaginal secretions. Unprotected sexual intercourse and the sharing of IV drug needles are the most effective ways of transmitting the virus. NonIV drug abusers or street children who regularly engage in prostitution are increasingly at risk. AIDS is not as contagious as sexually transmitted diseases such as herpes or hepatitis-B. Heterosexual intercourse is the predominant mode of AIDS transmission in Africa, where in some countries, the incidence of AIDS per 100,000 is 100 times that of the U.S.

AIDS: How is it passed to children? Most children with AIDS in the U.S. are children in poverty; AIDS can be passed to children while they are in the womb if the mother is HIV+. However, there may be a 50-67% chance that the child will not contract AIDS from the HIV+ parent. *Of all the documented cases of the children with AIDS, there is not one transmission attributed to causes other than transfusion and perinatal contact.* The HIV virus is also present in breast milk, but there is no case of a child contracting AIDS solely from consuming such breast milk. Our failure to provide comprehensive safe-sex education to all children, comprehensive health care to all parents and comprehensive drug education and

Table 1. Type of Contact with Patients with AIDS Among 101 Household Members

Activity	Percentage of Members in Activity
Sharing of Household Items	
Razors	9
Toothbrushes	7
Nail clippers	42
Combs	51
Towels	37
Clothes	15
Eating utensils	25
Eating plates	46
Drinking glasses	48
Sharing of household facilities	
Bed	37
Toilet	90
Bath or shower	92
Kitchen	93
Washing items used by patients	
Dishes	65
Toilet	49
Bath	55
Clothes	38
Interacting with patients	
Helping to bathe	10
Helping to dress	16
Helping to eat	13
Shaking hands	21
Hugging	79
Kissing on cheek	83
Kissing on lips	17

treatment to all of those in need is the vehicle that is principally powering the spread of AIDS. Preventing the passage of AIDS to children demands

that we dissect out our moral qualms about "deviants," "drug addicts" and "minorities" and "sexuality." *There is no evidence of HIV trans-*

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mission to children through normal parent-child contact. Extensive studies continue to document the lack of transmission of the AIDS virus from the HIV+ parent to the child or other adults living closely together in the same household. Parents and children engaged in hugging, kissing, sharing of cups, sharing of utensils, sharing of food, toothbrushes, nail clippers, combs, towels, drinking glasses, etc. A summary of household contacts and one of other studies that corroborate the absence of risk are provided in Table 1.

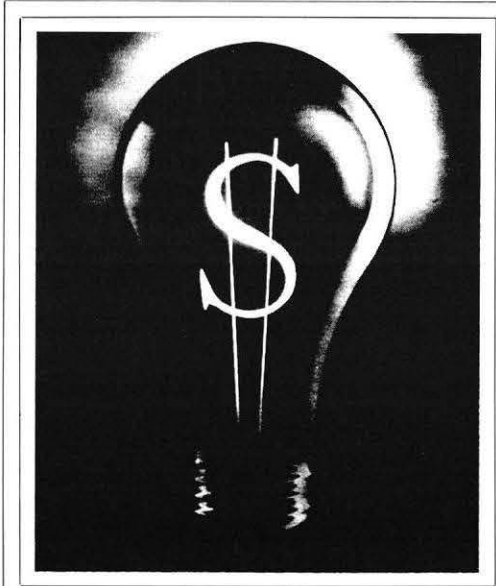
The findings of no household contact transmission in the above study are given further weight by the summary of studies printed in Table 2.

Although AIDS has been isolated in saliva and tears, there is no evidence of transmission through either. This includes close interaction between kids, including the biting of other children by HIV+ infected children. Likewise, there is no documented case of transmission of AIDS to health care workers who are bitten by adult HIV+ patients.

Table 2. Studies of the Risk of HIV Infection among Household Contacts of Patients with AIDS.

Study	Index Patients*	No. of Index Patients	No. of Household Contacts	No. Positive	No. Positive w/o Other Risk Factors
Salzmann et al. 110	Adults (IV drug users)	61	145	1	0
Rogers et al. 106	Children (transfusion recipients)	24	85	0	0
Fischl et al. 56	Adults (Haitians, IV drug users)	45	135	19	0
Redfield et al. 57	Adults (heterosexuals, IV drug users)	7	11	1	0
Thomas et al. 107	Women	28	25	3	0
Lawrence et al. 108	Adults and Children (hemophiliacs)	29	42	0	0
Jason et al. 109	Adults and Children (hemophiliacs)	34	45	0	0
Total		228	491	24	0

*IV denotes intravenous



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HIV Antibody Testing: Whether and When

It is possible, with a reasonably high degree of accuracy, to determine who is infected with HIV and therefore capable of transmitting the virus to others. As noted above, the transmission occurs only as a result of specific behaviors that are usually not part of a household situation involving children. When such behaviors occur, they are illegal in their own right. Therefore, testing would seem irrelevant to child custody decisions. AIDS allegations have been used unsuccessfully in many states to block access to children.

Testing for HIV antibodies is a two-step process: first one performs an Enzyme Linked Immunosorbant Assay (ELISA) as a screening test. The ELISA is better than 99% sensitive in identifying HIV-infected persons; it is also better than 99% specific, *i.e.*, fewer than 1% of uninfected persons will register positive. In persons with a history of high-risk behaviors, the ELISA test alone may be predictive of infection; however, because of extreme emotional, political and economic impact of the HIV infection and the possibility of signifi-

cant discrimination, *the standard of medical care is to perform confirmatory testing whenever the ELISA test registers positive.*⁵

Given the established prejudice against minorities, gay people, intravenous drug users and those in poverty in America, an allegation of AIDS/HIV should not be used to further discriminate against an already persecuted group. Harm to children can be prevented only by protecting their parents from persecution. Common prejudice now fuels a deadly epidemic. □

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¹ *Morbidity and Mortality Weekly Report*, Vol. 37, #36, p. 1, 9/16/88.

² Fox, Daniel M. & Emily H. Thomas. *AIDS Cost Analysis and Social Policy, Law Medicine & Health Care*, Vol. 15:4, pp. 186-211.

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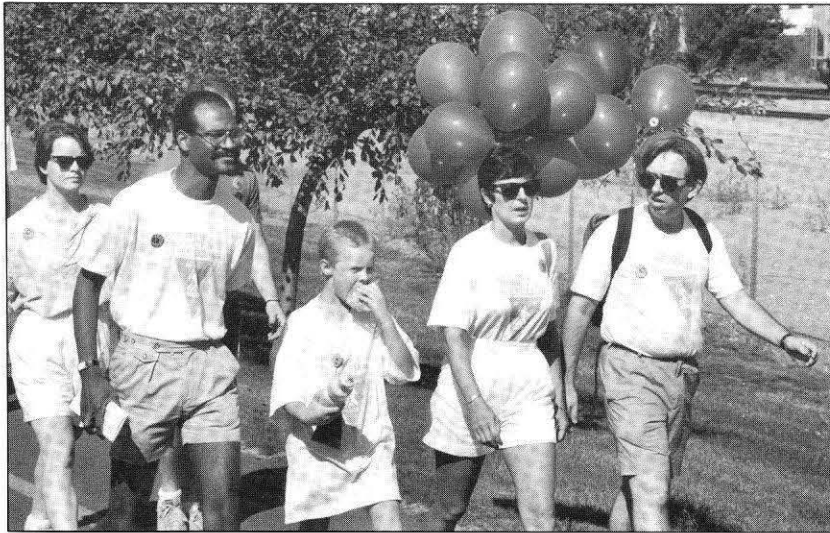
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³Fox, Daniel M. & Emily H. Thomas. AIDS Cost Analysis and Social Policy, *Law Medicine and Health Care*, Vol. 15:4, pp. 186-211.

⁴Fox, Daniel M. & Emily H. Thomas. AIDS Cost Analysis and Social Policy, *Law Medicine & Health Care*, Vol. 15:4, pp. 186-211.

⁵First, the ELISA should be repeated to ensure that the first result was not in error. If the second ELISA is positive, a second confirmatory test (a Western

Blot) is performed. Generally, laboratories do not report ELISA tests alone, but only the results from the full sequence (repeated ELISA then confirmatory tests). In persons without known risk behaviors, only about 20% of the ELISA tests are confirmed to represent HIV infection. Roughly another 20% of positive ELISA specimens are read as "indeterminant" on the confirmatory tests. These persons may be infected, but more likely are not — only future testing may reveal

whether HIV infection actually exists. The remainder (60%) are ELISA positive but not confirmed — not infected.

In low-risk persons (without known risk of infection), perhaps 1 in 100 persons positive by ELISA and confirmatory tests is actually not infected (false positive). In persons with high-risk histories, this figure would be lower. False negatives also occur most commonly because the infected person was too recently infected to have developed detectable antibody levels.

The period between infection and development of a detectable antibody is usually two to four months although much longer periods have been reported. There are also some persons (perhaps 4%) with later stage infection — even AIDS — who lack antibodies detectable by the ELISA test.

Present evidence suggests that most persons who become infected will eventually develop disease. However, many remain well for years. Of sexually active gay men in San Francisco known to be infected 10 years ago, the majority have either developed AIDS or AIDS-related diseases; however, about one third remain well.

John W. Kydd is a Seattle attorney whose practice emphasizes mediation and family law.

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The Battle for the Tidelands in the Constitutional Convention

by Charles K. Wiggins
(The First of Three Parts)

Railroads, Jumpers, Squatters and the Public Interest

The contemporary notion of constitutions and constitution-making emphasizes civil liberties, personal rights, powers of government and the separation of powers among the branches of government. But the bitterest and most divisive battle of the Washington constitutional convention of 1889 was fought, not over any of these fundamental governmental structures, but over the public domain. Although the federal government had sold or given vast quantities of land in the new state to individual settlers and to the Northern Pacific Railroad under its land grant, the government had never parted with title to the extensive tidelands of Puget Sound and of the Pacific Coast. The tideland, that strip of land between ordinary low water and ordinary high water, was particularly valuable because it was the gateway for commerce and transportation between land and water. These lands were particularly valuable within the major port cities of Seattle and Tacoma, and valuable for another reason — they were the only significant level land on Seattle's Elliott Bay and Tacoma's Commencement Bay. It was widely recognized that these cities could only realize their future potential if the large mudflats at the mouths of the Duwamish and Puyal-

up rivers could be diked and filled for commercial development.

The western Washington delegates generally wished to recognize the vested rights in the tidelands, but they were badly divided on which rights to recognize. The railroads claimed ownership to portions of the tidelands under various legal theories, but they were unable to agree on a unified strategy because their own interests conflicted. Some Western delegates favored the rights of the early settlers, who had taken claims upland from the tidelands and had built improvements on the tidelands. Other individuals claimed the tide-

lands against the rights of the upland owners. Indeed, the debates in convention disclosed the fact that several of the western Washington delegates claimed interests in the tidelands.

The eastern Washington delegates were unhampered by the need to consider the vested rights of influential constituents who had elected them. As a group, they were more inclined to recognize the rights of the state, regarding the upland owners who claimed riparian rights in the tidelands as "squatters" and the individuals who claimed in derogation of the upland owners as "jumpers."¹

The politics of the tidelands were

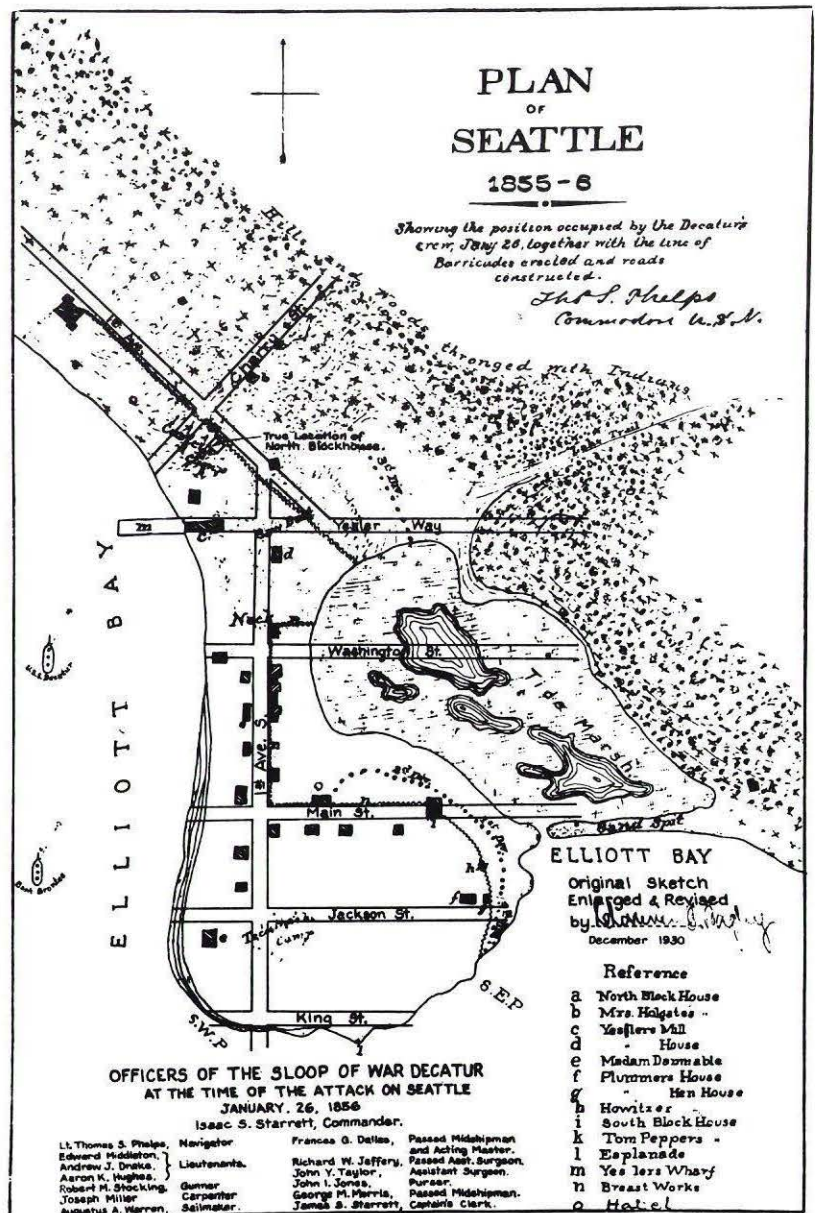


Photo courtesy of Special Collections Division, University of Washington Libraries, Maps & charts, Negative No. 4104 1889, #1

infinitely complicated by the tortured history of the Seattle ones. The Seattle City Council had given exclusive waterfront franchises to railroads which promised to connect the city with the east. Seattle had traded away its waterfront, not once, but twice, cinching a legal Gordian knot which would not be resolved until 1902 with the construction of a railroad tunnel under the Seattle business district. Even with an understanding of the problems in Seattle, the debate on the tidelands is barely comprehensible;

without some understanding, the debate is mystifying.

The Problem in Seattle: Esau's Mess of Pottage

Early-day Washington lawyer Orange Jacobs commented in his memoirs on the railroad franchises granted by the city of Seattle along its waterfront:

Esau sold his birthright, with all that it implied, for a mess of pottage. Infant communities, wheth-

er territorial or municipal, feeling the pressure of present want, are always tempted by money sharks to mortgage, sell or surrender, for a mere song, rights and franchises of a constantly increasing income, and relinquish political power necessary for a legitimate assertion and protection of their rights in years to come... The applicant for this birthright, and all its prospective enormous income, finds his most congenial and hospitable host in a municipal legislature. He is usually, but not always, accompanied by the fascinating Miss Graftis.²

In the early 1870s the Puget Sound cities, none of which were large, all aspired to become the terminus of the transcontinental Northern Pacific Railroad. The settlers of each town realized that location of the railroad would bring construction and shipping, with their attendant payrolls and increases in real estate values. Olympia and Seattle, with populations of about 1,200 each, were considered the leading contenders, while Tacoma, with less than 200 people, hardly seemed in the running. A committee of the Board of Directors of the Northern Pacific visited Puget Sound in the summer of 1872, inspecting possible terminal locations and determining what offer each city would make in order to secure the terminus. The people of Seattle offered 7,500 town lots, 3,000 acres of land, \$50,000 in cash, \$200,000 in bonds, and considerable tidelands for tracks and depots. But cheaper land was to be had on Commencement Bay, where fewer settlers had made claims and where the company could reserve large tracts of land through its land grant. In the summer of 1873, the Northern Pacific selected Tacoma as its western terminus.³

This was a defeat for Seattle, but not fatal. Selucius Garfield, a Seattle lawyer who had served as territorial delegate to Congress, addressed the people of Seattle at a public meeting in front of the Yesler Cook House and inspired them to build their own railroad through Snoqualmie Pass to Walla Walla County, at that time the most populous county in the state and the richest.⁴ The people responded enthusiastically and incorporated the

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Seattle and Walla Walla Railroad. The city granted to the railroad a right-of-way along the irregular waterfront, which became known as the "ram's horn" because of its twisted shape.⁵ Seattle's legislative representative, J.J. McGilvra, prevailed upon the territorial Legislature to relinquish all right, title and interest of the territory to all tidelands in Elliott Bay south of King Street, granting them to the proposed railroad.⁶

The people of Seattle themselves provided the necessary labor to begin construction of the railroad on May 1, 1874:

The day dawned bright and clear, and all the steam whistles in town and harbor hailed it with long blasts. A few pieces of cannon and several anvils were fired, the church bells and school bells were rung, business was wholly suspended and at an early hour, every man, woman and child in Seattle went on board steamboats, barges and every other conveyance which could be brought into use to take them up the river to the place where work was to be begun. This had been chosen at a point nearly three miles from the proposed terminus, where work would be easiest, and where the best showing would be made as a result of the day's operations. Here the men and able bodied boys began work. Some with axes and saws cleared the right-of-way; others with pick and shovel threw up the dirt for the grade.⁷

The women and girls provided the lunch, which was followed by speeches, "the last of them made by Henry Yesler, who stopped his incessant whittling long enough to sound the keynote of the day by shouting, 'quit your fooling, and go to work.'"⁸ The little railroad never made it to Walla Walla, or even across Snoqualmie Pass, but it did reach the coal mines at Renton and Newcastle, and it played an important role in the development of Seattle.⁹

In 1881 the Seattle and Walla Walla was acquired by the Columbia and Puget Sound Railroad Company, a subsidiary of the Oregon Improvement Company.¹⁰ The Puget Sound shore line gave Seattle a transconti-

ental railroad connection with the Northern Pacific. However, when Villard lost control of the Northern Pacific in 1883, it discontinued service to Seattle, and the Puget Sound shore line became known as the "orphan road."¹¹ Judge Thomas Burke, a highly influential Seattle attorney, devised the solution: organize another railroad and grant it access to the waterfront, just as Seattle had done with the Seattle and Walla Walla in 1873.¹² Burke organized the Seattle Lakeshore and Eastern Rail-

way in 1885.

The Seattle Lakeshore and Eastern faced a major obstacle: the good people of Seattle had already given away the waterfront to the Seattle and Walla Walla. Burke devised an ingenious solution: the city would create a new waterfront, a 120-foot-wide right-of-way to be built several hundred yards off shore out over the water.¹³ This expedient solution resulted in Railroad Avenue, now Alaskan Way, which was eventually diked with a sea wall and filled with the

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earth removed from Denny Hill.¹⁴ Doubtful of its own power to appropriate the bed of Elliott Bay in this peremptory fashion, the City Council asked upland owners to dedicate to the city any right they might have in the area covered by Railroad Avenue.¹⁵ Its construction was carried out by the company building the Seattle Lakeshore and Eastern, and by the time of the constitutional convention, the trestles of Railroad Avenue cut across the Seattle waterfront.

This tangled history left a maze of

conflicting claims to the tidelands in front of Seattle. To complicate matters further, in the 1880s a series of claims was made to Seattle tidelands by individuals holding congressional land scrip. On several occasions Congress had awarded to specific individuals the right to settle on unclaimed and unspecified public land. The "Porterfield scrip" was given by Congress in recognition of Porterfield's services to the country during the Revolutionary War.¹⁶ The "Valentine scrip" was granted by Con-

gress to Thomas Valentine, to replace a grant of 13,000 acres of land in what was then Mexico, and later California.¹⁷ Speculators obtained this scrip and filed claims to hundreds of acres of tidelands in Seattle and Tacoma.¹⁸ The Washington Supreme Court eventually rejected the claims of the scrip holders to tidelands, holding that "public land" meant uplands, not land beneath navigable waters,¹⁹ but at the time of the constitutional convention the status of the scrip claims was very much an open question.

Early Skirmishes: Muck Amuck Illahe

The opening skirmishes of the battle for the tidelands took place early in the convention. The first controversy arose over chairman Hoyt's appointment of Seattle delegate David Durie as chairman of the committee on harbors, tidewater and navigable streams. Durie was a member of the Seattle City Council, and he owned substantial interests in the tidelands through his interests in the Seattle Drydock Company.²⁰ To defuse criticism of this apparent conflict of interest, Hoyt explained that disposition of the tidelands would come before the committee on state, school and granted lands, chaired by delegate Oregon Dunbar from Klickitat County.²¹

A protracted debate erupted when James Z. Moore of Spokane Falls introduced a resolution calling for a full investigation of the history of the tidelands and all details concerning them.²² Moore's resolution reflected the unfamiliarity and uncertainty of the eastern Washington delegates over tideland disposition. Moore played a prominent role in the debates, employing all of the qualities attributed to him by a contemporary newspaper account:

He is a frequent and very fluent speaker and in well rounded sentences, of the purest English, he always commands the attention and interest of his audience, frequently electrifying and inspiring them by his eloquence.²³

He also possessed "rather a fiery Southern temper on occasions, and had great disgust for cowardice and betrayal of public office."²⁴

Moore's request for information on the tidelands was well-directed,

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for, as discussed above, it was scarcely possible for the delegates to evaluate the proposals before them without understanding the history of the competing claims. The resolution, however, was not well-received. Buchanan, the "thrifty Scotsman of Ritzville," protested that every member of the convention knew the history of the tidelands: "The tide has flowed and ebbed and ebbed and flowed over them from the very beginning, and that is all the history they have."²⁵ Buchanan suggested that the resolution would more appropriately be referred to the judiciary committee for an inquiry into the legal status of the tidelands. Moore was content to have the issue referred to the judiciary committee, headed by his fellow Spokane delegate judge George Turner, rather than the public lands committee, headed by Dunbar, who felt that the tideland issue should be resolved by the Legislature, not the constitution.²⁶ A lively debate ensued, in which "nearly every delegate took occasion to tell what he didn't know about the tidelands."²⁷ Finally, the delegates decided that the judiciary committee was the more appropriate, but voted against the resolution: "So it decided upon nothing and referred it to the judiciary committee."²⁸

The debate then shifted to the committee on state, school and granted lands, which patiently listened to the opinions and recommendations of a parade of disinterested and interested citizens. One of the influential witnesses was W. Lair Hill, an attorney who had practiced in Oregon and California, and had recently moved to Seattle. Hill was a former editor of the *Daily Oregonian*, and had been asked by that newspaper to draft a proposed constitution for the state of Washington. The Hill constitution was distributed to all the convention delegates and greatly influenced them. In his commentary on the proposed constitution, Hill observed that the new state of Washington would own more tidelands than any other state in the union; they would cover over 2,500 miles of coastline and directly or indirectly influence every industry and activity on Puget Sound.²⁹

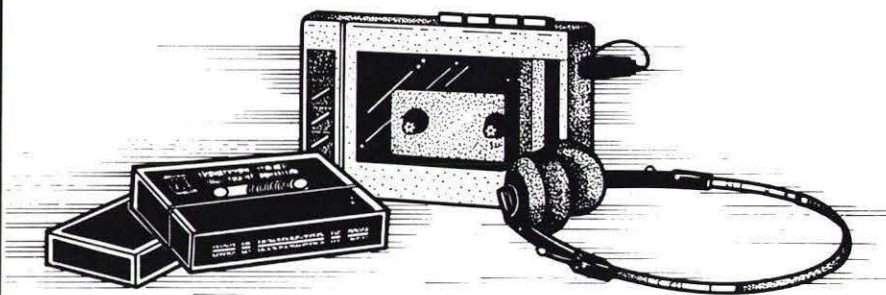
Hill emphatically declared that the tidelands were held in absolute trust by the United States for the people of

the new state, that any grant or patent given by the U.S. conferred no title to tidelands upon the grantee, and that the shoreland owners had no rights to the tidelands. Hill admitted, however, that the history of other states revealed that public lands inevitably became a fertile field of "jobbery" and corruption, and that valuable rights of the people had too often been squandered. Although he recognized that no constitution could fully guard against corruption, Hill recommended that some restrictions be

placed in the constitution to protect the rights of the people:

While human nature is human nature, it is not probable that any constitutional provision or inhibitions will be found sufficiently strong or sufficiently strict to convert professional lobbyists into honest citizens and speculators into disinterested patriots, or entirely to preclude in all cases a combination of these classes from at least partial success... But something is gained if

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provision can be made by which a practical approach to the actual value of the property can be secured, and by which some restraint may be thrown around the disposition of the lands to those who seek them merely for speculative purposes.³⁰

To accomplish these goals, Hill recommended that the constitution unequivocally declare the state's ownership of the tidelands, that persons who had built improvements on tidelands be granted preemptive rights to purchase the tidelands at their appraised value less the cost of the improvements, that the state forever retain the title and control of landings and wharfage privileges upon shore or tidelands, and that no public land be sold "except for appraised value."³¹ Appearing before the committee on public lands, Hill again recommended the sale of the tidelands, primarily to provide level land for factories.³²

The committee also heard from representatives of upland landowners, who claimed a right of ownership in the tidelands which could not be

taken away without compensation.³³ Delegate Durie of Seattle "presented the needs of the people of Seattle in strong terms" stressing why Seattle should have absolute control of its own harbor.³⁴

The convention was also presented with a variety of propositions calling for disposition of the tidelands. Kinnear of Seattle proposed that streets and alleys of cities and towns located on tidelands should be dedicated to the cities, which would have validated the creation of Railroad Avenue. Power of Skagit County proposed that title to marshlands which had been granted by U.S. patent to settlers should be confirmed in the settlers. Power explained, "the government has disposed of the marshlands, actual settlers have taken them up and improved them in good faith, and it would be nothing short of an outrage for the state to claim ownership of them."³⁵ Stiles of Tacoma and Prosser of Yakima both presented propositions declaring that the tidelands were the property of the state and should not be sold.³⁶ Durie of Seattle presented another proposi-

tion important to Seattle, invalidating the legislative grant of 1873 of most of Elliott Bay to the Seattle and Walla Walla Railway.³⁷

Throughout this preliminary sparring, the delegates managed to maintain some perspective and a sense of humor over the tidelands issue. When the delegates considered the prohibition against the Legislature's authorizing a lottery, Austin Mires objected that the article should be stricken out, "because it may be necessary to dispose of the tidelands question by lottery."³⁸ Mires' suggestion was amplified in a tongue-in-cheek memorial presented to the convention by a group of old settlers, including A.A. Denny, Henry Yesler, Dexter Horton, James Swan, and others. They proposed that the tidelands should be set aside for the benefit of old settlers as "muck amuck illahe," Chinook jargon for clam lands:

Whereas grave doubts now exist, and have existed, in legislative and judicial minds since the day when Moses was found in the bull rushes, as to what constitutes tidelands in law and in fact, therefore, in order to settle that question forever it is hereby declared that the true definition of the term tidelands, as established by immemorial usage on Puget Sound is "muck amuck illahe," or clam lands, and that all lands and water producing clams shall be held and treated as tidelands as hereafter provided.³⁹

The memorial provided that the tidelands would be divided into separate claims (marked, appropriately, by mounds of clam shells) and should be granted to old settlers (including, diplomatically, the 75 members of the constitutional convention), based on a lottery. The memorial satirized the proposal to take property away from those who had improved the tidelands by requiring improvers to remove any buildings, wharves, pilings, or fill, and to reestablish clams at the rate of 25 bushels per acre. The memorial also satirized the tendency of the constitutional convention to become too "legislative" by spelling out matters in excessive detail; it provided that the names of the old settlers be placed in butter churns, which "shall be turned a sufficient length of

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time to make butter come, provided, that if churns cannot be procured, ice cream freezers may be substituted..."⁴⁰ The memorial was signed by a number of prominent attorneys, including Thomas Burke, Orange Jacobs and others, and one J.B. Metcalfe, who added his opinion: "I believe these sections will hold water in any court."

¹R. Nesbit, "He Built Seattle": A Biography of Judge Thomas Burke, p. 317 (1961).

²O. Jacobs, *Memoirs of Orange Jacobs*, p. 181 (1908).

³C. Snowden, *History of Washington*, pp. 215-27 (1908).

⁴*Id.*, p. 222, 232.

⁵Nesbit, *supra*, p. 116.

⁶Snowden, *supra*, p. 233.

⁷Snowden, *supra*, pp. 234-35.

⁸G. Quiett, *They Built The West*, p. 448 (1934).

⁹H. Hunt, *Washington West of the Cascades*, p. 260 (1917).

¹⁰Hunt, *supra*, p. 308.

¹¹See "Charles S. Voorhees and the Omnibus Admissions Act," 43 *Wash. St. Bar News* 25 (June 1989).

¹²Nesbit, *supra*, p. 105.

¹³*Id.*, p. 116.

¹⁴M. Phelps, *Public Works in Seattle*, pp. 73-74 (1978).

¹⁵Nesbit, p. 116; *Seattle-Post Intelligencer*, December 28, 1888.

¹⁶*McSorley v. Hill*, 2 Wash. 638, 649-52 (1891). *McSorley v. Hill* was the final case in the long battle between the Porterfield claimants and the heirs of the grantees of early-day Seattle settler David "Doc" Maynard to a portion of what is now downtown Seattle. The case turned on the rights under the Oregon Donation Act of 1850 of Maynard and his second wife, whom he married after obtaining a legislative divorce from his first wife without notice of service of process. *Maynard v. Valentine*, 2 Wash. Terr. 3 (1880).

¹⁷"Jumping Tidelands," newspaper article of January 1889, Vol. 35, Northern Pacific clipping scrapbook, August 1887 to February 1894, p. 94, Minnesota Historical Society microfilm 522, roll 9.

¹⁸*Id.*; Nesbit, *supra*, p. 311.

¹⁹*Baer v. Moran Brothers Co.*, 2 Wash. 608 (1891).

²⁰*Tacoma Morning Globe*, August 15, 1889.

²¹*Tacoma Morning Globe*, July 10-11, 1889.

²²*Seattle P.I.*, July 14, 1889.

²³*Olympia, Washington Standard*, August 23, 1889.

²⁴University of Washington Law Library Lawyer File.

²⁵*Seattle P.I.*, July 14, 1889.

²⁶*Spokane Falls Review*, July 16, 1889.

²⁷*Seattle P.I.*, July 16, 1889.

²⁸*Seattle P.I.*, July 16, 1889.

²⁹*Daily Oregonian*, July 4, 1889.

³⁰*Id.*

³¹Hill Constitution, Article XII, *Daily Oregonian*, July 4, 1889.

³²*Tacoma Morning Globe*, July 14, 1889.

³³*Seattle-Post Intelligencer*, July 18, 1889; *Tacoma Morning Globe*, July 18, 1889.

³⁴*Seattle-Post Intelligencer*, July 12, 1889.

³⁵*Id.*

³⁶*Journal of the Washington State Constitutional Convention*, p. 40, 42 (B. Rose now ed. 1962) (hereafter "Journal of the Convention").

³⁷*Seattle-Post Intelligencer*, July 14, 1889.

³⁸*Tacoma Morning Globe*, August 8, 1889.

³⁹*Spokane Falls Review*, August 4, 1889.

⁴⁰*Id.*

Charles K. Wiggins practices appellate law with Edwards & Barbieri in Seattle.



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Tacoma, February 9-10, 1990

Present: President Vander Stoep and all the Governors save Don Curran, absent on other business. *Also present:* C.C. Bridgewater (Prosecuting Attorneys Assn., Saturday); Judge Rosanne Buckner (Superior Court Judges' Assn.); Cheryl Carlson (Washington Women Lawyers/Pierce County, Friday); Harold Clarke (WSBA/YLD); Frank Edmondson (Government Lawyers Assn.); Mary Fairhurst (Washington Women Lawyers); John Fattorini (WSBA Legislative Liaison, Saturday); Stuart Halsan (WSBA Legislative Liaison); Ed Holm (Legal Foundation of Washington, Saturday); Keith Kessler (WSTLA, Friday); John J. Michalik (WSBA Executive Director); Mike Larson (SKCBA/YLD); Judge Roy Rainey (Magistrates' Assn.); Lawrence Ransom (SKCBA Trustees); Lee Ripley (WSBA Disciplinary Counsel); Lindsay Thompson (*Bar News* Editor/Clark County Trustees); Judge Philip Thompson (Court of Appeals).

The Governors began their meeting with an executive session about which many of them will report in their newsletters. Readers should consult those publications for indications of what went on.

If Downtown Seattle Weren't Overbuilt, Where Would We Put Them? Executive Director John Michalik said another six hundred people were about to sit the February bar examination in the Tacoma Dome. Come summer, the fun shifts to Spokane, where the bar exam will be conducted while the Dome is used by the Goodwill Games.

No, "Audita Querula" Doesn't Mean I Disagree With the Accountants: BDO Seidman gave the Association a clean bill of health for the fiscal year ending September 30, 1989. Executive Director Michalik went through the audit report for the Board; it shows the Board's continuing austerity moves paying off: the bottom line moved from a 1988 deficit of \$164,035 to a 1989 surplus of \$152,348. Budget Committee chair Bill Bergsten told the Board the committee had set a goal of building a reserve fund of ten percent of the Association's operating budget: about half a million dollars. The 1989 results allow \$120,000 to be put toward that goal. On a motion by Governor Steve DeForest, the Board approved the adoption and publication of the auditor's report in the WSBA Annual Report in the May *Bar News*.

Giving Help or Giving Away the Store? In July 1988 the Association's Pro Bono Task Force presented a lengthy report to the Board on the need for more legal services for the poor in Washington. The major unmet need found by the task force was in the field of family law; recommendations for change included adoption of a limited-practice rule which, like the one for title officers in real estate transactions, would create a cadre of licensed paralegals who'd be able to help meet the need in family law.

The Board referred the question to the Young Lawyers Division and the Family Law Section for comment; the YLD replied in May 1989, finding the limited-practice rule an inadequate response to the problem and proposing

some alternatives. The Family Law Section somehow missed a cue and did not begin formulating a reply until last fall when they read in the *Bar News* that the Board was wondering where it was: another benefit of close reading every month. The section sent in a preliminary response in December and a fuller memo on the limited-practice rule in January.

Seattle attorney and former section chair Mary Wechsler told the Board the section agreed with the Pro Bono Task Force's findings and conclusions - up to the limited-practice recommendations. "Family law gets more complex every year," Wechsler said, as attempts to remedy problems in the field become more and more specific. That breeds complicated formulae and more paperwork that's hard even for lawyers. "If there are limited practitioners, the chances of their making mistakes are very high."

"So what's the solution?," asked Governor Lem Howell. "I don't have an easy answer," Wechsler said. "No one does." She said the section has lacked the time to go back to first principles to seek a solution; they are busy fighting fires all the time with current legislative changes and proposals.

Governor Paul Stritmatter said he saw general agreement that there "is a tremendous problem, and I'm concerned if we don't act the Legislature will step in even further than they have. If people are concerned that limited practitioners will lack qualification, why don't we fashion a rule to take account of it, say, limiting their work to single-issue cases?"

Wechsler pointed out that even in "simple" divorces complex questions can rear their heads; Governor Jeff Tolman thought there were plenty of young lawyers, plus six to eight hundred new ones each year, who could take more of these. "You take all sorts of things when you're new that don't make much money," he said. "You get experience by doing." He felt the question the Board ought always to ask first is "What will this do for lawyers?" He felt the limited-practice rule "does nothing for lawyers. It sets a miserable precedent. It's like letting someone be a brain surgeon but not letting them be a GP and treat colds." A general pause ensued.

The president wondered if a middle way would be to go to the Legislature with a request that they simplify things. "I don't think they try to make things complicated deliberately."

Governor Jim Turner said he had heard the same arguments advanced against limited-practice rules when the real estate rules had come up. The problems in family law are large and pressing and our first response need not necessarily be 'what's good for lawyers?' He favored the limited-practice idea. But Governor DeForest wondered if any other states had adopted such a rule and what its fiscal impact would be. None on the Association when the real estate rule was adopted, Executive Director Michalik replied.

After lunch with the Tacoma-Pierce County Bar Asso-

ciation and Washington Women Lawyers leadership, the Board returned to the question. Governor Lem Howell proposed the creation of a task force whose goals would be developing ideas for streamlining the system, creating uniform forms for court proceedings, establishing alternative dispute resolution systems, and investigating other means of addressing the problem.

He proposed that the task force be composed of representatives of the Family Law Section, legal-aid lawyers, the pro bono community, the Legal Foundation of Washington, the state Office of Support Enforcement, the Superior Court Clerks' Association, the Court Administrators and Family Court Services organizations, the Young Lawyers Division, and unnamed consumer groups. Up to \$7,900 would be allocated for the task force, which would report back by July 1, 1990.

Some debate followed on details. Governor Stritmatter wanted the task force to draft a limited-practice rule; Howell and Governor John Schultz felt that directing the drafting would preordain a result. A vote on Stritmatter's amendment to require the task force to come up with a rule failed 3-6, Governors Stritmatter, Gould and Turner voted aye. Gould then moved an amendment to ask the task force to consider whether a limited-practice rule is in the best interests of the public. That passed 6-3, Governors Schultz, Howell and Tolman opposed. The main motion to create the task force passed 8-1, Tolman voting no. It will produce an interim report by July 1.

Computers: Why Didn't You Just Ask Us? That's what state Courts Administrator Mary McQueen and Court of Appeals Judge Kenneth Grosse wondered. They reported on the pretty spectacular advances of the Judicial Information System, a massive computer operation linking virtually all of the state's courts. Why spend so much time trying to develop CD technology when direct computer access systems are already available?, Judge Grosse asked. The JIS is already working on direct access with law and other firms, even on an interactive system in Kitsap County which would make electronic filing of documents possible. Governor Lem Howell moved that the Board ask the Court Administrator to develop a proposal for Association members to be able to access the Judicial Information System, including the Washington statutes and maybe even the appellate reports. The motion passed unanimously.

Won't Tell; Can't Make Me: The Board took up two matters dealing with disclosure of confidential information. Rules of Professional Conduct Committee chair Doug Ferguson presented the first — a proposed ethics opinion governing the extent to which legal service offices or lawyers have to make disclosures to funding or administrative entities like the Legal Services Corporation, which might lead to the identification of clients served. After a brief discussion the Board unanimously adopted the opinion, the text of which will appear in the April issue of the *Bar News*.

The second issue was one raised by the state Public Disclosure Commission. The commission wrote to the Association in January questioning an Association interpre-

tation of the Rules of Professional Conduct to prohibit attorneys seeking public office from disclosing the identities of business clients required to be disclosed under RCW 42.17.241. The commission appears to be backing away from a past practice of granting attorneys partial or full exemptions from the disclosure requirements on a case-by-case basis.

Disciplinary Counsel Lee Ripley said that when the Rules of Professional Conduct were adopted, Washington opted for a more restrictive rule which, in effect, supercedes statutes which could chip away at client confidentiality. Governor John Schultz wanted to refer the question to the Rules of Professional Conduct Committee; Ron Gould thought maybe a Board committee would do. Governor Stritmatter moved the latter; Jim Turner suggested the RPC Committee was a better study group. But Governor Steve DeForest held that all the RPC Committee could do is study the offending rule, not work out some kind of compromise with the commission. The motion passed 7-2, Governors Turner and Tolman opposed. President Vander Stoep appointed Governor John Slater to chair the committee, aided by Governor Bill Bergsten.

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

- met Friday afternoon at the University of Puget Sound School of Law and heard a report from Dean Jim Bond;

- heard a report on the operations of the state Judicial Council from attorney Doug Tuffley;

- heard a lengthy legislative report from our men in Olympia, John Fattorini and Stuart Halsan, during which the Board referred a bill to expand the state jury pool to the Association's Legislative Committee, and heard from State Securities Administrator Jack Beyers and representatives of the Business Law Section announce a compromise over a new small-investor securities offering rule which would obviate the need for legislation endorsed by the Board over the Division's objections;

- approved a set of comments from the Court Rules Committee on various proposed amendments to the Federal Rules of Civil Procedure, opposing in the process adoption of a rule to allow service by electronic methods.

Next month: A fairly heavy agenda will meet the Governors in Bellevue, including a report from the Attorneys' Professional Liability Insurance and Legal Aid committees; a report from the Association's delegates to the ABA midyear meeting; a further consideration of the proposed WSBA disaster response plan; another report on activity in the Legislature and plans for the Association's future conventions, and further consideration of the Public Disclosure Commission client disclosure issue, among others. Meetings of the Board of Governors are open, save the monthly executive session.

Coming meetings: Bellevue, March 16-17; Victoria, B.C., April 20-21; Walla Walla, May 18-19; Port Ludlow, June 15-16; Moclips, July 20-21; Vancouver, WA, August 17-18; Spokane, September 11-15 (Bar Convention).

by Lindsay Thompson,
Editor, Bar News



March 1990

2 Significant Developments in Intellectual Property Law, Seattle. *Sponsored by:* WSBA. *For information:* (206) 448-0433.

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

3 Depositions: Tactics, Strategies and Problems, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

9 The Law As a Business: The Keys to a Successful Personal Injury Practice, Seattle. *Sponsored by:* WSTLA. *For information:* (206) 464-1011.

9-10 Tenth Annual Northwest Securities Institute, Vancouver, British Columbia. *Sponsored by:* WSBA/WSBA Corporation, Business & Banking Section, Oregon State Bar and others. *For information:* (206) 448-0433.

10 Toxic Tort and Products Liability Law in Washington, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

13 Risk Management Insurance Society 25th All-industry Day Conference, Seattle. *Sponsored by:* RIMS Washington Chapter. *For in-*

formation: Ellen Higgins, (206) 448-5211.

16 Law in the Soviet Bloc: The Legal and Political Impact of Reform, Seattle. *Sponsored by:* WSBA Section on World Peace Through Law. *For information:* (206) 448-0433.

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

17 Introduction to Computer-Assisted Legal Research, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

22 The Family Lawyer: A Practicing Professional, Spokane. *Sponsored by:* WSBA/WSBA Family Law Section. *For information:* (206) 448-0433. Also presented March 29 in Olympia and April 6 in Seattle.

22-23 Going International: Doing It Right, Annual International Law Institute and Midyear Meeting, Seattle. *Sponsored by:* WSBA/WSBA International Practice Section. *For information:* (206) 448-0433.

23 Basic Corporate Practice Under the New Washington Business Corporation Act, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

23 Consumer Protection: Current Litigation Issues, Seattle. *Sponsored by:* SKCBA. *For in-*

formation: Starlene Colwell, (206) 624-9365.

23 The Rules as Tools: Know Them, Apply Them, Control Them, Seattle. *Sponsored by:* WSTLA. *For information:* (206) 464-1011.

28 Improving Your Power of Recall, Vancouver, British Columbia. *Sponsored by:* CLE Society of British Columbia. *For information:* (604) 669-3544 or fax (604) 669-9260.

29 The Family Lawyer: A Practicing Professional, Olympia. See March 22 entry for details.

29-30 Taking Depositions, Seattle. *Sponsored by:* ABA Section on Litigation and Young Lawyers Division. *For information:* (312) 988-6200.

29-31 Planning for Clients With Assets in Multiple Jurisdictions, Hawaii. *Sponsored by:* Asia Pacific Institute, CLE Society of British Columbia, and others. *For information:* (808) 263-3600 or fax (808) 262-4020.

30 Starting Your Own Practice: Law Office Management, Seattle. *Sponsored by:* SKCBA. *For information:* (206) 624-9365.

31 Law Firm Strategic Planning, Vancouver, British Columbia. *Sponsored by:* CLE Society of British Columbia. *For information:* (604) 669-3544 or fax (604) 669-9260.

31 Wrongful Discharge: Rights and Responsibilities, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

31 Nominations due, Vern Countryman Consumer Law Award. *Sponsored by:* National Consumer Law Center, 11 Beacon Street, Boston, MA 02108. *For information:* Karen Smith, (617) 523-8010.

April 1990

4 New Skills for the Old Problems of Practicing Law, Seattle. Also presented April 11, 18, 25. *Sponsored by:* WSBA Lawyers' Assistance Program. *For information:* Steve Feldman, (206) 621-7007.

6 The Family Lawyer: A Practicing Professional, Seattle. See March 22 entry for details.

6 Suppressing Evidence, Seattle. *Sponsored by:* Washington Association of Criminal Defense Lawyers. *For information:* (206) 623-1302.

7 Suppressing Evidence, Spokane. See April 6 entry for details.

14 International Contracts and Negotiating: A Workshop, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

20-21 WSBA Board of Governors meeting, Victoria, British Columbia. *For information:* (206) 448-0441.

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21 Basic Estate Planning, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

22-25 7th Annual Statewide Conference on Child Abuse and Treatment, Bellevue. *Sponsored by:* DHHS. *For information:* Carol Mason/Noreen Kaponen, (206) 624-4307/(206) 285-8328.

25 Tax Planning for Highly Compensated Individuals in Washington, Seattle. *Sponsored by:* National Business Institute. *For information:* (715) 835-7909.

27 Managing the Reservation Environment, Seattle. *Sponsored by:* WSBA Indian Law Section. *For information:* (206) 448-0433.

27-28 14th Annual Trial Practice Seminar, Seattle. *Sponsored by:* SKCBA Young Lawyers' Division. *For information:* Mark Griffin, (206) 623-1900/Emilia Castillo, (206) 624-1913/Scott Voorhees, (206) 623-5296. Limited to 80.

27-29 WSBA Young Lawyers Division Midyear Meeting, Leavenworth. *For information:* (206) 448-0433.

28 Current Perspectives on Aboriginal Law, Vancouver, British Columbia. *Sponsored by:* CLE Society of British Columbia. *For information:* (604) 669-3544 or fax (604) 669-9260.

28 Suits Against Local or Regional Government, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

May 1990

1 Washington Elder Law: The Basics and Beyond, Seattle. *Sponsored by:* National Business Institute. *For information:* (715) 835-7909. Also presented May 3 in Spokane.

3 Washington Elder Law: The Basics and Beyond, Spokane. See May 1 entry for details.

3 Asian Bar Assn of Wash., Second General Meeting. *For information:* Peggy Nagae Lum, (206) 292-9988.

5 Fourth Annual Family Law Institute, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

5-6 WSBA Creditor/Debtor Section Midyear Meeting, Victoria, British Columbia. *For information:* (206) 448-0433.

11 Depositions: Tactics, Strategies and Problems, Coeur d'Alene, ID. See March 3 entry for details.

12 Depositions: Tactics, Strategies and Problems, Yakima. See March 3 entry for details.

15-16 WSBA Board of Governors meeting, Walla Walla. *For information:* (206) 448-0441.

18-20 WSBA Corporation, Business & Banking Section Midyear Meeting, Coeur d'Alene, Idaho. *For information:* (206) 448-0433.

19 Evidence for the 1990s — Emerging Issues in Law and Technology, Seattle. *Sponsored by:*

UW School of Law. *For information:* (206) 543-0059.

31-2 WSBA Environmental & Land Use Section Midyear Meeting, Vancouver, British Columbia. *For information:* (206) 448-0433.

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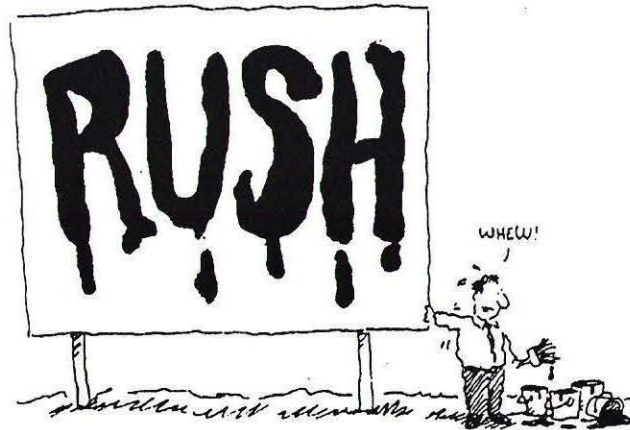
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Notices of Interest to Association Members

Disciplinary Notices

Disbarred: Seattle attorney **Jan G. Otterstrom** (admitted 1972) was disbarred by Order of the Supreme Court effective December 11, 1989 pursuant to a Stipulation to Discipline. The stipulation was based upon Otterstrom's conduct in removing client funds intended for a real estate closing from trust and using them for his own purposes, and misrepresentations to the client regarding the status of the closing.

Public Notices

Recording Fees: Beginning January 1, 1990 fees for filing/recording UCC information with, and obtaining UCC information or copies from county auditors or county recording offices, shall be in accordance with the schedule of fees set out in RCW 36.18.010. In King County, this means filing a UCC form will cost \$7 for the first page plus \$1 for each additional side or page, standard or non-standard. Searching records for a UCC filing in King County costs \$8 per hour.

In re: Application of New King County Superior Court Local Rules: Questions have been raised as to the

applicability of the new King County Superior Court Local Rules which were effective January 1, 1990 to cases filed or scheduled for trial before January 1, 1990. The joint Seattle-King County Bar Association/King County Superior Court Caseflow Monitoring Committee has made the following decision:

1. The *pre-1990* King County Superior Court Local Rules will govern discovery cutoff limits, etc. for all cases scheduled for trial by means of a Notice of Trial Date generated and mailed by the Clerk's Office, prior to January 1, 1990.

2. The *New Revised* King County Superior Court Local Rules will govern discovery cutoff limits, etc. for all cases scheduled for trial by means of a Notice of Trial Date generated and mailed by the Clerk's Office, after January 1, 1990. A "Case Schedule" will accompany the Notice of Trial Date and will contain the discovery date cutoffs and other pretrial event due dates.

Updated Child Support Modification Forms: RCW 26.09.170 and .175 set forth procedures for the modification of child support. RCW 26.09.175(7) requires the Office of the Administrator for the Courts to develop model forms which implement these procedures. Updated

child support modification forms are now available upon request from the Office of the Administrator for the Courts at the Temple of Justice, AV-01, Olympia, WA 98504.

Notice of New Snohomish County Ex Parte Services: Snohomish County Clerk Kay Anderson has announced that in light of "an alarming rate of escalation" in the demands for service from the Superior Court Commissioner's Office, paralegal services have been added. This service is available for presentations to the court commissioners or a judge that do not require an attorney's personal appearance. The types of orders that may be presented in this manner include: agreed orders, orders of default and default judgment, probate orders, preplacement and postplacement orders, and dismissal orders. The commissioners note, "Routine orders can be processed rapidly and less expensively by using mail *ex parte*. Even with expanded *ex parte* hours, there may still be a wait. The minor charge for processing by the Clerk is less costly to your client than having you wait."

The *ex parte* service fee is \$10. Service requests should be sent to Snohomish County Clerk's Office, Attention: Ex Parte Clerk, Room 246, Mission Building, Everett, WA 98201.

In re RCW 19.52.120(1): Legal Interest Rates

The average coupon equivalent yield from the first auction of 26-week treasury bills in February 1990 is 8.15%. The **maximum allowable interest** permissible for **March 1990** is therefore **12.15%**. 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, *Bar News*, 7414 N.E. Hazel Dell Avenue, Suite A, Vancouver, WA 98665. Deadline is the 15th of each month for the second issue following.)

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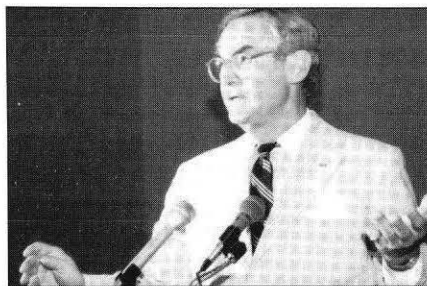
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THE BIG TIME

ABA President Meets Downtowners, Law Students

ABA president L. Stanley Chauvin, Jr. spoke to an audience of 130 in the Metropolitan Ballroom of the downtown Seattle Sheraton at a January 10 luncheon co-sponsored by WSBA, SKCBA, and City Club of Seattle. He had just returned from being in Berlin at the time the wall came down, and then in Russia. He spoke to the changes that perestroika is bringing to the legal profession in Eastern Europe. Some of those changes anticipated have already taken place in the West European economic community where, for instance, there is an international bar exam. (Those that do not pass and outsiders must wait until they are a "finished product.") He found "the



Stanley Chauvin

Soviet Union deteriorating economically, not by the day but by the hour, as East Block economic powers turn to others to do business. Communists never envisioned a demanding consumer society." Perestroika is "way ahead" of his expectations. Russians who are arrested now have immediate access to a lawyer. "They really want to...remake their system."

Chauvin's main theme was our own country's nightmare — drugs — in a

situation that "virtually happened overnight." There is an "obscene lack of resources," to fight the drug war, and a skyrocketing number of addicts. He argued, "You cannot run a growth industry [combatting the drug trade] with a cracker barrel philosophy," and insisted the figure of eight billion dollars or less being discussed in Congress for the war was wholly inadequate.

He touched on a multitude of other law-related issues, such as specialization ("I can come down on both sides of the question"), advertising, jury composition ("Are some cases now too complex for randomly chosen jurors?"), and the changing economics of law. He pushed pro bono: "You don't have to put in all of your 50 hours for pro bono this week, but put in *some!*"

Later in the day, the president met with Dean Frank Smith and 50 law students at the University of Washington's Condon Hall for an hour. He told the would-be lawyers that law school is important and is "the last

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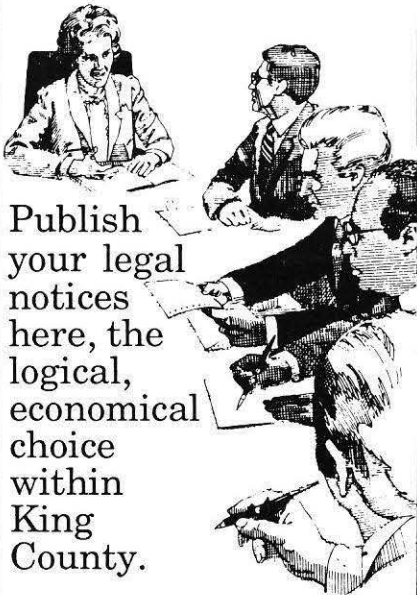
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chance in your life to think freely," as opposed to attacking specific problems with specific means. Chauvin insisted that nothing he had learned before taking the bar for the second of nine times after 20 years of general practice "could have helped me" pass. He advised the students not to be disappointed if they did not link up with a large firm. "Go to the prosecutor's office...get street experience."

What kind of profession are the students entering, and are there too many attorneys? "People said that when the largest law firm in America hit four lawyers...Try to do what you want to do when you want to do it... I want my lawyer to be comfortable... As long as we are held in the right esteem by our clients, that's what counts..."

Students should expect accelerating change in law practice, he said. "It's changed more in the last 20 years than in the last 200...The concept of partnerships has drastically changed...Lawyers are now in 'commerce.' Mediation, arbitration...will become as much a part of life as jury

trials. Nontraditional methods will become standards, and the jury trial will become the unusual event."

The president urged the students to be active in state and local bar associations for collective problem-solving and as a "good way to do business."

After fielding pungent questions for 20 minutes, Chauvin left to be hosted by the Board of Governors at a dinner at the Columbia Tower Club. His only other appearances in the Northwest were the next day at the Tacoma Rotary Club and before the faculty and students at University of Puget Sound.

The president has been in 30 states already this year, and he aspires to be in all 50, but already senses that the days may not be long enough.

COMPUTER-ASSISTED RESEARCH

West Comes West

St. Paul, Minnesota-based West Publishing Company has announced that the *Washington State Bar News* is one of four American bar journals selected to participate in its second annual Bar Journal Grant Program.

Under the program, the *Bar News* will be provided six months' use of a Westlaw Walt II Terminal and printer, free Westlaw training and access for that period, and \$2,500 to establish a monthly page in the publication devoted to computer-assisted legal research and office automation. Copy for the column will be developed jointly by West editor Eileen Gonyeau and *Bar News* staff.

"We are all pleased that West has chosen the *Bar News* for this program," editor Lindsay Thompson said. "It will be an interesting experience, not only for the *Bar News*, but for my firm, which will be able to acquire a first experience of computer-assisted legal research," which will be reported in the new column, expected to begin in April 1990.

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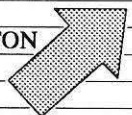
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ing are on the move in America and Canada.

The Continuing Legal Education Society of British Columbia has received a grant from the Law Foundation of British Columbia to establish a Plain Language Legal Drafting Project. The project will convert forms and precedents commonly used by lawyers into clear, modern language. A project director, editorial and research assistant and administrative assistant staff the project for a year, with a possible two-year renewal.

Meanwhile, the American Society of Writers on Legal Subjects, known as SCRIBES, has announced the publication of a new publication, *The Scribes Journal of Legal Writing*. The *Journal* is the first and, so far, only publication to deal exclusively with its subject. The first issue will appear this spring, and it will appear annually thereafter.

Editing the *Journal* is Bryan A. Garner, author of the *Dictionary of Modern Legal Usage*, published by Oxford University Press in 1988. Garner is editor of the Oxford Law Dictionary Project at the University of Texas. Christopher Simoni of the University's Law Library is assistant editor, and Wake Forest University law professor Thomas M. Steele is managing editor.

Garner says the *Journal* will both exemplify and advocate rare qualities in legal prose: lucidity, concision and felicity of expression. "We hope to spread the growing scorn for whatever is turgid, obfuscatory, or needlessly dull," Garner continued. This radical notion will find its first expression in a refusal to publish long, substantive footnotes in its articles, and in an aim to avoid as many footnotes as possible. Articles will be accepted dealing with any aspect of legal writing: document drafting, opinion writing, analytical writing, brief writing, legal usage and related topics. The publication's intended audience will be lawyers, judges, law professors and publishers. Interested parties can contact managing editor Steele at Wake Forest University School of Law, P.O. Box 7206, Reynolda Station, Winston-Salem, NC 27109.

CLARK COUNTY REPORT

by JOHN F. NICHOLS

Stuff Happens... Walls fall, governments topple, even Panamanian presidents get arrested. But the biggest event of the decade was the announcement that the last bastion of Bon Vivantness — of Hunkness — of Bachelorhood — is finally getting

married. Yes, **Philip "Casey" Marshall**, after investing millions in props and black felt pens (for use in bathroom stalls), has succeeded in his ultimate quest after some 40 years of feigned freedom. Casey announced his engagement at a gala event at Prosecuting Attorney **Art Curtis's** renovated house/chapel, during the halftime of the Rose Bowl. Unfortunately, his fiancée was unavailable;

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MARITIME PERSONAL INJURIES

ADMIRALTY NOTE: Many workers injured aboard floating seafood processors are still being incorrectly informed that they are only entitled to worker's compensation. These workers are seamen who can sue their employers for damages under the Jones Act and general maritime law. It is generally immaterial that they may have been paid worker's compensation benefits.

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she was changing the plugs in Casey's Beemer. However, sightings have been confirmed and approved. The actual date of the nuptials has not been disclosed, but it is anticipated for sometime this summer following verification of I.D.s, W-2's and correctly identifying all state capitols and the real words to "Louie Louie."

The Cold War Continues: While

freedom stirs in Eastern Europe, takeovers are in full flower in Clark County. That friendly little firm of Gallup, Ferguson & Tubbs has been enveloped by the Oregon conglomerate, "Schwabe, Williamson & Wyatt" under the new name of "Schwabe, Williamson & Wyatt." The big boys further installed one **Lawrence Paulson** at the Vancouver satellite to

oversee the performance of the long-time Vancouverites. In hushed conversations with former Senior Partner **Bud Gallup**, he declared the new coalition is a veritable "worker's paradise," but that he had not anticipated such long lines for pencils and paper clips.

So much for life in Gulag Vancouver.

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PIERCE COUNTY REPORT

by **GEORGE S. KELLEY**

Darrell Addington, treasurer of the Tacoma-Pierce County Bar Association, reported that the bar finished 1989 in the black, largely due to funds received from bar-sponsored CLE programs. It seems that these programs are well attended, not only for their quality, but because they avoid the stress and expense of rush hour travel to Seattle for CLE credit. Lawyers in southwest Washington might keep this factor in mind when planning their ongoing education.

This financial report was part of the local bar's annual business meeting, which is required by the bylaws. Not only do bar officers give reports, but each chairperson is likewise required to report on whether or not the committee did anything useful.

Mike Smith claimed that the golf tournament committee returned a profit.

Dick Benedetti, chairman of the judicial qualifications committee, reported that a list of qualified candidates for three new superior court judicial positions was prepared based upon a poll of the bar's membership. The governor made only one of the three appointments from the list. Dick reported some concern that the efforts of his committee were for naught. One might conclude that, while one out of three ain't bad for a major-league hitter, that in the matter of judge-picking, the committee will have to do better in the future.

The firm of Burgess, Kennedy and Fitzer, P.S. having lost **Karen Strombon** to one of the aforementioned court positions, announced that **Timothy R. Gosselin** and **Jack J. Maichel** have become shareholders. Presum-

ably it won't take both of these fellows to do Karen's caseload.

The state attorney general announces that **Valerie Bittner**, **Melba Caliano**, **Linda Williams**, **Jo Messex Casey** and **Laurie Christensen** have joined the local Tacoma office.

Finally, the Young Lawyers elected **Jim Orlando** as president-elect, **Dan Absher** as secretary and **Elizabeth Pauli** as treasurer. **Bob Spaulding** and **Dave Petrich** are new members of the board. **Mark Dynan** took over the presidency from the retiring **Jeanne Betzendorfer**.

SEATTLE-KING REPORT by JAMES L. VARNELL

Crystal Ball. After lengthy consultations with Jeanne Dixon and through review of various supermarket tabloids, this correspondent has compiled a list of salient events involving the legal community, which the reader can be assured will occur during the 1990s.

Merger mania continues to sweep the legal profession as the law firms of Bogle & Gates and Perkins Coie join together to form the largest law firm north of Palm Springs, California. The managing partners for this mega-firm, known as "BoPerk," are **Kelly Corr** (formerly of Bogle) on even-numbered days, and **V. Woolston** (formerly of Perkins) who serves on odd-numbered days.

In sports, judge **Bill Dwyer** resigns his position on the U.S. District Court and buys the Seattle Mariners baseball club, thereby preventing the team from moving to Indianapolis at the expiration of its Kingdome lease. Dwyer hires the retired **George Steinbrenner** as his general manager, and UPS law school professor **Bill Creech** as his field manager. In spite of the fact that the Mariners have the worst record in baseball at the 1996 All Star break, Steinbrenner extends Creech's contract for five years and gives him a raise and a signing bonus.

Ron Friedman and **Ken Sharaga** captain the winning team in the national, under-six-foot basketball tournament. The final game is punctured by a backboard-shattering, tomahawk slam-dunk by Friedman, who

was also known to dunk over **Ralph Sampson** during undergraduate days at Virginia. **Judith Eiler** wins the Phil Biege-South King County Bar Association Open after **Paul Houser** drives into the lake on the first play-off hole. The team of **Tom McElmeel** and **Jim Varnell** win the Gary R. W. Slater best-ball golf tourney with a blistering 10-under-par round. **Carlos**

Sosa forsakes the legal profession and is named coach of the Seattle Thunderbirds, the National Hockey League's newest entry.

Four years after winning re-election to the U.S. Senate, **Brock Adams** resigns to re-enter private law practice. Newly-elected Governor **Jay Inslee** of Selah appoints Tacoma attorney **Michael J. Welch** to replace

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Adams. Apparently, Inslee saw this as the only way that he and his team would be able to re-capture the WSTLA three-on-three basketball tournament championship, which had been won five straight years by the team of Welch, **Dan Hannula** and **Jeff Hale**. (Welch subsequently wins re-election to the U.S. Senate by a narrow margin over former U.S. attorney **Gene Anderson**.)

On the national scene, President **Albert Gore, Jr.** dips into the law school ranks to name U.W. law professor **John Junker** as U.S. attorney for the Western District of Washington, former assistant U.S. attorney, King County chief criminal prosecutor and UPS law professor **David Boerner** as federal public defender for this district, and U.W. law professor **Bill Rodgers**, a fellow Tennessean formerly from Chattanooga, as secretary of the cabinet-level Department of Environment. President Gore also names long-time supporters **Ron Perey** and **Julia Langley** as his chief of staff and attorney general, respectively.

Kay Frank is the first graduate of



photo by Mary Levin

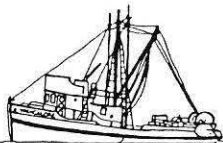
*"JD"s with "EMBA"s: The following members of Washington's legal community are alumni and students of the University of Washington Executive MBA Program, in which experienced managers and professionals in a variety of fields study while continuing to work full-time. Left to right: (seated) **Dorothy Bullitt** ('88)/Harbor Properties; **Sara Hemphill** ('90); Seattle Aquarium Society; **Robert Gullette** ('88)/Boeing Computer Services; **Richard Busch** ('90)/US WEST New Vector; (Standing **Mark Roellig** ('88)/US WEST Communications; **Ron Hauer**; **Laura Eckert** ('85)/WA State Dept. of Natural Resources; **Adrienne Stone** ('91)/1st Interstate Bank of WA; **Steven Holmes** ('91)/US WEST Communications.*

the University of Puget Sound School of Law appointed, and subsequently elected, to the Washington Supreme Court. Frank hires this correspondent, who formerly sponsored her as

an APR 9 intern, as his law clerk. **Henry Aronson** is named executive director of the booming Port of Langley. **Tom Bucknell** leaves the practice of law to pursue a singing career in Nashville, and after three albums "go platinum," returns to his hometown of Burlington to farm. After winning four Academy Awards for Best Director of a motion picture, **Dennis Nollette** retires from the movie industry and returns to the King County Prosecuting Attorney's office to serve as trial deputy for Aukeen District Court. **Frank Smith** serves the full decade as Acting Dean of the University of Washington School of Law, which announces that a full-time replacement is to be named "forthwith."

M&A. Preston, Thorgrimson, Ellis & Holman has merged with Shidler, McBroom, Gates & Lucas and will practice under the name of Preston, Thorgrimson, Shidler, Gates & Ellis. Davis Wright & Jones has merged with the Portland firm of Ragen, Tremaine, Krieger, Schmeer & Neill, and will practice as Davis Wright Tremaine.

Of Note. **William R. Hickman** was recently presented with The Athletics Congress (TAC) President's Award at a ceremony in Washington, D.C. In the media release regarding this award, Hickman, in spite of his hav-



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LIENS IN BANKRUPTCY: Although a bankruptcy filing stays creation of post-petition liens against property of the debtor, this provision is inapplicable to maritime liens arising post-petition against a debtor's vessel. *United States v. Z.P. Chandon, et al.*, ___ F.2d ___, W L 131714 (9th Cir. 1989) George H. Luhrs, attorney for prevailing lien claimants.

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ing been a captive of the insurance industry for the past 20+ years, is noted for writing the "iconoclastic" [i.e., attacking established beliefs or institutions] *Washington Insurance Law Letter*. **Judith M. Runstad** has been appointed to a three-year term as a director of the Seattle branch of the Federal Reserve Bank of San Francisco.

Office Moves. Lane Powell Moss & Miller announces the following additions: **Timothy J. Pauley, Frederick L. Gillings, Craig McIvor, Deborah Davidson Canning, Nadine D. Dias, Charles C. Huber, Mari C. Schwab, Grant E. Courtney, Samuel D. Chung, Denise S. Kuhlman, Bruce M. Hull, Neil A. Cable, Gregory L. Anderson, William Michael Targett, Jane Rakay Nelson, Gary M. Kirk, H. Kevin Wright and Timothy J. Tompkins.** **Kevin A. Peck** has opened his office in the Hoge Building. **Thomas M. Fitzpatrick** has joined Stafford Frey Cooper & Stewart.

Robert Goodstein has joined Short Cressman & Burgess. New attorneys at Heller, Ehrman, White & McAuliffe are: **James E. Dunlap, Donald J. Manning, Leif M. Ormseth, Jacqueline S. Glanz, Deborah Epstein and Jacqueline S. Hebert.** **Dale N. Schuman** and **Judith R. Eiler** have become partners at Bonneville, Viert, Morton & McGoldrick, and **Kevin P. Donnelly** and **Paula S. Pridgeon** have joined the firm as associates. **Dawson Taylor** has become a principal at Cairncross, Ragen & Hempelmann, and **J. Thomas Richardson** is special counsel; new attorneys there are **Daniel C. Vaughn, Laurie D. Heinz, William J. Murphy and Janice Sue Wang.** **Mark R.** ("Big Stroke") **Busto** has joined the Bellevue office of Davis Wright Tremaine.

Williams, Kastner & Gibbs has moved to Two Union Square. The Seattle office of Rosenow, Hale & Johnson has moved to 1111 Third Avenue, and **Jeffrey P. Smith** and **Donna M. Moniz** have joined the firm as partners, and **Peggy E. Amodt** has joined as an associate. **David C. Pearson** has joined Madden & Crockett as a partner. **Donald F. Kline** has joined Albert & Slater as an associate. **James R. B. Salter** has been named president and chief operating officer of the Pacific Building Corpo-



photo by Chert Bannan

Attorneys **Judd Lees** and **Harry Schneider** respond to a question about "Neon Lips," a rock band composed of lawyers, during a talk show on KISW, Seattle's number one rock & roll station. Along with discussing their musical interests, Lees and Schneider fielded questions about an array of legal topics.

Lees is an attorney at the Bellevue office of Williams, Kastner & Gibbs; Schneider is with Perkins Coie's Seattle office. The two were guests on "Talk with the Rock," a public affairs program hosted by KISW news director **Jim Kampmann**. The program features a legal topic once a month and is produced in cooperation with the WSBA's Public Affairs Department.

ration.

Jerry Rubin, Judith Stouder and **Margaret Barbier** have joined Stoel Rives Boley Jones & Grey as partners. Lasher Holzapfel Sperry &

Ebberson announces: **Anthony J. W. Gewald** has been selected as managing partner; **Danial D. Pharris, William A. Snyder** and **Paul A. Tonella** have associated with the firm. **Jean**

Johnson, Christopher Marsh, Mary S. Peterson and Scott C. Wakefield have become directors of Reed McClure Mocerri Thonn and Moriarty. **Kristen Anderson** is an associate with Rutledge, Cary-Hamby & Scott. **Brooks E. Harlow** has become a partner at Miller, Nash, Wiener, Hager & Carlsen.

Errata and Editorial Comment. Proving again that this column has a wide and distinguished readership, a tip of the hat is due WSBA Executive Director **John Michalik** for pointing out that the "Chet Kembro" mentioned in the January issue as having joined Foreman, Kraft & Prince is really **Chuck Kimbrough**.

SPOKANE COUNTY REPORT

by **BERNIE McNALLEN**

Election: The Spokane Chapter of Washington Women Lawyers has recently elected new officers: **L. Diane Emmons** is president; **Darlene Chovan-Anderson** is vice president; **Victoria Redlin** is secretary; and **Mary Ellen Gaffney-Brown** is treasurer.

The chapter's focus this year concerns the recently published findings of the Governor's Task Force on Gender and Justice. WWL has formed a speakers' bureau to disseminate this information to various community groups.

Kudos: The Washington Legal Foundation has recently given the Spokane Bar Association pro bono program a grant of \$37,500 to help fund the pro bono program for 1990.

In 1989, Spokane attorneys contributed approximately \$220,000 of free legal services to poor and disadvantaged people. The annual pro bono appreciation party will be held on March 6.

Events: On March 1 the Spokane Bar Association honored five attorneys who have been in practice for 50 years. The honorees are: **Chester Chastek, Paul Clausen, Norman Johnson, John F. Kelley and Smithmoore P. Meyers**. Festivities will be held at the Spokane Club.

On April 7 the Spokane Bar Association Dinner/Dance will be held at the Spokane Country Club. The *John Heath Players* ensemble will be back by popular demand. (Produce can be purchased at the door.)

WHATCOM COUNTY REPORT

by **MICK MOYNIHAN**

From our corner of the state, the biggest news is that **Tut Asmundson** stepped down as a commissioner of the Port of Bellingham. He initially became a commissioner back in 1955 and has served continuously since that date. The list of accomplishments is too numerous to list in this column, but Tut resigned because he wanted to do some traveling and en-

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joy a few relaxing years without the stress of a law practice and port business at the same time.

Continuing on with the same family and law firm, **Mark Asmundson** was married in the last week of December, and he and his new bride are busy restoring one of Bellingham's older homes (and trying to figure out a way to bill that time out).

And, speaking of weddings, **Richard Baum** and **Mary Summers** were married this past summer, and **John Aabe** and **Judy Proller** also tied the knot. I thought that it would be a good idea to do a column on the lawyers who are married to other lawyers, and that may have to wait for some future column. I believe that there are seven couples in this area that fit that description.

For this coming year, our elected officers are as follows: **Denise George**, president; **Steve Adelstein**, vice president, and **David Nelson**, secretary-treasurer.

Further election news for the Volunteer Lawyers Program has **Dan Raas** as president, **Ed Simmers** as vice president and **Tom Ashton**, as everything else.

IN MEMORIAM

Barry Schneiderman died on September 21, 1989, of pancreatic cancer. He was 56.

A long-time Seattle resident, Schneiderman graduated from the University of Washington School of Law in 1957, where he was affiliated with the Phi Alpha Delta Fraternity. He remained an active supporter of both the University and its law school throughout his life. Admitted to the Washington State Bar Association in 1957, he was a King County deputy prosecuting attorney from 1959 until 1961 when he co-founded his law firm, last titled Burns, Schneiderman & Finkle. He was also a municipal court judge pro tem for the city of Seattle, and a founding member of the national Trial Lawyers Advocacy Foundation.

Schneiderman retired as a Colonel in the U.S. Army Reserve, where he served as staff judge advocate for the 139th Army, commander of the 226th

JAG Military Law Center, and as assistant to the General Counsel, Office of the Secretary of the Army. His military service was marked by numerous awards and commendations.

Schneiderman acted as president of the Caroline Kline Galland Home and the Seattle Lodge B'nai B'rith, and served on the Board of Trustees of Temple de Hirsch-Sinai, the American Jewish Committee, and the Jewish Federation of Seattle. He was also a member of the College Club of Seattle, Rainier Club, the Seattle Tennis Club, the Washington Athletic Club, the YMCA, Thomas M. Reed Lodge No. 225 F&M, and the Scottish Rite.

He is survived by his wife, Judy, and two children, Paul and Leah. Remembrances are suggested to the Caroline Kline Galland Home, the American Cancer Society, or a favorite charity.

Seattle attorneys **Steven M. Dorobis**, 36, and **Eric A. Hoyer**, 34, were found shot to death in their King County home January 15, 1990. As of deadline for this issue of the *Bar News*, no cause or suspect for the killings had been found.

Dorobis lived in Sunnyside, Yakima County, before practicing in Seattle. Hoyer, a native of Canada, was a graduate of the University of Puget Sound School of Law. He practiced business law in the Lyon Building in downtown Seattle. A reward fund has been established to assist the police in their inquiries: Friends Reward Fund, Lyon Building, Suite 306, 607 Third Ave., Seattle, WA 98104. Further details will be reported in future issues of the *Bar News*.

Robert W. Graham, 74, died January 6, 1990 in Seattle. Born in Payette, Idaho, Graham graduated from Whitman College, where he was president of the student association and set records for the 100 and 220 yard dashes that still stand. He participated in the 1936 U.S. Olympic trials, but a leg injury prevented his traveling to Berlin that year. Graham took his law degree from Columbia University. Moving to Seattle in 1939, Graham joined Bogle & Gates, where he spent his entire career. By

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1944 he had been named Seattle's Junior First Citizen; in 1953 *Time* named him a Newsmaker of Tomorrow.

Few organizations missed Graham's involvement. He was president of the Seattle Chamber of Commerce and Downtown Seattle Rotary Club, chair of the Whitman College Board of Trustees, a Seattle school levy campaign chair, and an inspector for the State Department. In 1968 President Johnson appointed him to the National Administrative Conference; in 1970 President Nixon named him to a State Department task force on U.S. embassy operations in the Far East. He was a national vice president of the Jaycees and national board member of the American Cancer Society. Locally, Graham was a director of the United Good Neighbors, Seattle Symphony, Swedish Hospital, Downtown Seattle Development Association, and a co-founder of the World Affairs Council of Seattle. Active in politics, Graham was co-chair of former Senator Daniel Evans' 1983 Senate campaign.

Graham's government service culminated in his appointment by President Reagan to the Mutual and Balanced Force Reduction Talks delegation in Vienna. He returned to Seattle in November 1986 after being diagnosed with thyroid cancer.

Survivors include his wife and five children.

David B. Schultz, late Thurston County Superior Court commissioner and municipal judge for Olympia and Tumwater, was honored by the unveiling of a portrait at the Thurston County Courthouse January 9, 1990.

Schultz died July 9, 1989 at his home in Lacey. He was 57 years old. Born in Everett, Schultz graduated from St. Martin's College and Gonzaga University School of Law before opening his law office in Olympia in 1958. In the mid-1960s, he purchased the Thurston County Title Company. He was Olympia municipal judge from 1972 to 1985 and held the same post for Tumwater from 1974 until his death. Schultz served as superior court commissioner from 1976 to 1982. Survivors include his wife and three children.

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