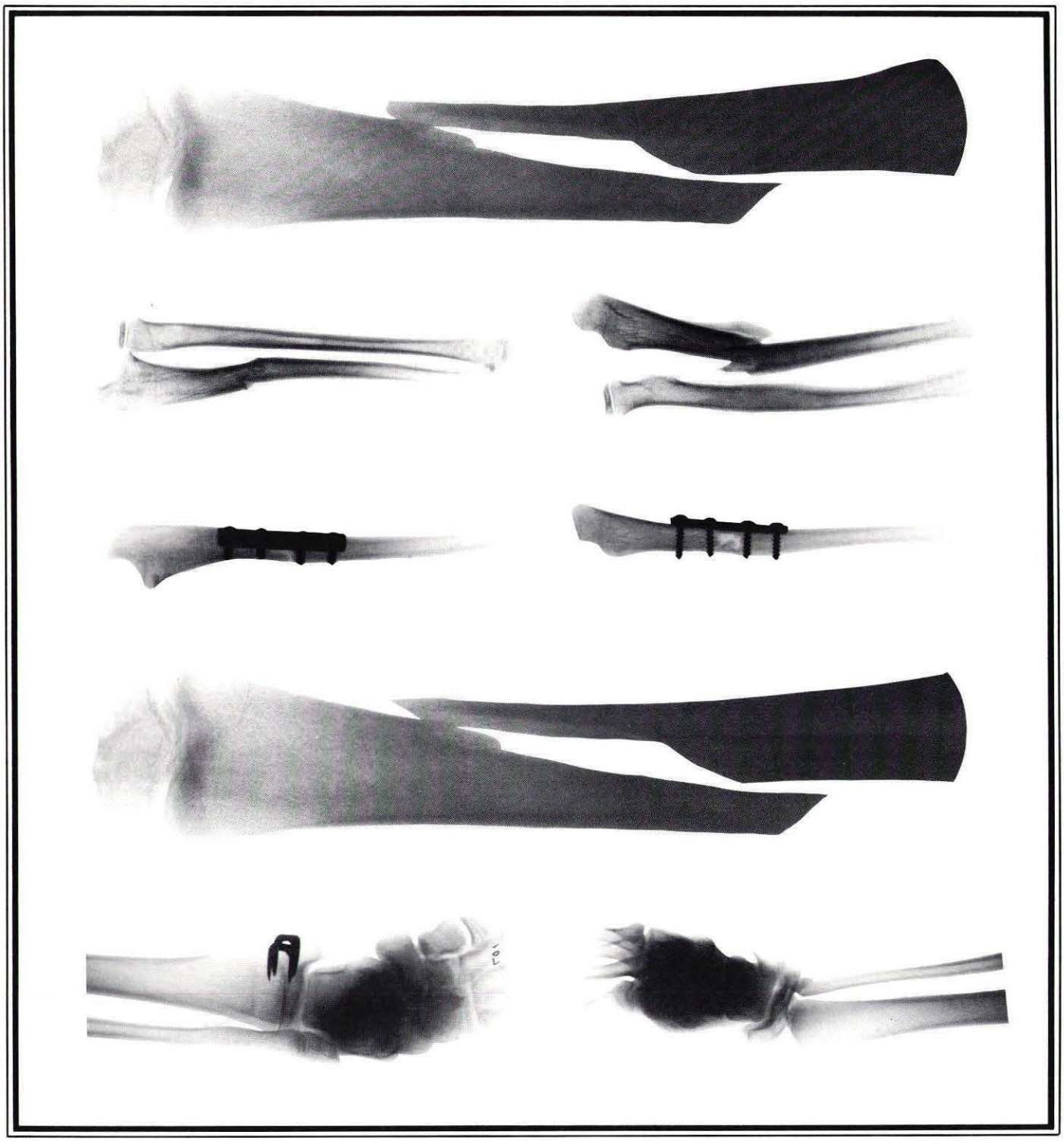
Washington State Bar News
Vol. 44, No. 2, February 1990



Playground Liability: Have the Rules Changed?

Prevention and Resolution of Interprofessional Disputes

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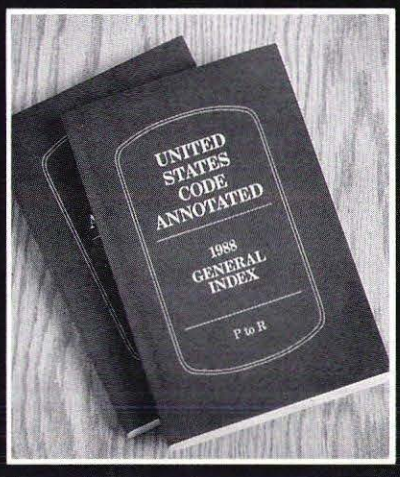

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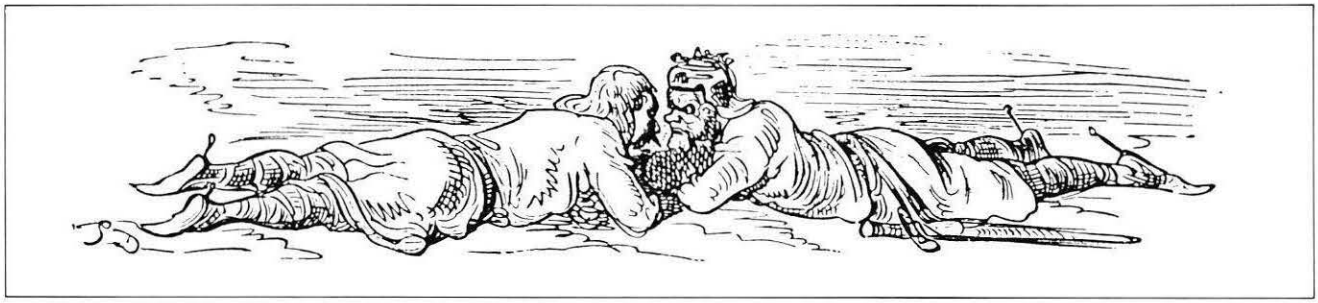

Interprofessional disputes: See page 9.

FEATURES

DEPARTMENTS

ART CREDITS

Cover: The broken and mended bones of children — injuries typical of playground falls — are arranged in the hexagram "Youthful Folly" from the I Ching. Our lead article this month explores the liability potential for owners of playgrounds, the surfaces of which do not meet the U.S. Consumer Product Safety Commission's recommendations.

The x-rays are courtesy of **Children's Hospital and Medical Center** in Seattle, devoted to health care for children since 1907, when the hospital was founded by 24 Seattle women. From that seven-bed, rented ward, it has grown to 200 beds on a 25-acre campus and has an international reputation for specialized treatment as well as teaching and community outreach.

WSBA Telephone Numbers

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DENNIS M. EAGAN, *Advertising Director*

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Board of Governors

The leadership of any dynamic organization has critics. Your Board of Governors is not an exception. Criticism is healthy and necessary. In recent years a few Bar members have tried to paint a picture of your elected Governors as elitist. The specific claims are: that the Board meets in exotic and plush locations; that the elected Governors are unrepresentative of the Bar; and that Governors do not work for, or care about, the profession's needs.

With these criticisms in mind, let us examine the facts.

Where does the Board meet? The Board of Governors' 1990 meeting sites include Tacoma, Walla Walla, Leavenworth, Yakima, Seattle, Olympia and Vancouver, Washington. In fact, every 1990 Board meeting will be held in Washington state except one. The single exception is a joint meeting with the governing board of the Law Society of British Columbia in Victoria in April.

Are the Governors representative? All Governors are directly elected by the Bar membership. Every Washington Bar member is able to participate in these elections and vote for his or her preferred candidate. Most elections are actively contested. For the last six years the Board included an elected female member. A woman Governor, Elizabeth Bracelin, continued her service as president in the term before mine. The Board is composed of lawyers from multiple areas of practice. Three current Governors work in large firms, and seven are from small firms.

Do the Governors work for you? The Board meets for two days each month. Each member also spends a lot of time on the telephone, at local meetings, and in correspondence between meetings. Subjects addressed by the Board almost without exception involve significant debate and divided votes. These meetings are open to Bar members and are scheduled throughout the state so that all lawyers can attend the meetings and provide input.

I appreciate informed dissent. But anyone who questions the sincerity and professional devotion of our Governors is ill-informed. Our Governors are unpaid; they take time away from their practices and families to contribute to the well-being of our profession and association.

I served as a Governor for four years and have been president since September. During that time I have worked with over 20 elected Governors from all over Washington state. Every one of those men and women worked hard to represent the profession without making themselves richer by a penny. I am proud of our Governors and our democratic Bar Association. You can also be proud of these people and your organization.

LETTERS

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

Bangkok Post
Established in 1946

Vol. XLIV No. 325 BANGKOK TUESDAY NOVEMBER 21, 1989 Price 10 Baht

Legal Services for the Poor (Part III)

Editor:

How many lawyers serve Washington's poor? This unaddressed question, in Sir Thomas Browne's famous words, "though puzzling..., (is) not beyond all conjecture." Legal aid advocates argue that the poor have fewer attorneys than the general population. Statistics (unreliable as always, but interesting) give a dramatically different picture.

The Oregon State Bar published *Economics of Law Practice* in September 1989, based on a survey of the Oregon bar. It shows that Oregon attorneys donate almost $40 million worth of free legal help for the needy poor each year. *On the Record* summarizes:

> In a typical month, an Oregon attorney spends an average of four hours a month providing pro bono legal help. Extending that to an annual basis, Oregon's 8,700 active attorneys donate more than 417,000 hours of pro bono work each year, at a value of $39,672,000.

For Oregon, that adds the equivalent of 209 full-time legal aid attorneys to the existing 86. Oregon thus has (not counting law school clinics and nonLegal Services Corporation-funded programs) at least one attorney for every 928 poor people.

Of course, Washington attorneys do better. But assuming the same averages, Washington's 14,916 active attorneys would donate 715,968 hours, at a value of $68 million. Assuming a full 40-hour work week and a 50-week year, this is the equivalent of an additional 358 full-time legal aid attorneys.

In 1987/1988, Washington LSC-funded legal aid programs reported they had 103 advocates (attorneys/paralegals) serving a 1980 census poor of 394,891. That would be just one advocate for every 3,834 poor. These kinds of figures, we are told, show that the poor are seriously underserved compared with the general population.

However, if one adds the 358, there are then 461 full-time equivalent attorneys serving the poor: one attorney for every 857 poor. Thus, the poor get more, not less, than the general population.

Extrapolation is never a reliable research method by itself. But the reality is also clearly different from what we are normally given by legal-aid advocates. Washington also has nonLSC-funded legal aid programs, and law school clinical programs which improve these figures.

How much legal aid is available to the poor, how many poor there are, how much legal assistance they truly need: these are real questions, not usually addressed. The above figures may contribute to the answer.

ALAN L. GALLAGHER
Stevenson

Look to Vancouver

Editor:

If you are like me, when you get your new issue of the *Bar News* you probably first turn to the back to see which of your brethren has been disbarred or suspended.

Following that unhappy activity, however, I invariably turn to the "Clark County Report" by John Nichols. Although I barely know a soul who practices in the Vancouver area, the "Clark County Report" is always amusing, sometimes very funny and, at times, downright hilarious.

As one who was unexpectedly lampooned by Nichols last month (November 1989), I even thought what he wrote about me was funny.

I recommend the "Clark County Report" to anyone else who believes they could use some additional levity in their lives.

THOMAS W. ROACH
Pasco

[From "Column Nine"]

Lawyer's bells jingle all the way

PERHAPS prematurely Column Nine has declared the start of its festive season. This means for the next two months readers can expect lots of Christmassy tales. You've been warned. Launching the campaign is our legal correspondent, who says Christmas carols were heard early at Stafford magistrates court last Friday when a solicitor's novelty underpants played Jingle Bells. As Mr Mark Jewels applied for an adjournment, he leant against his desk and the mechanism in his underwear was activated. He carried on talking while the tune carried on playing. Mr Jewels, who apologised to the judge, said later: "The underpants were a present. Once started the music doesn't stop until it's been through its repertoire. I had no alternative but to carry on."

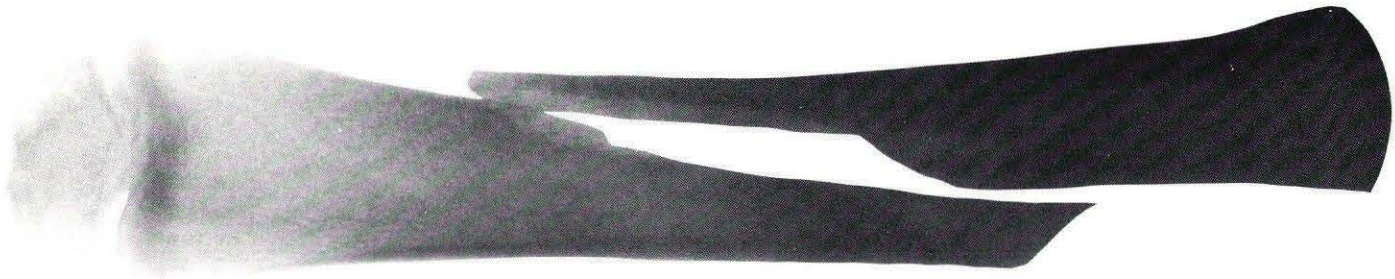
But Where Do You Stick the Batteries?

Editor:

I recently returned from a very enjoyable ten days in Thailand with a copy of the English language *Bangkok Post*. I thought you might want to share with your readers the delightful anecdote I have circled on page one.

Unfortunately the reporter did not record the judge's response to this challenge to courtroom decorum, or where such an interesting item could be purchased.

RICHARD P. THOMPSON
Judge, Southwest District Court
Seattle



Playground Liability — Have the Rules Changed?

by **Richard J. Forsell**

Playground accidents are common in our society and have been assumed to be a normal part of growing up. However, many are avoidable, and with reasonable care children may be saved from the pain and trauma of major playground injuries. Relatively recent changes in state law dealing with governmental liability for torts, combined with Consumer Product Safety Commission (CPSC) research on playgrounds and recommended guidelines for equipment and surfaces have changed the rules that many attorneys, government policy makers and businessmen have become accustomed to.

Playgrounds are everywhere — restaurants (McDonald's, Burger King, etc.), schools, parks, community centers, and resorts; the locations are endless. Our society nominally puts great emphasis on child safety: witness the rules and regulations of child restraints in automobiles and the uproar when a child is harmed after being referred to Child Protective Services (such as in the Eli Creekmore case). However, largely ignored are the dangers and injuries created by playgrounds.

In 1977, an estimated 93,000 injuries associated with public-playground equipment were treated in hospital emergency rooms. Of these injuries, *59%* occurred due to falls from playground equipment to the surface. *A Handbook For Public Playground Safety*, U.S. Consumer Product Safety Commission (1981), hereinafter referred to as *Handbook*. The *Handbook* makes a number of recommendations on both equipment and surfacing. The equipment manufacturers have largely complied, but the surfacing recommendations have been largely ignored by the people who would be generally expected to be most concerned about the safety of children — public officials setting spending priorities for school, park and other government playgrounds.

Key factor: The *Handbook*, after an extensive study of injuries to children from playground uses, says, "[A] surface should not impact at a peak acceleration in excess of 200 g's to an instrumented ANSI headform (the testing instrument) dropped on a surface from the maximum estimated fall height." Volume II, page 22. CPSC standards are geared toward avoiding severe head trauma rather than minor injuries, and are based on numerous impact child-injury studies.

This recommendation sets an objective standard to determine whether a playground is reasonably safe and how the reasonably prudent person will design, maintain and administer it.

Historically, no objective standard existed as to what constituted "reasonable care" with regard to protecting children from falls from equipment. This created difficulty in setting a standard of care for use in negligence suits. However, the *Handbook* recommendation, based upon scientific, objective studies, has now established such a standard.

The *Handbook* suggests use of a National Bureau of Standards test which requires first dropping an instrumented headform in guided free fall and then measuring the linear acceleration response of the headform during impact. This standard method allows the comparison of the shock attenuation capabilities of various surfaces. Independent testing facilities routinely perform this test. Furthermore, the CPSC recommendations are based upon studies (available to interested parties) by the Product Technology Division of the National Bureau of Standards.

In Washington state there appear to be three main groups who have different liability standards concerning playground safety: (1) private commercial business who offer playgrounds to solicit business; (2) schools; and (3) parks and noncommercial recreational use providers.

Private Commercial Businesses

Private businesses offer playgrounds as a method of attracting customers. Primary among these are the fast-food restaurants. They use the traditional business invitée standard at common law, which states that an owner or occupier of land owes to his business invitées the duties to maintain the premises in a reasonably safe condition and to warn of any dangers which are known or discoverable by reasonable inspection. A typical case is one such as *Johnson v. Safeway Stores, Inc.*, 1 Wn. App. 380, 461 P.2d 890 (1969), which dealt with a child falling off a hobby horse onto a hard surface and receiving permanent injuries to her head.

Johnson stated the above standard rule and that the duty owed to invitées extended to devices, such as the hobby horse, that the degree of care varies according to the circumstances, and that it must take into account the fact that the equipment is intended to be used by children.

Since business playgrounds are typically established in an urban setting — commonly over concrete or asphalt, the most dangerous surfaces — the establishment of an objective, verifiable standard of what constitutes "reasonably safe premises" and a "reasonable standard of care" creates a liability nightmare. Playground surfaces can be tested to determine whether they conform to CPSC guidelines and, if an injury occurs due to a fall, liability can be more readily determined.

Furthermore, some playground equipment manufacturers and restaurants have calculated "payback" periods to determine how fast playground cost will be recovered due to additional business generated. If a small child sustains a serious injury (such as a concussion) due to the failure of a business to place a safety surface under playground equipment, and if statistics from that business show that the cost of such a surface would be recovered in a matter of a few *months*, one can imagine the impact of such a revelation on a jury.

Thus, private business owners are in the vanguard of providing a safe play environment. However, the great majority of commercial playground operators do not comply with the "costly" CPSC guidelines. Ironically, the least likely to comply are day-care providers, perhaps because they are under such severe financial constraints.

Schools

A significant change has occurred in school playground liability. RCW 28.58.030 had granted a special immunity from tort liability upon school districts:

> No action shall be brought or maintained against any school district or its officers for any noncontractual acts or omission of such district, its agents, officers or employees, relating to any park, playground, or field house, athletic apparatus or appliance, or manual training equipment, whether situated in or about any schoolhouse or elsewhere, owned, operated or maintained by such school district.

This statute was repealed by the Legislature in 1967. Upon its repeal, school districts were governed by RCW 4.08.120:

> An action may be maintained against a county or other of the public corporations mentioned or described in RCW 4.08.110 [any county, incorporated town, school district or other public corporation of like character], either upon a contract made by such county, or other public corporation in its corporate charac-

ter and within the scope of its authority, or for an injury to the rights of the plaintiff arising from some act or omission of such county or other public corporation.

The Court of Appeals in *Rhea v. Grandview School District*, 39 Wn. App. 557, 694 P.2d 666 (1985), discussing this statute and the general rule of tort law, stated at page 560:

> The general effect of that statute is to render public corporations, school districts included, liable for their tortious acts or omissions according to the normal rules of tort law. *Chapman v. State*, 6 Wn. App. 316, 321, 492 P.2d 607 (1972).
>
> A school district owes a duty to its pupils to "anticipate reasonably foreseeable dangers and to take precautions protecting the children in its custody from such dangers." *Carabba v. Anacortes Sch. Dist. 103*, 72 Wn.2d 939,955,435 P.2d 936 (1967) (quoting *Tardiff v. Shoreline Sch. Dist.*, 68 Wn.2d 164, 170, 411 P.2d 889 (1966)); see also *Briscoe v. School Dist. 123*, 32 Wn.2d 353, 201 P.2d 697 (1949).

Clearly, a fall from playground equipment is a "reasonably foreseeable danger." Note the statistic, *supra*, of 93,000 injuries treated in emergency rooms from playground accidents, of which 59% are from falls to the surface. *Handbook*. Thus schools have an affirmative duty to take precautions to protect the children in their custody. If the schools are under a standard of reasonable care, the CPSC guidelines of protecting from falls which generate over 200 g's should be the goal.

However, due to the severe financial and funding problems which exist in Washington, many school districts are unable to pay the substantial cost of bringing all of their playgrounds into compliance. Many districts are making certain that all *new* playgrounds are in compliance, but are adopting multi-year plans to refurbish or replace existing playground equipment and surfaces. It is not uncommon to find rubber pads under equipment which have been tested and specifically do not meet the CPSC recommended standards; under equipment with a fall height of five to ten feet are pads which meet the 200-g recommendation for falls of only one to three feet. This creates a deceptive situation.

Parks and Recreational Use of Private Land

Under RCW 4.24.210, a landowner who allows his land to be used for recreational purposes, without charging a fee, is immune from liability for unintentional injuries sustained by the recreational user unless the landowner has actual knowledge of an artificial latent condition on the land which caused the injury and does not post conspicuous warning signs. *McCarver v. Manson Park & Rec. District*, 92 Wn.2d 370, 597 P.2d 1362

(1979) held that this statute applies to a public entity, such as a public park, whose primary purpose is to provide recreational facilities otherwise encompassed under the statute. *Curran v. Marysville*, 53 Wn. App. 358 (1989) specifically held that RCW 4.24.120 applies to accidents on municipal park playground and exercise apparatus. *Preston v. Pierce County*, 48 Wn. App. 887, 741 P.2d 71 (1987) applied this statute to a Pierce County park wherein a young child (aged six or seven) broke his ankle when he slipped into exposed moving parts on a merry-go-round. The court in *Preston* adopted the interpretation of the statutory language as set forth in *Morgan v. United States*, 709 F.2d 580 (9th Cir. 1983), which said that "known" refers to the landowner's mental state while "latent" refers to a condition not readily apparent to the recreational user.

Applying this criterion to playground liability, it is apparent that creating, maintaining and administering a playground creates some obvious dangers and hazards. The key determination will be whether playground hazards are latent. A playground on concrete (a hard, dangerous surface) may not create liability if a child is injured — the hazard is patent and obvious. However, a playground on sand — a surface which has some shock attenuation capacity but when wet is hard and dangerous — may create liability, even though it is greatly preferable to concrete, because a sand surface is a latent danger which may appear safe to the recreational user.

Plaintiffs alleging liability, based on this statute, against recreational area providers have an additional threshold to cross before they can prove actionable negligence. However, the CPSC guidelines can help in determining what may be considered a patent or latent hazard.

In the past, it has been difficult to prove negligence in playground accidents; objective standards of care dealing with playgrounds did not exist. Manufacturers of playground equipment have largely eliminated many hazards (inadequate railings, areas where heads can be trapped, etc.) to make their equipment safer. The next frontier is playground surfaces, which protect against falls. Consumer Product Safety Commission research and guidelines, together with a standard surface-testing methodology have created an objective standard which may be applied in negligence actions and which, even more importantly, may be used by playground owners to protect themselves against suits and, finally, may spur and encourage playground owners to address this neglected subject. □

Richard J. Forsell *is a practicing attorney in Bellevue. He has recently accepted the position of president of Surface Technologies, Inc., a manufacturer of a cushioned playground surface. He may be contacted regarding this matter at (206) 451-0600.*

Prevention and Resolution of Interprofessional Disputes

I. Background and Scope of Article:

A. ***Purpose:*** This article is to inform practitioners concerning problems, ethical considerations, and procedures for preventing or resolving disputes which arise between attorneys and other professionals whose services are necessary as part of case preparation and the litigation process.

B. WSBA Interprofessional Committee: The Interprofessional Committee of the WSBA offers mediation services to persons who have provided professional services to attorneys but remain unpaid because a dispute has arisen between the attorney and the professional service provider. This committee handles from 50 to 75 disputes each year.

C. Areas of Dispute: The most frequently encountered types of disputes concern rate of compensation, scope of services, reimbursement of experts' expenses, cancellation of scheduled meetings, deposition and trial appearances, and payment for preparation time. Mutually satisfactory resolutions have been obtained in approximately 50% of the disputes mediated by members of the committee.

D. In re Witteman and WSBA Ethics Opinion No. 140 (1969): The Washington State Supreme Court recently held that disputes between an attorney and expert witness over fees of the expert "are not properly determinable in attorney discipline proceedings." 108 Wn.2d 281, at 285, 737 P.2d 1268 (June 1987). There is still WSBA Ethics Opinion No. 140 (1969), which indicates that an attorney has a duty to inform the person rendering the professional service if (s)he must look to the client for payment.

II. Additional Methods of Resolution

A. Opinion Option Developed by Tacoma-Pierce County Bar: The Doctor/Lawyer Liaison Committee of the Tacoma-Pierce County Bar Association and the Medical Society of Pierce County have entered into a Memorandum of Understanding which offers the option of a formal, or informal, opinion as to matters of mutual concern between the legal and medical professions. This memorandum also provides for binding arbitration where a formal opinion is requested that involves a complaint by a member of one profession against a member of the other profession, so long as all participants consent to arbitration in writing.

B. Interprofessional Code For Physicians and Attorneys by Seattle-King County Bar: The Joint Medical-Legal Committee of the King County Medical Society and the Seattle-King County Bar Association published an Interprofessional Code For Physicians and Attorneys in 1972. The joint medical-legal committee will make recommendations regarding interprofessional disputes if requested by

both parties. Among the topics covered were subpoenas and arrangements for court appearances and fees for services of physician relative to litigation. The code points out that a physician [or other professional] who is subpoenaed as a fact witness is entitled only to the statutory witness fee. But a physician [or other professional] subpoenaed as an expert [*i.e.*, where a professional opinion is called for] is entitled to additional compensation, and it is advisable to agree upon an appropriate fee in advance. Whether the client or the attorney is to pay the physician's [or other professional's] fee should be arranged beforehand, and the attorney should cooperate with the physician [or other professional] to assist in securing payment. Of course, no such expert witness fee should be contingent upon the outcome of the case.

III. Model Agreement

Many of these disputes could be avoided if a written agreement were entered into along the lines of the model developed by the Doctor/Lawyer Liaison Committee of the Tacoma-Pierce County Bar Association and Medical Society of Pierce County. This model agreement promotes discussion leading to provision for the following subjects:

1. nature of the services to be provided,
2. compensation (hourly rate) for services of expert,
3. travel time compensation for expert,
4. reimbursement of expert's expenses,
5. cancellation of scheduled attendance,
6. examination and opinion by expert,
7. terms of payment of fees and expenses, and
8. limitation on scope of expert's services.

IV. Guidelines for Interprofessional Relations

A Memorandum of Understanding between the Doctor/Lawyer Liaison Committee of the Tacoma-Pierce County Bar Association and the Doctor/Lawyer Liaison Committee of the Medical Society of Pierce County spells out valuable guidelines [summarized below] for relations between these professions whose participation in litigation has been the subject of occasional conflict. (This approach can be useful in improving relationships between attorneys and other professionals as well.)

1. Physicians [and other professionals] should make themselves available for conferences with attorneys, depositions, court appearances, etc., at reasonable times and upon reasonable notice.
2. Physicians [and other professionals] who are called as expert witnesses are independent

[1]Transcript Format Guidelines

1. No fewer than 25 typed lines on standard 8 1/2 x 11 paper.
2. No fewer than nine or ten characters to the typed inch.
3. Left-hand margin to be set at no more than 1 3/4 inches.
4. Right-hand margin to be set at no more than 3/8 inch.
5. Each question and answer to begin on a separate line.
6. Each question and answer to begin at the left-hand margin, with no more than five spaces from the Q and A to the text.
7. Carryover Q and A lines to begin at the left-hand margin.
8. Colloquy material to begin no more than 15 spaces from the left-hand margin, with carryover colloquy to the left-hand margin.
9. Quoted material to begin no more than 15 spaces from the left-hand margin, with carryover lines to begin no more than 10 spaces from the left-hand margin.
10. Parentheticals and exhibit markings to begin no more than 15 spaces from the left-hand margin, with carryover lines to begin no more than 15 spaces from the left-hand margin.

(Reprinted by permission from the National Shorthand Reporters' Association article in August 1986 issue of National Shorthand Reports' publication, p. 55.)

experts, not advocates, and they should state the truth [or their opinion] based on their best professional judgment regardless of how it affects the outcome of the case.

3. Attorneys should give physicians [and other professionals] at least 30 days' notice for trial testimony, 15 days' notice for deposition testimony, and seven days' notice for office conferences.
4. Subpoenas of expert witnesses should be served at least 20

days prior to the date on which the witness is expected to be called.

5. Fees should be reasonable in relation to the time required, the complexity of the subject matter, and the experience of the expert.
6. Physician [or other professional] may charge for time set aside for attendance at a legal proceeding which is subsequently canceled on less than three business days' notice, except that "stand-by" charges should be reduced in proportion to time utilized for chargeable [billable] hours (that is, where the expert is able to fill part of the stand-by time with appointments).
7. Attorney has the duty of initiating discussion concerning the expert's fees.
8. The physician [or other professional] has the duty of furnishing accurate information as to the usual and customary charges which he or she makes for consultation and/or testimony.
9. It is improper for a physician to require an attorney to pay a patient's medical bills before agreeing to give medical information or testimony.
10. A physician's [or other professional's] fees for conferences with an attorney, attendance at deposition and/or trial, should be paid for within 30 days of receipt of a bill and not await final resolution of litigation.
11. A physician's [or other professional's] bills are payable when received and are not contingent upon the outcome of litigation.
12. Disputes as to a physician's [or other professional's] fees may be resolved by arbitration, provided both parties consent in writing to be bound by the decision of the arbitrator.

V. Attorneys and Court Reporters

A. Arrangements: Typically, arrangements are made by telephone and fees may not be discussed. It is suggested, however, that during a call to a court reporter for the first time, inquiry should be made concerning the hourly cost of attendance, the per-page cost and the time required for transcription.

B. Cancellation: If cancellation notice is received before the reporter has left for the assignment, most will not charge for an appearance. If, however, the notice of cancellation is received later, an appearance fee of about one hour is usually charged.

C. Liability: The attorney (or firm) who makes the arrangements is usually expected to pay the court reporter's fees, unless that attorney specifically indicates that it is another attorney's deposition or that the client will pay the fee, in which case the reporter may ask for a deposit in advance.

D. Format Guidelines: Standards for transcription format have been adopted by the National Shorthand Reporters' Association, Vienna, Virginia. Guidelines for transcription format are reprinted in the footnote below.[1]

VI. Conclusion:

Many disputes with other professionals could be avoided by entering written agreements of the kind suggested by the Model Agreement developed by the Doctor/Lawyer Liaison Committees of Tacoma and Pierce counties at the time the services are requested. The guidelines for interprofessional relations which the same Doctor/Lawyer Liaison Committee prepared would also be useful in maintaining courteous and positive relationships with other professionals consulted in the course of litigation. □

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*This article was prepared jointly by **Ann K. Nakamoto**, **Gary E. Randall**, and **Winslow Whitman**, members of the WSBA Interprofessional Committee. They wish to thank the Doctor/Lawyer Liaison Committee of the Tacoma-Pierce County Bar Association and the Joint Legal-Medical Committee of the Seattle-King County Bar Association for their contributions to this article.*

CALENDAR

February 1990

1-2 Doing Business in Mexico: What the U.S. Lawyer Should Know, Puerto Vallarta, Mexico. *Sponsored by*: Mexican Law Institute. *For information*: (206) 352-9635.

2 Health Care and the Law, Seattle. *Sponsored by*: WSBA. *For information*: (206) 448-0443.

2 Nineteenth Annual Estate Planning Seminar, Portland. *Sponsored by*: Lewis & Clark Law School and the Estate Planning Council of Portland, Inc. *For information*: Laurie Bennett Mapes, (503) 244-1181.

6 Grand Opening, West Seattle Neighborhood Legal Clinic. *Sponsored by*: SKCBA Young Lawyers Division. *For information*: (206) 932-4462.

8 Tax Practice & Procedure: Dealing with the IRS in the 1990s, Seattle. *Sponsored by*: WSBA. *For information*: (206) 448-0443.

9 Essentials of Negotiation, Seattle. *Sponsored by*: WSBA. *For information*: (206) 448-0443.

9-10 WSBA Board of Governors meeting, Tacoma. *For information*: (206) 448-0441.

12 Washington Construction Law: What Do You Do When . . . ? Update 1990, Seattle. *Sponsored by*: National Business Institute, Inc. *For information*: (715) 835-7909.

14 Greater Seattle Legal Secretaries Association CLE Seminar, Seattle. *For information*: Lynn Grignon, (206) 547-2687.

March 1990

2 Significant Developments in Intellectual Property Law, Seattle. *Sponsored by*: WSBA. *For information*: (206) 448-0443.

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.

7 New Skills for the Old Problems of Practicing Law, Seattle, eves. Also MAR 14, 21, 28. *Sponsored by*: WSBA Lawyers' Assistance Program. *For information*: Steve Feldman, (206) 621-7007.

9-10 Tenth Annual Northwest Securities Institute, Vancouver, B.C. *Sponsored by*: WSBA, Oregon State Bar CLE and N.W. State-Federal-Provincial Securities Conference. *For information*: (206) 448-0443.

12 Informational meeting, paralegal studies certification program. *Sponsored by*: University of Washington. *For information*: Alan Biné, (206) 543-2300, ex. 329.

13 Risk Management Insurance Society 25th All-industry Day Conference, Seattle. *Sponsored by*: RIMS Washington Chapter. *For information*: 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. Also MAR 29 in Olympia and APR 6 in Seattle. *Sponsored by*: WSBA. *For information*: (206) 448-0443.

22-23 Going International: Doing It Right, Annual International Law Institute & 1990 Midyear Meeting, Seattle. *Sponsored by*: WSBA. *For information*: (206) 448-0443.

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

(*Calendar* carries information on events of interest to members of the Association. Please send event notices 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.)

Notices of Interest to Association Members

Disciplinary Notices

Reprimanded: Seattle attorney **Charles S. Wheeler** (admitted 1949) has been ordered reprimanded pursuant to a Stipulation to Discipline. The discipline was based upon Wheeler's conduct in serving as attorney for an estate and filing a Declaration of Completion in the estate, at a time his own overdue promissory note obligation to the estate remained unpaid. Additionally, Wheeler was ordered to make restitution to the estate.

Suspended: Kirkland attorney **Jerald D. Pearson** (admitted 1979) has been ordered suspended from the practice of law for two years, effective December 1, 1989, by Supreme Court order of June 8, 1989. The Supreme Court approved Pearson's Stipulation to Suspension based upon Pearson's invasion of client funds for his own benefit, commingling of his funds with client funds, invasion of funds of one client for the benefit of another client, and failure to maintain appropriate records. Following reinstatement, Pearson will be on probation for two years under a variety of conditions.

Public Notices

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.

Fax Transmissions to the Supreme Court Administrator: Persons interested in sending information via fax machines to Supreme Court Administrator Mary McQueen may call (206) 357-2127. McQueen requests that faxed communications be sent to her at this number, and not via the number of the Office of the Administrator for the Courts.

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 Commissioners' 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.

Pro Se Divorce Advice: Evergreen Legal Services, a statewide not-for-profit agency providing free civil legal services to the poor, has recently published a revised edition of *Getting Your Own Divorce in Washington*, a *pro se* manual for obtaining a dissolution in Washington. The manual is current as of November 1989, and contains updated Parenting Plan forms, the revised Child Support Schedule worksheets recently adopted by the Child Support Schedule Commission, and recently revised summonses.

The manual is the most up-to-date manual of its type. It was written by family law attorneys employed by Evergreen Legal Services, with assistance from other legal-aid clinics and legal-service programs around the state. The manual is available through local not-for-profit *pro se* family law clinics, some local area bookstores or from Evergreen Legal Services, 101 Yesler Way, Suite 300, Seattle, WA 98104, (206) 464-5933.

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 January 1990 is 7.93%. The maximum allowable interest permissible for **February**

1990 is therefore **12.00%**. 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.

Board of Governors Elections Due

Lawyers residing in the Third, Sixth and Eighth Congressional Districts, and in King County, please note:

Members of the Board of Governors of the State Bar Association to represent those Districts, for three-year terms ending in 1993, are due to be elected this year. Expiring in September 1990 are the current Board terms of Paul L. Stritmatter (Third District), William P. Bergsten (Sixth District), James S. Turner (Eighth District), and Stephen E. DeForest (King County At Large).

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

Nominating petitions may be obtained from the Bar Office, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599. The petitions must be filed with the Executive Director at the State Bar Office by no later than 5 p.m. on Monday, April 30, 1990.

Notice of Public Meeting: The 1990 quarterly meetings of the Board of Directors of Evergreen Legal Services, a 501(c)3 not-for-profit organization which provides civil legal services to eligible low-income clients will be held on the following dates: February 24, 1990, April 28, 1990, July 28, 1990, and October 27, 1990. These public meetings commence at 9 a.m. and are usually held in the vicinity of the Seattle-Tacoma Airport for cost economy reasons, and to accommodate board member travel.

For specific meeting site information, which may vary from meeting to meeting based on space availability, please call Bev Miller, toll-free at (800) 542-0794.

(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.)

Olympia, January 12-13, 1990

Present: President Vander Stoep and the Governors. *Also present:* Judge Gerry Alexander (Court of Appeals); Judge Daniel Berschauer (Superior Court Judges' Assn.); C.C. Bridgewater (Prosecuting Attorneys Assn., Saturday); Harold Clarke (WSBA/YLD); Frank Edmondson (Government Lawyers Assn.); Mary Fairhurst (Washington Women Lawyers); John Fattorini (WSBA Legislative Liaison); Ed Holm (Legal Foundation of Washington, Saturday); Lucy Isaki (SKCBA Trustees); John J. Michalik (WSBA Executive Director); Mike Larson (SKCBA/YLD); Judge Roy Rainey (Magistrates' Assn.); Lindsay Thompson (*Bar News* Editor/Clark County Trustees); Pat Sutherland (Prosecuting Attorneys Assn., Friday); Robert Welden (WSBA General Counsel).

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

President's Report: As the river rose in Chehalis, his nearby hometown, it was definitely the high-water mark of his term. And time, it developed, to announce his successor. In a prepared statement, the president reminded the Board he had appointed Governors Steve DeForest, Jeff Tolman and John Slater to search out a new president for the Association. Following past practice, this year the search would be for someone from the Seattle area. Departing from past practice, the committee also considered people who have not been members of the Board of Governors.

The committee contacted sixteen people, nine of whom were former Board members. Of those sixteen, six expressed an interest in being considered further. Resumés were submitted and interviews conducted; in the Board's executive session the final choice was reached: Seattle attorney Lowell K. Halverson.

Halverson, 47, is a Tacoma native who graduated from Harvard (1964) and the University of Washington School of Law (1968). He has published widely in the fields of Native American and family law issues, and is a Fellow of the American Academy of Matrimonial Lawyers. His leadership within the Association has been extensive: chair of the SKCBA Young Lawyers Section (1974-1975); member of the Board of Governors (1977-1980); member of the Disciplinary Board (1983); and editor of the *Family Law Deskbook* (1987-1988). He is also noted as the father of the IOLTA program; he will take office in September.

The president also reported on meetings: the Board met January 11 with the Supreme Court to discuss "common interests"; the president met with the Legal Foundation of Washington board, from which closer relationships — board to board — are contemplated, and a recent contact with the Treasurer of the British Columbia Law Society advanced plans for the joint meeting in Victoria in April.

The Board heard a financial report from executive director John Michalik and approved a motion by Governor Lem Howell to have future Board minutes list the names of observers of the meetings. Past practice had been to list only the Board and persons there in an official capacity: usually only the president of the Young Lawyers Division. The motion passed unanimously.

Look, Up in the Sky; It's A...A...Lawyer...: In October the Board asked the Litigation Section to develop a plan for coping with disasters like airplane crashes in Washington. Recent crashes in other states have seen out-of-state tort lawyers — dubbed "parachutists" — rolling in to sign up victims, as well as insurance company representatives trying to get early settlements.

Section chair Don Law of Olympia, Charles Palmerton of PEMCO Insurance, Andrea Davis of Seattle and Daniel McKelvey of Spokane worked furiously for two months to produce a plan for the Association to get a grip on matters in a disaster setting.

Law said most other states developing plans have tended to produce long, complex documents laden with detail. His committee decided on a short, direct document with some supporting appendices which could be worked on as time and circumstances dictated. "You don't have to have a Bar goon squad on the scene to try and police lawyer solicitation," Law said. "It doesn't work very well and is a PR disaster. What works is a simple, visible presence." The main issue the committee saw needed addressing was how to aid victims who are called on to make a number of potentially complex decisions at a bad time.

The plan calls for educating victims on their legal rights by offering pro bono counsel when requested and by having a team of lawyers and Bar staff ready to assemble at a disaster site. The team would be made up of thirty-two lawyers, four nominated by each Governor. Team members would be required to agree not to make referrals for or have as a client anyone first contacted while acting as a team member. At a site, members selected from the team would set up a WSBA Victim Assistance and Monitoring Center, whose presence would be coordinated with local authorities. Team members, clearly identified, would offer previously prepared information on legal issues and filing grievances against lawyers or other professionals acting

improperly. WSBA's chief disciplinary counsel or his representative would be on scene to keep an eye out for misbehavior. The WSBA director of public affairs would take predetermined steps to brief the media on activities. After each employment of the plan, it would be evaluated for effectiveness. It is soon to be published in the *Bar News* upon adoption by the Board of Governors.

Governors praised the plan and thought it a landmark in the field. Governor Ron Gould was concerned, however, about liability of the Bar Association for advice given in a disaster setting. Governor Don Curran thought there should be guidelines and limitations on what the team members could say and do, they should be more clearly identified physically, and that a budget impact statement should be done to determine how much the plan will cost the Association. Governor Steve DeForest thought the plan worth giving conditional approval and then seeking member comment before final adoption. Some considerable discussion followed before a Curran motion to table the report until March was approved 7-3, Governors DeForest, Schultz and Turner opposed.

Back on Standard Time: Bob Boruchowitz of the Criminal Law Section was back for a third visit to try and get the Board's approval of revised Standards for Public Defense Services drawn by the Washington Defenders Association. The matter had been carried over from October and November to seek comment from other interested groups, such as county prosecutors.

Governor Ron Gould moved to adopt the standards but not, on a suggestion by Governor Jim Turner, the editorial commentary appended to them. Turner thought it a bit subjective. Cowlitz County Prosecuting Attorney C.C. Bridgewater, speaking for himself, said the chief problems with the standards were a lack of money to put them into effect and the fact that current caseloads and other indicia already exceed the standards and are unlikely to meet them, ever. Additionally, he had problems with the way the standards would allow defenders to approach courts ex parte to get budget approval for experts.

Governor Don Curran was concerned with the budget impact of the standards, but no one would come up with a reliable cost estimate. Boruchowitz said they would certainly be costly if fully implemented, but if the Legislature acted on proposals to shoulder more of the load, it could cost the counties less. Governor John Slater thought the standards unrealistic, and unlikely to be enforced. But Governor Bill Bergsten reminded the Board they were just guidelines, and Jeff Tolman, noting a lack of consensus, called for delaying action. On the motion to adopt the standards, the Board did so, 6-4, Governors Curran, Schultz, Slater and Tolman opposed.

M.C. Escher, Meet Robert's Rules of Order: The Board heard a report on pending legislation from John Fattorini, the Association's man in Olympia. Governor Lem Howell raised a concern about one aspect of amendments to the franchise law, but the Governors expressed satisfaction with several other matters they'd asked for clarification on last month. A motion by Governor DeForest to remove the qualification on the Board's endorsement of the bill was approved 9-1, Governor Howell opposed.

Jack L. Beyers, state securities administrator, and securities division lawyer Mike Stevenson appeared and asked to address the Board on its approval of some proposed revisions to the securities laws relating to small-business offerings. Beyers objected to the content of the bill and the fact that the state had not been given a chance to comment on the bill before the Board endorsed it. Governor Paul Stritmatter moved to let Beyers and Stevenson speak. Governor Jeff Tolman thought it a bad idea, since there was no one there from the proponents' side to respond, and since the Board had followed its normal routine in considering the legislation. After an involved discussion, the Board allowed Beyers to speak, 6-4, Governors Bergsten, DeForest, Slater and Tolman opposed.

The nub of the division's objections was that the proposed legislation would create an unacceptable small-offering exemption: a haven for penny stocks and fraud, Beyers said. The Board should revoke its endorsement and let the division continue to work with interested parties.

An interesting procedural wrangle followed. Governor Ron Gould moved to continue to support the securities law amendments but schedule a further hearing on the issues in February. It was felt the effect of the proposal was to reconsider the Board's prior endorsement of the bill, and various ways to deal with that were discussed, up to the point of moving to reconsider the reconsideration of the prior endorsement. On the amendment to consider the matter further in February, the Board voted 8-2 aye, Governors Bergsten and Tolman opposed. On the main motion, to support the legislation, the Board voted 8-0-2 in favor, Governors Bergsten and Howell abstaining. For about fifteen minutes in the middle of all this, the Board's endorsement of the bill was revoked, but it all worked out in the end. Sort of. Stay tuned.

Plus ça change, plus ça UPL: At budget time the Board voted no funds for the Unauthorized Practice of Law Committee, reserving judgment on whether the committee had a role to play anymore. The UPL and Legal Assistants committees had been talking of late, though, and thought it would be useful if the UPL Committee could confer with the Legal Assistants Committee on issues of common interest relating to what legal assistants can do. It was felt $1,500 would give the UPL Committee a lease on life, but Governor Jim Turner wondered where the committee would go that it hadn't already been. Governor Bill Bergsten wondered if continuing the committee wasn't in effect an avoidance of the real issue — "that we aren't willing to face up to having never done anything on UPL or doing anything in the future."

Governor Don Curran wondered why the UPL Committee needs to meet with the Legal Assistants Committee. "Isn't this a duplication of effort?"

But Governor Ron Gould saw some merit in the idea, and moved to give the UPL Committee a $1,500 budget. Governor Turner saw a want of merit. "We're throwing $1,500 away, and we all know it. We're just placating some lawyers. We'll get the same answers we got last year. It's just a symbolic gesture."

Governor Stritmatter then moved to table; the motion failed 4-6, Governors DeForest, Slater, Stritmatter and Tolman voting aye. On the motion to approve the $1,500, the Board approved, 7-3. Governors Slater, Stritmatter and Turner voting against.

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

- authorized the Court Rules Committee to develop comment on proposed amendments to the Federal Rules of Civil and Appellate Procedure;
- heard reports from the Task Force on Opportunities for Minorities in the Legal Profession and the Board Committee on Computerization and the Law (featuring appearances by the Code Reviser and the Reporter of Decisions);
- agreed to send their ABA delegates to the midyear meeting without instruction;
- approved a bylaw amendment changing the name of the Corporation, Business and Banking Law Section to the Business Law Section; and
- approved the text of a new Rule 14 of the Admission to Practice Rules governing licensing of foreign legal consultants.

Next month in Tacoma the Board will meet for a time at UPS School of Law. On the agenda will be a report from the Budget and Audit Committee; a report from the Attorneys Professional Liability Insurance Committee on an endorsed insurance plan; a report from the Family Law Section on options for providing legal services to the indigent, including whether a limited practice rule for paralegals should be adopted; more legislative reporting; and additional consideration to alternatives to the Novack Commission recommendations.

Next meetings: Tacoma, February 9-10; 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, Washington, August 17-18; Spokane, September 11-15 (Bar Convention).

— *by* **Lindsay Thompson**, *Editor*, Bar News, *and* **Frank Edmondson**.

LAW-RELATED EDUCATION

Mock Trials Treat Drug Issues

Can a school district require drug tests of students who participate in after-school activities?

That's the question high school students from around the state will try to resolve during the 1990 mock trial competition. Schools will compete in regional competitions during the month of March. Winners from each of 10 districts will advance to the state finals, to be held April 27 and 28 in Olympia. Last year's event drew more than 500 participants.

During the trials, students assume the roles of attorneys, witnesses and court bailiffs. The hypothetical case for 1990, authored by Seattle attorney Jerold Everard, is based on a lawsuit by students who oppose the school district's plan to start a drug-testing program. Participants will examine federal (Fourth Amendment) protections against unreasonable searches and seizures, as well as privacy rights guaranteed by the state constitution.

Washington's mock trial competition is a program of YMCA Youth & Government, in cooperation with the state Office of the Administrator for the Courts and the state Bar Association. Honorary chairman is Supreme Court Justice Charles Z. Smith. Judges, court officials, attorneys and educators assist teams as coaches and advisers.

Project sponsors say this "hands on" learning experience gives students a working knowledge of our legal system. Along with dispute-resolution techniques, mock trials help students develop skills in critical thinking and analysis, oral advocacy, and in planning and preparation.

A comprehensive competition kit includes case materials, trial procedures, tips, registration details and other information about the mock trial program. The kit is available from the YMCA mock trial competition office in Olympia. To obtain a copy, write to 6630 Old Olympia Highway S.W., Olympia, WA 98502, or call the project director, Paula Liechty, at (206) 866-2689. A 42-minute videotape is also available from the mock trial office or Washington State Bar Association, (206) 448-0441, ext. 213. The tape commemorates the 1989 event and traces one team's experience.

The mock trial program is funded by contributions and grants from the sponsors and other law-related associations and organizations. Fundraising assistance is available to help teams raise money to cover registration fees or other expenses. Also, a scholarship fund is being established for participants who will attend the state finals.

Wednesday, February 14 is the deadline to register district teams. The deadline for conducting all district mock trial competitions is March 31.

The 1989 program involved 400 students from 40 teams, plus approximately 100 volunteers. One student called it "one of the best learning experiences I've had — it was fun while learning." Another said "being a prosecutor made me think on my feet, and helped me understand what really happens in court."

WSBA SECTIONS

Generalists, Unite

Recently approved by the Board of Governors, the Association's eighteenth section is organizing under Kennewick lawyer Joe Erickson. "The primary role of the General Practice Section will be to advocate the professional interests and needs of the general practitioner, and in particular, the sole practitioner, before the Association's Board of Governors," Erickson says. "In the eyes of many, the Association's administration could better address some of the everyday practical needs of the general practitioner. For instance: should the Association's administration develop a better health insurance program for its members? ...aggressively push the availability of the *Washington Reports*, the RCW and the WAC on low cost CD-ROM disks? ...assist members in developing retirement programs? ...follow the lead of California and clarify its Code of Ethics to allow the sale of the good will of a law practice, subject to certain conditions to protect client confidences? The General Practice Section is committed to preserving the general practice of law, improving the quality of legal services, and increasing the competence, professionalism, earning potential and quality of life of the general practitioner."

The General Practice Section will be a clearinghouse of ideas, information and resources of interest to the general practitioner, creating a forum for the exchange of ideas on how to manage and practice law. A section committee is developing a networking program whereby a general practitioner can utilize a list of attorneys with concentrations of practice in various areas of law for a free one-half hour consultation. The section's committees are developing brief banks and form banks, and are pursuing subscription computer research opportunities.

"An invitation is extended to all members of the Association to join the Section," Erickson told the *Bar News*. "An invitation is also extended to all those members of the Association who have volunteered in the past to serve on other Association committees or projects, but who have been turned down due to a scarcity of openings, to assist in the formation of the General Practice Section."

LEGAL HISTORY

Minorities in the West's Legal System

Western Washington University, the Ninth Judicial Circuit Historical Society and the National Archives–Pacific Northwest Region have announced a mock trial and symposium called "Minorities Under the Law: A Bicentennial Review," in honor of the two hundredth anniversary of the organization of the federal judiciary in 1789 and that of the U.S. Supreme Court in 1790. The event will be held May 10-11, 1990 in Bellingham.

Financial support for the event has come from the American Bar Association, the American Trial Lawyers Association, the Washington State Bar Association, and the Seattle-King County Bar Association, says Phillip Lothyan, member of the Program Committee.

The mock trial will be that of Gordon K. Hirabayashi, whose challenge to the internment of Japanese-Americans in World War II was finally upheld by the Supreme Court 40 years later. Tentative symposium topics include a review of the federal judiciary in the West; native-American treaty rights and treaty-making; Hispanics and the law of the West; minorities in the Western bench and bar; racial exclusion under the law; legal education and minorities, the Boldt decision revisited, and Justice William O. Douglas and minority rights.

Persons interested in participating should contact: Phillip Lothyan, National Archives–Pacific Northwest Region, 6125 Sand Point Way N.E., Seattle, WA 98115, (206) 526-6500.

THE JUDICIARY

Judging Judges

The public is rightly concerned about the revolving door between government service and the private sector. Time and again, abuses have been documented. Today, because more and more judges are leaving the bench, this issue has become of increased concern to the judiciary. Indeed, Congress is debating several bills mandating "post-employment" restrictions of federal judicial officers. What's needed, the American Judicature Society declared in a recent editorial in *Judicature*, is thoughtful regulation of and assistance to judges returning to private practice.

The editorial notes that while statutes, court rules and codes of judicial conduct recognize the fundamental importance of judicial impartiality and its appearance, most statutes, rules and codes do not address the issue of former judges appearing before their former colleagues. It is not uncommon for lawyers who have resigned from the bench to begin appearing immediately before their former fellow judges. Even if, in fact, they have no special advantage, the editorial maintains, the appearance of impropriety remains.

Among the recommendations are 1) restricting judges who resign from the bench from appearing before their former colleagues for a fixed period; 2) requiring that judges recuse themselves in any case in which a colleague appears as counsel for a fixed period of time after the resignation of that colleague; 3) requesting voluntary recusal after the fixed time period if the prior relationship was close or of long duration; and 4) developing standards to guide judges in dealing with prospective employers once they decide to leave the bench.

"The need," concludes the editorial, is "for thoughtful regulation to

preserve the appearance of impartiality that is so essential to the fair and effective administration of justice, as well as restraint and sensitivity by judges in setting their own personal standards."

JUDICIAL EFFICIENCY

"MY GOD! A trial date *next month?!?*"

Clark County Superior Court is "beating the averages" of a judicial position needs report by operating a more efficient judicial system.

The report, produced by the Research and Statistics Unit of the Offices of the Administrator of the Courts and distributed last month, provides a method for translating the number of cases filed in a court into an estimate of the number of judicial positions required to process and dispose of these cases.

Judicial position needs were estimated by dividing how much time is required to hear all the cases in a court by how much time a judge can expect to have available for hearing cases, according to the report.

Clark County Superior Court has six judges and one commissioner, with about 9,100 annual case filings. The positions report suggests it should have 10.15 judges.

According to an article in *The Columbian* Nov. 1,

> Clark County Superior Court Senior Judge John Skimas said the state report...is flawed because it does not take into account the method...judges use to move cases through the system.

The OAC report "reflects certain efficiencies in the way we run our system," Skimas said. While King County Superior Court judges, for example, are tremendously backlogged, Clark County's bench has no trouble keeping up with cases.

"Skimas and other judges said that is because Clark County uses individual calendars instead of one master calendar for scheduling cases," according to the article written by reporter Cynthia Tank. "Virtually all other counties in the state use a master calendar instead," Skimas said.

OAC Research and Statistics Manager Barney Barnoski said the Vancouver-based court system might be "a particularly together judiciary" that other state courts should look to for administrative answers and use as a model of operation for courts of similar size.

He said several factors can account for court efficiencies, including excellent administrative leadership and support and appropriate support staffing that allows judges more time to perform their case-related activities.

Conversely, courts in some counties may be faced with caseloads that require more time than average because of concentrations of military, government, or large corporate headquarters, he said.

The report should be viewed as one important piece of information to be evaluated in determining judgeships in a superior court district, he said.

Clark County Superior Court may be an exception to the study's results because of court efficiency, judicial efficiency, and its calendaring methods, Barnoski said.

Also, Vancouver's bar association and attorney practices may have a significant impact on judicial time, allowing for expedient caseflow.

What now is needed are additional measures for state court efficiencies and performance, as suggested by the Clark County courts, Barnoski said.

WOMEN LAWYERS

Sexual Harassment and Fewer Chances for Advancement

Many of the nation's most successful and best-paid women attorneys feel they are plagued by discrimination and sexual harassment, according to a *National Law Journal*/West Publishing Co. survey.

The National Law Journal is the

largest-selling publication for lawyers in the country. West Publishing Co., of St. Paul, Minnesota is the nation's premier publisher of legal materials and the supplier of Westlaw, a computer-assisted legal research service.

More than 900 female attorneys who work for 56 of the country's largest law firms in 13 of the biggest cities in the United States responded to the 12-page survey, according to Doreen Weisenhaus, Editor-in-Chief of *The National Law Journal*, which published the findings in the December 11, 1989 issue.

Sixty percent of the respondents said that they had experienced unwanted sexual attention, but rarely reported it. The offenses ranged from jokes and remarks to actual or attempted rapes and assaults reported by 13 women. One-third of the respondents said they experienced unwanted sexual looks or gestures, and a fourth said they had been subjected to deliberate touching, leaning over, cornering or pinching.

The survey — conducted in October and November 1989 — also revealed that although the women were generally satisfied with their careers, they often found the large law firms to be hostile environments where they had fewer chances than men for top positions and faced difficulty in finding a mentor to guide them and help promote their career within the firm.

A third of the respondents earned from $100,000 to $250,000 a year, and seven percent earned more than $250,000 a year; 25 percent earned from $75,000 to $100,000 and 38 percent from $50,000 to $75,000. Only two percent earned less than $50,000.

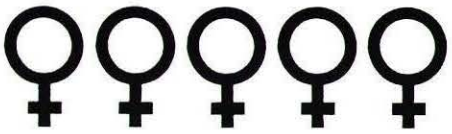
Survey participants were from large law firms in Atlanta, Boston, Chicago, Cleveland, Dallas, Houston, Los Angeles, Miami, Philadelphia, New York, San Francisco, Tampa, and Washington, D.C.

The survey revealed discernible differences among the cities. Women in Los Angeles and Washington, D.C., more frequently indicated their firms provided equal opportunities for men and women in regard to management positions, promotions, job assignments and litigation. Boston ranked the lowest in all categories, and Chicago did poorly in several of them.

The vast majority of women felt their salaries, billable hours and bonuses were comparable to their male counterparts, although long-time women attorneys felt they were paid less than their male peers. While 13 percent overall believed male counterparts got higher salaries and bonuses, nearly one-third of the women from Chicago believed there was a disparity.

There were other major findings of the survey:

- A large majority said they had to give up time for family, friends or outside interests to pursue their law careers, but they indicated that male lawyers in their firms must make some of the same sacrifices.
- Forty-two percent said they delayed having children to pursue their careers, and 24 percent said they opted for slower career advancement to have time for their personal lives. Even though three-fourths of the



firms offered part-time and flex-time programs, most of the women saw this option as a detriment to their careers.
- Three-fourths of the women felt they didn't have the same opportunities as men to cultivate after-hours sports and social activities that are important to promotions and assignments. Male-only social clubs — which nearly one-fifth of the women said their firms support — were especially irksome in this regard. Atlanta, Cleveland and San Francisco were worst in this male-club category; New York and Washington were best.
- Well over half the women said their male superiors are less willing or not willing at all to mentor women; 39 percent said they did not have to have a mentor; 42 percent had a male mentor, seven percent a female mentor and ten percent both a male and female mentor.

NOTES FROM THE ACADEMY

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

Community property. Husband and wife moved from California to Washington, sold California realty, and took back promissory note on purchase price payable to them as "joint tenants." Upon husband's death, wife argued that she was entitled to this note by right of survivorship. Co-executor argued it was community property, includible in husband's estate. *Held*, language of note was not sufficient to create joint tenancy under RCW 64.28.010. Nor was there evidence that words "joint tenants" in note memorialized a separate agreement between spouses to hold note as joint property. Further, grant deed from husband and wife to buyers did not establish that realty sold had been owned in joint tenancy. ***In re Estate of Magee***, 55 Wn.App. 692, 780 P.2d 269 (Div. 3, 10/12/89)

— T. R. Andrews

Constitutional law. Representatives of defendant political organization, National Democratic Policy Committee, supporter of Lyndon LaRouche, solicited contributions and distributed literature without shopping center's permission within closed mall of plaintiff Southcenter Shopping Center. Defendant's representatives refused to leave when asked, but later left. Shopping center seeks judgment declaring that defendant had no right to solicit funds or distribute literature without plaintiff's permission. *Held*, judgment for plaintiff affirmed. Free-speech provision of Washington Constitution, Article 1, § 5, protects individuals against state action only, not against acts of private parties. Court distinguishes its former decision in *Alderwood Assocs. v. Washington Environmental Council*, 96 Wn.2d 230, 635 P.2d 108 (1981), which upheld right of organization to solicit signatures on voters' initiative within a shopping center mall. In *Alderwood*, four judges agreed that free-speech rights protected against private action, but fifth judge, necessary to majority, concurred only on ground that initiative provision of state constitution, Article 2, § 1(a), allowed voters' initiatives. Remaining four judges dissented in *Alderwood*. Therefore, there is no free-speech right to enter private shopping center malls without permission, but only right to solicit for initiatives. Court says there is "no reason" right to solicit signatures for referendum would not also be guaranteed. *Sutherland v. Southcenter Shopping Center*, 3 Wn.App. 833, 478 P.2d 792 (1970), also "overruled" "to the extent" it is "inconsistent" with present decision. (*Comment. Alderwood* has been limited to a wafer-thin factual situation. That decision, and also *Sutherland*, reached different conclusions under Washington Constitution than position United States Supreme Court has now taken under First Amendment to U.S. Constitution. See *Hudgens v. NLRB*, 424 U.S. 507 [1976]; *Lloyd Corp. v. Tanner*, 407 U.S. 551 [1972]. Washington is free to interpret its constitution to give greater free-speech rights than does U.S. Constitution. *PruneYard Shopping Center v. Robins*, 447 U.S. 74 [1980]. However, Washington Supreme Court probably now wishes to bring state law closer to federal law. - W.B.S.) ***Southcenter Joint Venture v. National Democratic Policy Committee***, 113 Wn.2d 413, 780 P.2d 1282 (10/19/89).

— W. B. Stoebuck

Evidence. In prosecution for robbery, witness had given statement to police identifying defendant as robber. At trial, witness claimed not to recall who robber was. *Held*, police officer was properly allowed to recount witness's identification of defendant under hearsay exception for statements of identification. Court refused to limit this exception to statements made during a line-up or upon viewing photographic montage, as defendant urged. Court likewise found no violation of defendant's right to confrontation. ***State v. Grover***, __ Wn.App. ___, 780 P.2d 901 (Div. 1, 10/23/89).

— K. B. Tegland

Lawyers Counseling Lawyers

The following article is adapted from a speech given by Preston K. Munter at the ALI-ABA Invitational Conference on Law Practice Quality in September 1988, with permission from the *ABA Journal*.

I've spent an enormous part of my professional life living with lawyers, working with lawyers, associating with lawyers...to the extent that my medical colleagues think I've surrendered my professional identity. It is not at all uncommon for me to be at meetings like this and be the only psychiatrist, indeed the only M.D., present.

What I'm going to talk about is largely applicable to lawyers in trouble, but it's also applicable to lawyers talking to other lawyers about matters of concern — that is, the counselor's part in the interview process. The model I'm going to use is the clinical model of counseling.

Now, why should I persuade lawyers to become counselors? Well, for one thing, I think it's clear that to do so helps lawyers strengthen their client relationships. Lawyers can, to some extent, return to being client advisors, family advisors, that old notion we all had of lawyers when we were young. The second reason is that being good counselors will help lawyers help their peers who are in trouble. That seems to me a fundamental obligation of any professional.

"Counseling requires the basic skill of developing a counseling attitude." By that I mean an openness to alien personality styles, alien notions of life, even alien ways of practicing the law, and alien values; having the ability to discuss those with someone — with anyone — who takes a position different from one's own. That requires *patience*. That is part of the counseling attitude. It requires *compassion*. It requires understanding of people who are in trouble because they can't help themselves and cannot, as a rule, resist an honest hand held out to help them.

Helping them means giving up control, helping them find their solutions, not telling them what to do or solving their problems for them. This is terribly hard for lawyers to do, just as it's hard for doctors to do. We are used to being in control, and we don't know how to give it up.

If you're going to develop a counseling attitude, you have to also be willing to give up the thing that is most dear to your heart: argument. You don't sit and counsel with someone and argue. Instead, you sit there and you *wonder* with the person, what is troubling him, what he's *feeling*. You accept his statements and you wonder about them with him.

What is the counseling approach? It is to provide a safe place for someone to talk. In our culture, to have a safe place where you can talk trustingly, confidentially, with someone you respect, is an extraordinarily rare experience.

Another part of the counseling approach is that the dialogue exists during a process; in the course of this process, a relationship develops. It is an open-ended dialogue, not an attempt at closure. On the contrary, the attempt is to keep the dialogue open. Trust and honesty are absolute essentials of the sort that we don't ordinarily observe in social discourse. There is a very rigorous discipline around trust and honesty in the counseling approach.

Feelings are the facts of this dialogue, what the person in trouble feels and what the person doing the counseling feels, so that there is a two-way interaction in which the feelings of both the person being counseled and the person doing the counseling play their role. The emphasis is on listening. We [don't] dispense wisdom and experience. That is not a counseling approach. *Counselors listen*, and we do as little talking as possible, so the person who comes to us may do as much talking as possible. That is easy to say but extremely difficult to do, and even the most experienced therapists struggle with it all the time. This kind of listening is an active process: you burn calories doing it; you sweat, and it has risks. It means being nonjudgmental. (Note, please, how different that is from usual lawyerly judgments.) The counseling approach also means being yourself. You don't suddenly turn into a shrink with a beard and a Viennese accent simply because you are in the counseling mode with a peer or client.

What is essential is a certain psychological-mindedness, a willingness to be curious about people, to wonder with them about what's going on in their lives: what their reactions might be, what their behavior might be, what their body language might be, and so on. The emphasis in this encounter, this dialogue, is on the present reality, on the here-and-now. We do not wander off into the unconscious; we don't prescribe. We simply deal with what is being said. We don't manipulate the reality; we try to understand what it is. If a person lies to us, that is his or her responsibility. We are not in an adversary role. We act as facilitator; remembering that the solution to the problem lies within that other person. The counselor is not responsible to provide a solution to the problem, but only to help by providing some verbal means by which the person in trouble may find a solution. If we don't know what to say, we shut up and we wait. Now, lawyers aren't very good at being quiet, but that is an essential thing — to remain silent. As a colleague of mine says, "Don't just do something, stand there." That is the job, and that is very hard to do. When we do talk, we question, we ponder, we reflect, and we wait.

There are some technical considerations in this process that are important to facilitate the dialogue and help the other person, if possible, come to a solution to the problem. The first is called "ventilation" and simply means letting the person speak to reduce the anxiety and tension, to reduce the pain and replace the negative feelings somewhat. So, we say stunningly insightful things like: "Good morning, how are you feeling today?" Or, "Can you tell me more about that?" "That's interesting, I'd like to hear more." Things that are so dumb on the surface that most of you would resist saying them or asking them. It's surprising how long it takes to learn to ask and say simple things like that. Someone comes in and sits down and begins to cry. We say the extraordinary thing, "You're crying. You must be feeling sad."

Second, there is identification: finding out what's wrong, letting them talk about it, helping them talk about it, so after a while, the two of you can suggest to each other in ways that are clear to both of you, what is wrong. Then you have an idea of what the problem *may* be.

Third, and perhaps most important, there is clarification: asking enough questions, wondering aloud, raising your eyebrows often enough, and, yes, grunting sometimes, although personally, I could do away with grunting, having had an analyst who grunted. The goal is to evoke as much as possible from the other person, so that after a while it becomes extremely clear that the anxiety he had initially, that disrupts his linear thinking, is not so much present anymore, and he can express to you, and therefore to himself, more about the situation than was clear to him at the beginning. So clarification really becomes the main task of this process. Do you interpret their dreams? NO. Do you interpret anything they say to you? Probably not. Do you give advice? No, but all therapists give advice. In spite of our disclaimers, we all give advice. But that's not the main task here. You don't say, "I think what you want to do is leave the legal profession, divorce your wife, abandon your children, and go off with that chorus girl. She sounds pretty nifty to me." You don't say that. Then there is something about ending the interview, and I won't dwell on that for long, but it's good if you can bring such interviews to a more or less tidy conclusion by talking together to summarize the ground you have both traversed.

Having said that counselors don't give advice, I am going to give you some as do's and don'ts. Then I'm going to stop. Don't give advice. Don't reassure people by reciting your experiences to show how much you understand. That is very off-putting, as a rule. It shifts the focus from the person in trouble to the person listening. Therefore, it isn't helpful to the person in trouble and ends up being a kind of ego trip, based on the notion that my experience is more valuable for you to hear than yours is for me to hear. Don't assume the obligation of offering a solution to the other person's problems. Don't confuse the person with the problem. Very good people, *very* good people, do very bad things. All lawyers know that very bad people do very good things. Being judgmental is not a facilitating thing to do. Don't be in a hurry. If you can't think of what else to do, be quiet, wait, and listen. And, it's remarkable how evocative just sitting there can be when people are under pressure. Try not to come to premature closure or any short-term closure. Try to keep the issue open. There is always more. Don't try to rescue a person. All people who need counseling and therapy are vulnerable to rescue. It should be avoided for all kinds of reasons, among them the following two: one, because you're probably wrong; two, because it removes from the person the most important resource that person may have in resolving the problem, namely confidence in his or her coping devices. If we offer to rescue him, and we throw him a lifesaver, that can be a denial of something he needs very much to have in his back pocket, confidence in his restorative powers.

NEWS FROM HOME

Chief Justice **Keith Callow** has been named to Governor Gardner's Medal of Merit Committee, which reviews nominations for the state's highest award, presented by the governor during joint sessions of the Legislature.

Seattle City Council attorney **Steve Miller** has joined the honored and select ranks of lawyer-editors. He and a partner have purchased the recently defunct *Marine Digest*. They plan to restart the former weekly publication, founded in 1922, as a monthly.

Kimberly Casebeer Crnich has moved to Arlington, Virginia to serve as a Fellow in the Women's Law and Public Policy Fellowship Program, administered through the Georgetown University Law Center. She also acts as an adjunct faculty member at Georgetown.

Pierce County Superior Court Judge **Rosanne Buckner** and King County Superior Court Judge **Terrence Carroll** visited Taskent, Uzbeckistan, U.S.S.R. in October as part of a Seattle Sister Cities delegation. They traveled with a group of lawyers and lived with families with members employed in the Soviet legal system.

James J. Rigos was honored by the American Association of Attorney-CPAs in November. They gave him their Outstanding State Chapter President Award for 1989. Rigos is also a member of the organization's board of directors. The AAA-CPA is the largest professional organization in the world for professionals licensed in law and accounting.

Two Portland, Oregon law firms merged January 1, 1990. The firm of Vergeer, Roehr and Sweek merged with Cosgrave, Kester, Crowe, Gidley & Lagesen, and the new firm is known as Cosgrave, Vergeer & Kester.

The Cosgrave firm has twenty-one lawyers, and the Vergeer firm has nine lawyers, and all thirty will join the new firm, of whom seventeen will be partners and thirteen will be associates. Each firm has an extensive litigation practice, and the combined firm will continue to emphasize litigation and related matters.

Both firms have a long history in Portland. The predecessor of the Cosgrave firm was formed in 1934 and for many years was known as Maguire, Shields & Morrison. One of the founders, **Robert F. Maguire**, who died in 1976, was a judge at the Nuremberg War Crimes trials in 1947-1949. **Randall Kester**, present senior partner in the Cosgrave firm, is a former Justice of the Oregon Supreme Court.

The Vergeer firm was formed in 1936 as Vergeer & Samuels. **Duane Vergeer**, one of its founders still in active practice, was legal officer for the Allied mission to the Netherlands government during World War II. Among those making the move are WSBA members **James H. Gidley**, **Frank H. Lageson**, and **Norma S. Poitras**.

Bar News editor **Lindsay Thompson** was a speaker at West Publishing Company's Third Annual Editors' Exchange in St. Paul, Minnesota January 24-26. Thompson spoke on a panel dealing with book reviews in legal publications with **Stephanie Goldberg** of the *ABA Journal* and **Tim Robinson** of the *Los Angeles Daily Journal*. Also attending the conference was *Bar News* managing editor **Jennifer Klamm**.

William W. Baker of Everett assumed the ninth seat on the Division I bench of the Court of Appeals January 1, 1990. A past chair of the Commission on Judicial Conduct, Baker was appointed by Governor Gardner in November.

King County Superior Court Judge **Nancy Ann Holman** participated in the September meeting of the Council of International Federation of Women in Legal Careers as the American West Coast representative.

Supreme Court Deputy Clerk **Steve Helgeson** left the Court December 31, 1989 after three years in the clerk's office and prior service as clerk to justices **Hugh Rosellini** and **Fred Dore**.

Betty Hamilton of Nespelem was the first Yakima Indian woman to become a lawyer when she was sworn in last November. According to the *Yakima Herald Republic*, Hamilton decided to become a lawyer twelve years ago while working as a paralegal for the Yakima Indian Nation public defender's office. She worked as a secretary for Yakima County District Judge George Colby while attending college, and then graduated from Gonzaga University School of Law, all while raising four children, the paper said.

Hamilton now works for Evergreen Legal Services on the Colville Tribal Reservation.

Richard J. Padden, an attorney with the firm of Carney, Stephenson, Badley, Smith and Spellman, P.S., has been appointed president of the Washington State Chapter of the Cystic Fibrosis Foundation. Padden will oversee the Foundation's fundraising/public-education programs, which have accelerated towards a cure since the recent discovery of the gene that causes cystic fibrosis.

Marian English of Camas has been promoted to managing attorney at Hyatt Legal Services' Vancouver Mall office, where she previously was a staff attorney. English is a 1964 graduate of Ohio State University and received her law degree in 1987 from Lewis and Clark School of Law. She is a member of the Oregon State Bar and Washington State Bar associations.

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

Beagles (again): No sooner have the Beagles been presented than disgruntled attorneys commence complaining. There were the usual whines concerning expenditures and campaigning not resulting in an award. But the unique complaint came from **Jerry Hall**, who was justifiably upset that no award was given to video performance in an advertising roll. Sort of an MTV-Beagle achievement. Being easily amused and overly curious, Jerry arranged for me a private viewing at his new video store in the MacArthur Heights area of Vancou-

ver. The ad, currently being played during monster truck pulls on ESPN, features Jerry making his spiel for justice then sprinting up the nondescript courthouse stairs. Frequent replays in slow motion reveal that Hall used a stunt double (in his case, it could have been a stunt triple) to perform the "sprint" portions. This use of nonattorneys in a legal ad would be sufficient to disqualify Hall from any future Beagle consideration. Sorry Jerry, but them is the rules.

Moves: Winter migrations find old faces in weird places: **Mike Foister**, late of various quasi-governmental offices, is now with the button-down firm of Marsh, Higgins & Foster. Mike's occupational change comes with a complete physical "make-over," from his shiny suits to frosted hair. Unfortunately, he still has that nasty habit of speaking out loud while thinking; fortunately this doesn't happen too often. **Darcy Scholts**, another refugee from Mozenaville, has joined forces with that Beagle runner-up **Carole Luckett** at her offices on Southern Officers Row. Who said it doesn't pay to advertise? **Karin Dedona**, late of Marsh etc. (supra), can now be found at the sign of the gavel, to wit: Boyd & Gaffney. This horizontal move raises the ugly specter of "associate swapping." Since **Mike Higgins** of Marsh-Higgins is related by marriage to **Mary Kay Gaffney** of Boyd-Gaffney, one can only hope the change was due to a BFOQ, (she wanted more money, and Mary Kay has it).

New members: Yes, we have some, but until they appear in the Yellow Pages or do something funny (whichever comes first), I won't bore you with their names.

Other: **Bob Repp:** Bob is still around and is still crazy. Bob is known as the CCBA "floater," meaning that he doesn't have any permanent base of operation, but rather hovers around various offices in Clark and other counties. Bob recently announced that he is renewing his medical school education with a major in brain surgery. Apparently the "home self-study" program didn't work out, but you can hardly see the scars. Good luck Bob, and please write...don't visit.

EAST KING COUNTY REPORT

by **RANDOLPH I. GORDON**

Third planet from the Sun: Earth. Third-longest reign for a British monarch: fifty-six years (Henry III — after Victoria and George III). Beethoven's Third Symphony: the Eroica. Third United States President: Thomas Jefferson. Third-largest national park outside Alaska: Grand Canyon. Third-largest state: Texas (population); California (area). Third-highest mountain: Kanchenjunga in Nepal-Sikkim. Third-most-populous metropolitan area: Chicago (Los Angeles is now second). Third-longest suspension bridge in the world: Golden Gate. Third-most-home-runs-hit in a single season: Babe Ruth (59 in 1921). Third Article of the United States Constitution: created judiciary. Third-largest local

bar association in the state of Washington: East King County Bar Association.

At the year-end gathering, over one hundred members and guests of ECKBA enjoyed the Bellevue Hyatt's catering and reflected on the successes of the year past. Outgoing president **Barry Hasson** ebulliently issued Certificates of Appreciation to section heads and trustees, **Chris Frost** (golf event), **Doug Robertson** (ELAP), and past president **Eric Jeppeson**; and Outstanding Achievement Awards to the East King County Legal Secretaries Association (received by **Roxanne Forrest**, president); **Ken Davidson** (ELAP); **Nancy Myhre** (ELAP); **Carl Scribner** (publishing); **Jacque Baker** (administration); and his wife, **Annette** (he likes her). Outgoing trustee **Diane Vanderbeek** was specially recognized for her work on the Eastside Satellite Court. In attendance: superior court judge **Norman Quinn**, judges **Brian Gain** and **Joel Rindal** of Bellevue District Court and judge **John Lawson** and newly-appointed judge **Will Roarty** of Northeast District Court. Also present: **Dick Beaudry** (new secretary-treasurer of WSTLA) and **Walt Krueger** (new editor-in-chief of WSTLA *Trial News*); **Val Hoff** escorted by the newly svelte **David Hoff**; the always svelte **Barbara Varon** and numerous others unnamed by reason of space limitations or discretion or obscured by the throngs from this reporter's gaze.

There was much cause for celebration. Trustee **Stephen Hansen** had just that day seen his efforts as chair of the CLE Committee rewarded by a sell-out attendance at the Developments in Condominium Law seminar, held earlier at the Hyatt-Regency. (Nothing says you can't count your chickens after they've hatched!) Trustee **Don Gulliford** had generated a dramatic increase in advertising revenues for the EKCBA Directory which was receiving requests for advertising even as the directories were being readied for distribution. Newly re-elected trustee **Bruce Gardiner** had seen attendance at his new computer law section double. New president **Ken Davidson** was able to report that the Eastside Legal Assistance Program, which he has spearheaded from inception, had received Human Service Grants from King County, Kirkland and Bothell; contributions of $1,000 from the law firms of Davidson, Czeisler and Kilpatric; Inslee, Best; Williams, Kastner & Gibbs; and Revelle, Ries and Hawkins; contributions from individual at-

torneys of another $2,000; and is now a reality. **Doug Harris** will serve as its first president. **Roy Mattern** recalled when EKCBA, of which he was a charter member, consisted of twelve lawyers. Doth the proverbial cup nearly runneth over, or whath?

Election results: **Stephen Fisher**, vice president and president-elect; **Pat Lepley**, recent past president of WSTLA, will join the board of trustees; trustees **Jim Trujillo** and **Bruce Gardiner** were re-elected to second terms. **Stephen Fisher**'s election results in a vacancy on the board of trustees for appointment.

Lao Tze said: better to have a hopeful journey, than to arrive. For right now, for once, for EKCBA, being third feels just fine.

LOREN MILLER BAR ASSOCIATION

by **RICHARD A. JONES**

For the fourth consecutive year, the Loren Miller Bar Association (LMBA) has spearheaded an extremely successful food drive for local families. This year, LMBA, in conjunction with the Washington Women Lawyers, Seattle-King County Chapter, collected approximately $4,600 in cash contributions.

The Central Area Motivation Program (CAMP) and the Neighborhood House agencies received these funds in $40, $60, $80, and $100 grocery store certificates. The agencies then distributed the gifts to more than 80 pre-identified families with special circumstances in time for the 1989 Thanksgiving and Christmas holidays.

Dwayne Evans, High Point Neighborhood House director, joined CAMP director **Larry Gossett** and drive worker **Fauzia Rahman** in expressing sincere appreciation to the donating law groups and their contributing membership.

"The 1989 food drive was a tremendous success," stated **Richard A. Jones**, Loren Miller Bar Association president. "This was an opportunity for a number of lawyers to help feed more than 250 needy people during the holidays — this is a great way to bring in the '90s."

The Loren Miller Bar Association is a statewide service organization of Black judges, attorneys, and law graduates and is the Washington State affiliate of the National Bar Association.

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

Three new superior court positions have been filled by Governor's appointment. One appointee is **Fritz Hayes**. He was one of the top finishers of the many who submitted their names for consideration in the bar's judicial preference poll. The Governor needed no assistance from the preference poll in selecting **Karen Strombom**, an insurance defense trial lawyer, and **Terry Sebring**, from the Governor's own staff, for the other two slots.

Tom Felnagle, chief criminal deputy at the prosecutor's office, is taking Sebring's position with the Governor. **Jerry Horne** will move into Felnagle's job. **Mike Johnson** will become assistant chief criminal deputy which might finally earn him a much-coveted spot in the courthouse parking garage.

Judge **Thomas Swayze** gave an excellent noontime talk to bar members on what judges do when they are off the bench. He outlined the judges' many administrative duties. Those few who attended thought he was going to speak about golf.

Ed Lozier defended a fellow charged with simple assault in Tacoma Municipal Court. Apparently a karate kick was involved, and the jury acquitted Ed's client after a fifteen-minute deliberation. Ed, in a post-trial demonstration of the kick to acquaintances, broke his leg. It's fortunate that he was not defending a person accused of assault with a deadly weapon as he might have inflicted real harm on himself.

Douglas Smith of Albertson, Smith and Associates, reports that they are relocating their offices to the Tacoma Mall Plaza and that **James R. Cushing** will be joining the firm. **Katheryn Lynne Carman** joined Small, Snell, Logue & Weiss, P.S. as an associate. **Joyce Feely**, the executive director of our local bar association, got married. Congrats.

SPOKANE COUNTY REPORT
by **BERNIE McNALLEN**

Advancement: **Richard P. Guy** has ascended to the Washington State Supreme Court, appointed by Governor Booth Gardner in November to replace retiring Justice Vernon Pearson.

Guy, a 1959 graduate of Gonzaga School of Law, brings a diverse and distinguished background to the Court including service as an Assistant Washington State Attorney General, three years as Chief Criminal Deputy Prosecutor of Spokane County. Guy has also worked for the Agency of International Development. After serving four years as a Superior Court judge, he returned to private practice in Spokane and has been an associate partner with the Winston-Cashett firm since 1981.

Endowments: Gonzaga University School of Law recently announced that endowments have exceeded the $1 million mark, which is well on the way to achieving the law school's goal of $1.5 million. These funds have been used to enhance library resources, add faculty and provide other important necessities. Instrumental in the success of the endowment drive have been the efforts of **Gene Annis**, acting campaign chair for **Joe Delay**, who is teaching this semester at Gonzaga-in-Florence.

WASHINGTON WOMEN LAWYERS
by **JEAN KUHAREVICZ**

The WWL's Annual Dinner was held in October, was well attended and featured speaker **Karen Blair**. The following individuals were recently elected to the board: **Mary Fairhurst**, president; **Kristin Stred**, president-elect; **Sheryl Garland**, vice president - programs; **Linda Moran**, vice president - special projects; **Cece Clynch**, vice president - membership; **Carol Rainey**, treasurer; **Jean Kuharevicz**, secretary; and **Kathy Franklin**, newsletter editor. The board met in early December at its annual retreat to plan its year, which will include development of projects implementing goals as outlined by the Gender and Justice Task Force. An Issues Task Force has also been formed for the purpose of determining WWL's methods and procedures of taking positions on issues. This task force is open to all willing participants. Lastly, the WWL directory is complete and will be distributed to all members.

IN MEMORIAM

Benjamin F. Berry, 71, died in November in Seattle. A native of the city, Berry attended the University of Washington, Stanford and Harvard universities, and the George Washington University School of Law. Serving in the Navy during World War II, he achieved the rank of lieutenant commander.

Berry joined Cook & Robinson in 1948 as a patent attorney; in 1962 he formed Seed & Berry with Richard W. Seed. He was a member of Sigma Alpha Epsilon, Broadmoor Golf Club, and a variety of professional organizations. Survivors include his wife, four children and six grandchildren.

NOTICES

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

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