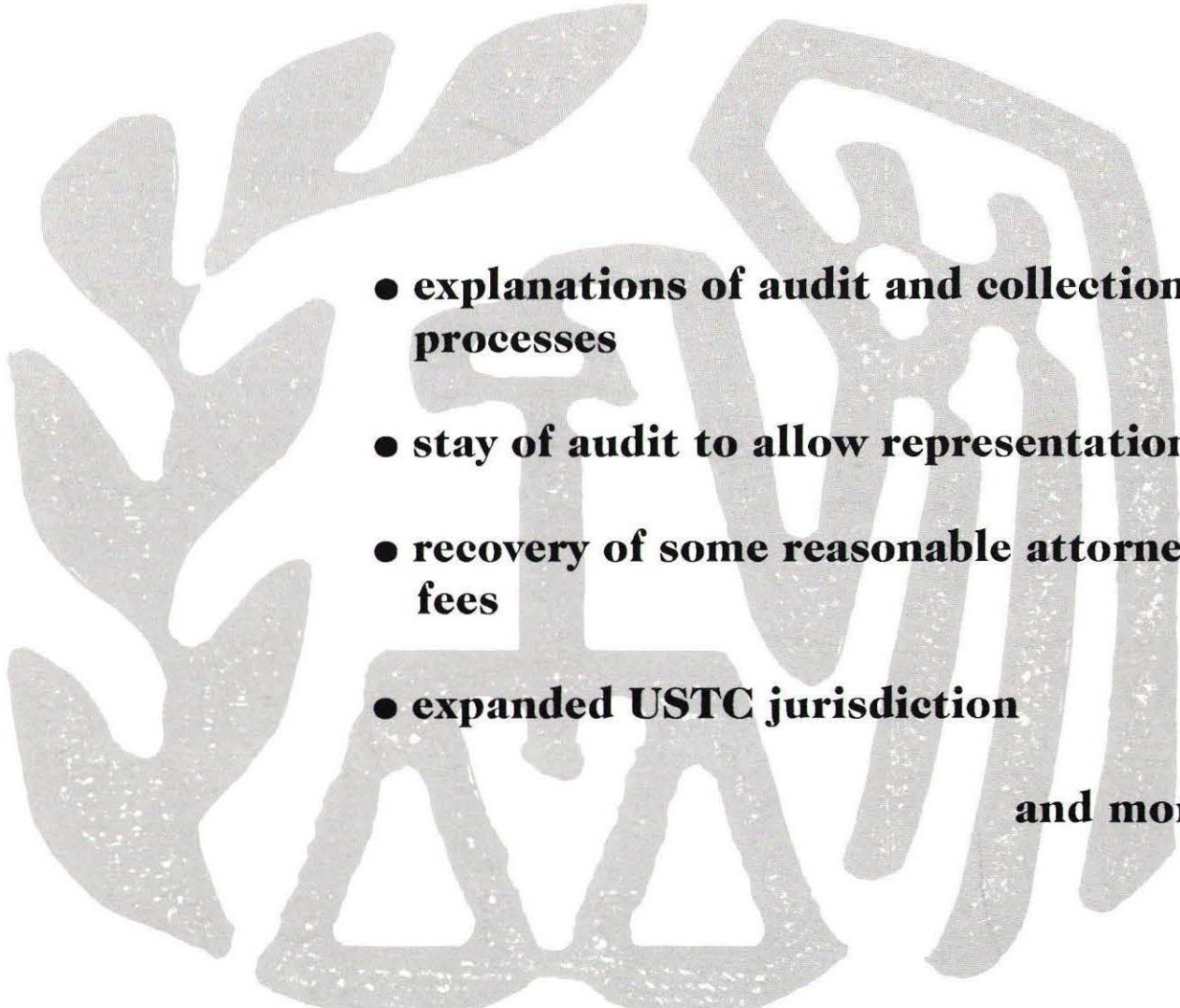


Washington State **Bar**
News

Vol. 44, No. 4, April 1990

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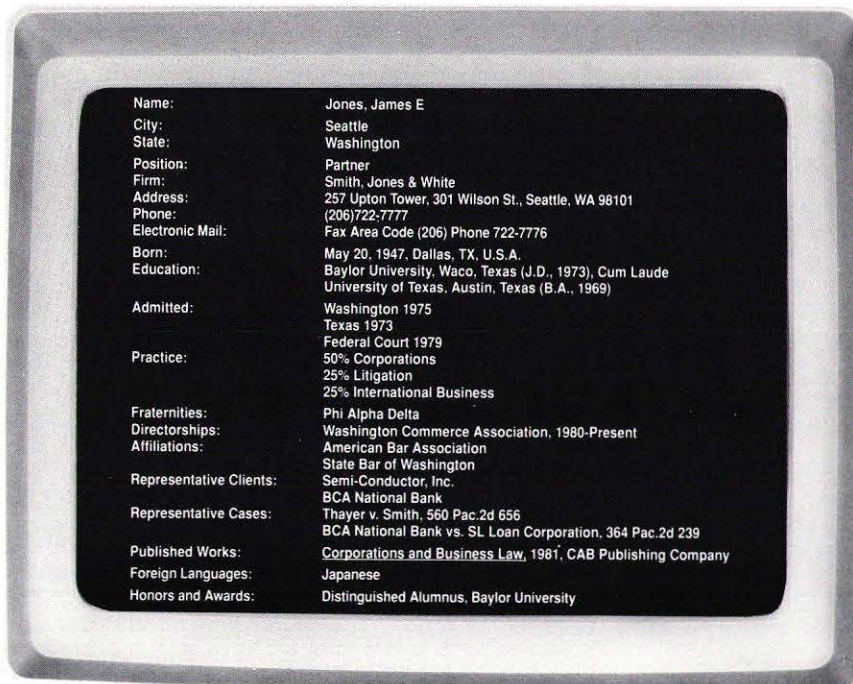
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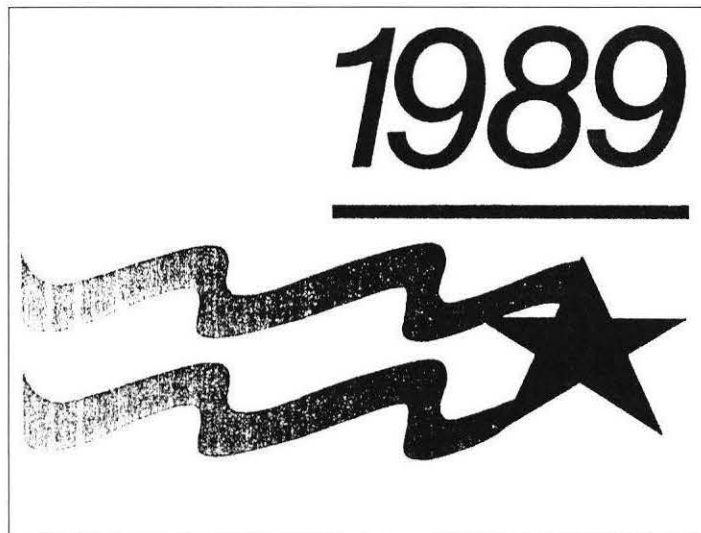
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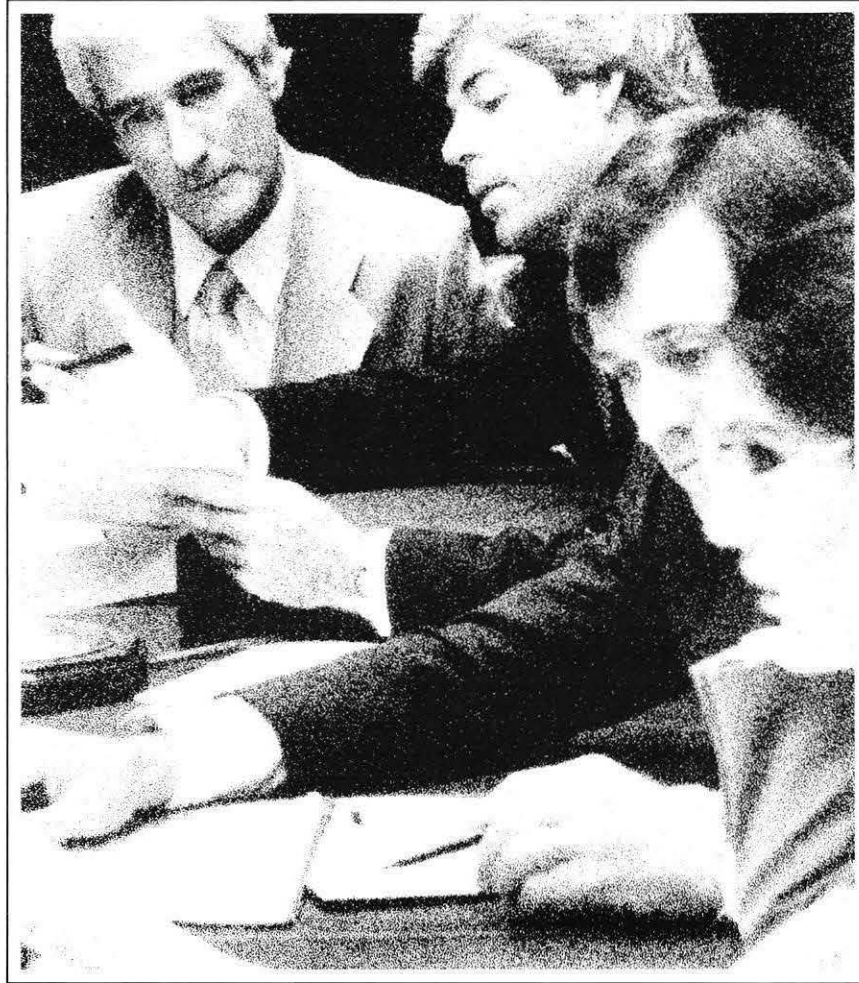
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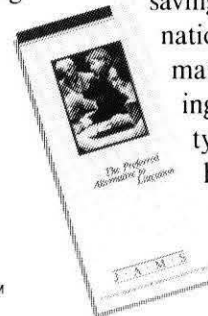
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Letters to the Editor of reasonable length are invited. Such letters should be typed and signed. The Editor reserves the right to select communications or excerpts therefrom for publication, and to edit any letter as may be appropriate.

The New Decalogue

Editor:

A lamentable event occurred on January 10 of this year when the Tacoma-Pierce County Bar Association adopted "Guidelines of Professional Courtesy." In its preamble the Board states: "These guidelines.....are directed to a lawyer's conduct towards other lawyers and the Courts."

The Guidelines are ten in number. So that the uninformed should have moderate acquaintanceship with these "Guidelines," I shall set forth the titles on only the first three:

1. A Lawyer Should Treat Other Lawyers and the Court with Courtesy and Civility.
2. A Lawyer Should Honor Promises or Commitments.
3. A Lawyer Should Never Knowingly Deceive Another.

If my reaction to this codification of professional rectitude appears withering, be advised that it is. I practiced law in Tacoma from 1950 until retirement in 1986, so I feel I am justified in expressing an opinion. That opinion is that my much-respected and beloved Bar is diminishing itself when it deems it necessitous to legislate civility, courtesy and honesty.

Have we, as lawyers, substantiated an old aphorism: "If we have no gravediggers, then we must be vultures"?

I hope not.

WILLIAM ERIC ROHRS
Tacoma

That's Not What I Meant

Editor:

I appreciate the attention the Bar Association has paid to the area of pro bono services. Unfortunately, my position on this issue was incorrectly stated in Jim Vander Stoep's column in the December issue of the *Bar News* ("Mandated Pro Bono Work?"),

December 1989, page 9).

Contrary to the statements in the article, I do not intend to introduce legislation which would mandate pro bono services by Washington state attorneys. I am not certain where Jim Vander Stoep obtained his information about such a bill. No such bill has been introduced, nor would such a bill be likely to be constitutional, as this issue is within the purview of the Supreme Court.

I have, however, expressed concern about the level of pro bono service being provided in our state, as well as the public service activities by Bar members. I have a very broad definition of public service. I know many attorneys volunteer their services in worthwhile activities. These voluntary efforts should be expanded.

I have urged the Bar to enhance pro bono activities. Legislative hearings were held on this issue in 1987 and former Bar Association president Jack Dean promised to promote pro bono activities at that hearing. I am pleased the Bar Association has made progress on this issue, and I

encourage its efforts.

PHIL TALMADGE
Washington State Senate
34th District, Seattle

They're Missing the Real Issue

Editor:

I was intrigued by the debate between James Bamberger and Alan Gallagher in the January *Bar News* concerning the cost of indigent legal services (Letters, January 1990, pages 7-9). The two of them apparently disagree over, among other things, whether the cost per attorney of providing legal services is \$44,250 or \$86,731.

While this discrepancy is somewhat disturbing, the first thought that springs to my mind is how surprisingly low are both figures. Remember that we're talking not about the salary of the attorneys but about the total cost of the program divided by the number of attorneys. In other words, the cost of support staff, management, physical plant, office supplies, etc...are all part of this number.

For the sake of comparison, let's

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look at a typical downtown "corporate" law firm. An attorney there will often cost between \$44,000 and \$87,000 in salary alone. The same attorney will be expected to bill out around \$200,000 per year so as to cover her total cost to the firm and generate some profit.

This discrepancy between the resources assumed by private lawyers and those used by legal services lawyers is what is really disturbing, particularly in light of each group's value to society. Legal service attorneys provide essential and often life-saving assistance to our citizens. They prevent tenants from being unfairly evicted, protect women and children from abusive partners, and ensure that the elderly receive the medical care to which they're entitled.

Corporate lawyers, on the other hand, often do no more than help to "divide up the pie." They may litigate, for example, the question of which insurance company should pay for a loss, or which designate is entitled to the proceeds from a patented product. The bill for such services is sometimes in the six-figure range. What's more, these corporate lawyers greatly outnumber the legal service lawyers.

The vast amount of money paid to support corporate lawyers is not an expense only to the rich clients they represent. The burden is passed on to all of us in the form of higher prices for products and services provided by these corporations.

Gallagher is wasting his time quibbling over the degree of efficiency of our grossly understaffed and underfunded legal services programs. He could put his analytical skills to far better use by investigating how our corporations can learn to resolve their disputes without throwing away such an enormous part of our gross national product on high-priced, private legal services.

DAVID ZUCKERMAN
Seattle

Filing Fee Increase Is Worth It

Editor:

I strongly disagree with Jim Goché's conclusion in his letter in the December 1989 *Bar News* ("Raising Filing Fees Is Not the Answer," Letters, page 7) that raising superior court filing fees by \$22 (see ESHB

1237) to help fund the delivery of civil legal services to low-income people will unduly burden city and county government. I was pleased to see that Goché strongly supports the goal of the proposal, which is to ensure access to legal assistance and the judicial system by low-income people in Washington.

Goché states that adding a filing fee surcharge would exacerbate local governments' growing budgetary problems related to paying for the criminal justice system. As local government is forced to commit more general funds to the criminal justice system, other necessary services will suffer. Goché implies that any increase in filing fees should therefore be used to defray escalating costs associated with the criminal justice system. A filing fee surcharge "for still another program," he says, would not be in the public interest.

In November 1988, after surveying legal and community service providers around the state, the WSBA Legal Aid Committee reported on the need for civil legal services for the poor in Washington. The report concluded that the extensive unmet legal needs of low-income persons, which frequently involve life's most basic necessities — food, shelter, a subsistence income, medical care, preservation of the family — go unaddressed due to inadequate funding. The committee found that such services are provided most efficiently and effectively by organizations that specialize in supplying them. Unfortunately, federal funding, the primary source of money for such programs, was drastically cut in 1981, has declined 40% in real dollars since then, and is not likely to increase significantly. Similarly, although IOLTA funds have helped the programs survive, they too have become static.

Since preparing its report, the Legal Aid Committee has obtained additional data that underscore the urgency of the situation. Between 1980 and 1988, for example, the number of lawyers working for the three major legal services programs serving the poor in Washington dropped from 133 to 83. During the same time period, the state's poor population increased more than 35%, from 555,000 to 750,000. "These folks," as Goché calls them, are typically chil-

dren, working mothers, the elderly, the homeless, and are often physically or mentally disabled.

On March 17, 1989, the WSBA Board of Governors unanimously approved a resolution strongly urging the Washington state legislature to make additional funds available for civil legal services for low-income people. Even though the Board of Governors generally disfavors special allocations of filing-fee revenue, the resolution supports passage of legislation that would increase superior court filing fees to help fund qualified legal-aid programs because the need is so great. In recent months, local bar associations in Spokane, King, Pierce, Whatcom and Snohomish counties, among others, have approved similar resolutions of their own.

Even if a crisis did not exist, increasing access to civil legal assistance for low-income people relates directly to the administration of justice. Consequently, advancing this goal is not just "another program," as Goché puts it. Using court filing-fee revenue is not a new idea. Five other states, including Oregon, use money received from filing fees for this purpose. Oregon earmarks \$22 of the \$118 circuit court filing fee to support indigent civil legal services.

I share Goché's concerns regarding the rising costs of running an increasingly overloaded criminal justice system. Clearly, massive funding is needed to shore up the several components of that system: public defenders, judges, prisons, etc. I believe Goché's own organization, the Washington Association of County Officials, recently estimated local government will need \$1 billion for this purpose over the next decade. The amount of money that would be raised to help support delivery of civil legal services to low-income persons through the proposed filing-fee surcharge over that same period (\$16 million) is *less than 2%* of what local government will require. On the other hand, requiring each person who can afford it to pay an extra \$22 when a lawsuit is filed will substantially increase the number of poor persons who will have access to that same system of justice. This would not cost local governments anything, since the funds used for legal services

would come from an increase in existing filing fees and not from funds currently retained by the counties.

Access to legal counsel and the courts is as much a cornerstone of our legal system on the civil side as in criminal matters. This is particularly important where basic human needs are so often at issue. Neither the federal government nor IOLTA is likely to prevent further cutbacks in civil legal services for the poor in Washington. A small filing-fee increase, however, would go a long way toward restoring balance to the scales of justice in noncriminal matters.

BRUCE DIDESCH

Chair, Legal Aid Committee, WSBA
Nespelem

A Modest CLE Proposal

Editor:

Every Washington lawyer to whom I have talked recently agrees that we ought to be able to get CLE credit for individually viewing video tapes or listening to audio tapes that have been approved by the CLE Board as is being done in Montana and Colorado.

This past January 10, I went to a bar lunch where the speaker was Stanley Chauvin, the new president of the American Bar Association. As guests arrived, often one would laughingly ask another if he or she was there to get CLE credits. In fact, 1.5 CLE credits were being allowed for attending the lunch. Doubtless this was done with a view to promoting an audience for Chauvin. Yet, although his anecdotal talk was amusing, it was utterly devoid of merit as a piece of continuing legal education.

At the lunch I sat between two Seattle lawyers. I mentioned that I was going to propose to the Board of Governors that we ought to allow CLE credit for individual viewing/listening to video and audio tapes, and I asked each lawyer what he thought about it. The lawyer on my left, a partner in a firm of some 120 lawyers, said that he approved it wholeheartedly. His wife, he said, was a lawyer and was then taking maternity leave. She wanted to keep up her CLE credits and her license, but found it extremely difficult to leave the house and go out to lectures

held in downtown places. He and she wished that she could get CLE credit for viewing/listening to approved tapes at home.

The lawyer on my right, one of Seattle's most prominent lawyers, said, "The beauty of a tape is that you can play it over when you miss something or are not quite sure you heard something correctly. It beats lectures all hollow."

Other states allow such credit for individual viewing/listening to tapes: Oregon, Idaho, Colorado and Montana, where the bar association runs its own circulating library of video and audio tapes for rental at nominal rates to lawyers. Why can't the Washington State Bar Association run a video/audio tape rental library for Washington lawyers?

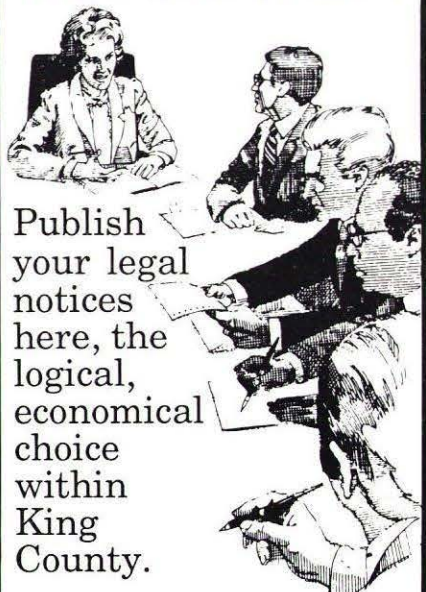
DOUGLAS SHAW PALMER

Seattle

ERRATA: The word "not" was inadvertently dropped from page 10, column 3, line 7 of the March 1990 Bar News. The correct sentence reads, "The HIV status of a mother should not be considered grounds for limiting her right to conceive or her right to parent her child."

The Bar News regrets the error.

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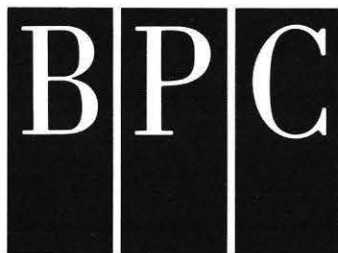
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**Which Side of the Desk
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James A. Vander Stoep

Today's law firm pays high overhead in rent, salaries, supplies, equipment and services. The practice of law is increasingly costly.

Obviously, advertising is here to stay. An examination of the Yellow Pages in the telephone book and a viewing of television ads reflect costly lawyer money outlay. Webster's Dictionary describes advertising as "to call public attention to, in order to arouse a desire to purchase." Increasing costs of practice and desire for higher earnings motivate advertising. As indicated, this is part of today's practice.

There is a distinct threat presented by high overhead costs and advertising. Lawyers are professionals — they act in a representative capacity. Sometimes it is not easy to distinguish between a business and a profession. But in the case of the legal profession, the hallmark is that we represent the interests of others. Within the framework of this representative capacity lies the question posed, "Which side of the desk has priority?"

With the increase in need for money has come the advent of "billable hours." That term has come to the forefront in many offices and with many practitioners.

Is this bad or wrong? Not necessarily. The key lies in the fundamental question, "Is the drive for hours primarily motivated and necessitated by clients' needs or by lawyer income?" The ultimate test of whether ours is a business or ours is a profession lies in the answer to the question: "Which side of the desk has priority — client interest or lawyer interest?"

Today your Bar Association is emphasizing professionalism. We all must continue in that direction. It will succeed as long as we continually ask, "Which side of the desk is accorded priority by me?" and we answer, "The client's side comes first."



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Dividing the Ninth Circuit

by **John J. Michalik**

WSBA Executive Director

For over 15 years now, the Board of Governors and the State Bar Association have been on record as favoring a division of the United States Ninth Circuit Court of Appeals. This position was most recently affirmed in August of 1989 and in connection with legislation sponsored by a number of senators, led by Senator Slade Gorton.

The subject of the division of the Ninth Circuit was on the agenda of the February 1990 Mid-Year Meeting of the American Bar Association House of Delegates. At that time one of the State Bar's ABA delegates, Ed Shea of Pasco, addressed the issue and the reasons for the Washington State Bar Association position favoring division of the Circuit and the creation of a new Twelfth Circuit Court of Appeals. As a matter of general interest, I pass along the following excerpts from Mr. Shea's remarks to the ABA House.

"The Ninth Circuit as it currently exists comprises nine states and two U.S. territories. Those states are:

- (1) Alaska, (2) Arizona,
- (3) California, (4) Hawaii,
- (5) Idaho, (6) Montana,
- (7) Nevada, (8) Oregon and
- (9) Washington, and the two U.S. territories, Guam and the Northern Mariana Islands.

"Just picture in your mind's eye how huge that circuit is.

"In those states and territories there are 40 million people, 28 appellate judges, 11 senior appellate judges, 87 district court judges, 40 senior district court judges, 62 active bankruptcy judges and the staff to support all of those judges in that vast geographic region. Even more judges are now being requested.

"When we in Washington discussed this issue in August of 1989, we were fortunate to have at our Board meeting not only our own United States senator, Slade Gorton, but also two dis-

tinguished jurists, Judge Brown and Judge Fletcher of the Ninth Circuit, both of whom oppose the division of the circuit. Judge Fletcher had formerly been a member of the Board of Governors of the Washington State Bar Association.

"After considerable discussion with the judges and the senator, our Board voted overwhelmingly to continue to support division of the Ninth Circuit. The reasons for division are simple and persuasive:

- (1) Conflict in the panel decisions within the Ninth Circuit resulting in unreliability of those panel decisions and unpredictability of those decisions for lawyers and parties.
- (2) The unsatisfactory use of a modified en banc procedure defeating the basic purpose of such a procedure.
- (3) An enormous workload resulting in delay and backlog. Currently the Ninth Circuit takes 4.5 months longer to make a final decision than the national average of other circuit courts.
- (4) Staggering expense to transport those judges around that huge geographic region.
- (5) The waste of time — where more time is spent traveling than hearing cases.

"These problems have been with the Ninth Circuit since the ABA and the WSBA originally voted to support the division of the circuit. In the years since only one thing has changed — size! The problems have grown unimaginably larger.

"Those who did not and do not want division concede that eventually size will require division. They just say, 'Not now!' It is the position of the Washington State Bar Association that division should, in fact, occur 'now,' and not 'later.'"

John J. Michalik

The Taxpayer Bill of Rights



by David W. Freese

Subtitle J of Title VI of the Technical and Miscellaneous Revenue Act of 1988 contains the "Taxpayer Bill of Rights." Despite the rather auspicious title, this author suspects that the act will not cause delinquent taxpayers and the IRS to be "cheek by jowl."

The reasons for taxpayer fear of the IRS are well-grounded in statutory policy and administrative practice of the IRS, for the power of the IRS to collect taxes (even as trimmed by the Taxpayer Bill of Rights) is truly awesome. Failure to pay a tax within ten days after notice and demand of the tax has been made creates a [secret] lien in favor of the United States.¹ This lien extends to all personal property of the delinquent taxpayer — right down to the BVDs.² The lien attaches to after-acquired property, and is not subject to state exemption statutes.³ Once notice of the federal tax lien is recorded properly, the lien takes precedence over subsequent purchasers, mechanic lienors, judgment lien creditors and certain good-faith purchasers taking title without actual notice.⁴

In addition to the federal tax lien, the IRS may also levy (seize) property. Notably, until the Taxpayer Bill of Rights, the IRS could levy all wages except the heady sum of \$75 per week plus \$25 per week per dependent.⁵

I. Taxpayer Rights at IRS Interviews (Audits).

With limited exception, a taxpayer could be subjected to only one audit per year by statute,⁶ and by regulation, each such audit had to be at a reasonable place and time. Practi-

cally, the taxpayer could obtain, as a matter of course, one to two deferrals or changes of date of audit.⁷ Further deferrals or change of dates, often, would turn into a schoolground yelling match between taxpayer's counsel and the examining agent over what was reasonable as to date, time and place.

Absent an IRS summons, taxpayer's counsel could shield the taxpayer from direct contact with the auditor.⁸ While IRC § 7605 allows the IRS to conduct an audit at any reasonable time and place, and specifically does not exclude the taxpayer's residence, IRC § 7606 only authorizes IRS employees to enter buildings for examination of "articles or objects" subject to tax, and not persons subject to tax. Failure to allow entry, under IRC § 7324, could lead to a \$500 forfeiture, and unlawful failure to obey an IRS summons could lead to a federal misdemeanor conviction.⁹ Entry of residences has usually been preceded by an [ex parte] order of the U.S. District Court authorizing same.

Under the Taxpayer Bill of Rights, the IRS is given authority to promulgate legislative regulations as to what constitutes reasonable time and place of audits.¹⁰ Most importantly, taxpayer presence may not be required without an IRS summons, and an *audit must be stayed if the taxpayer indicates his desire for representation*.¹¹ Specific statutory authorization is provided for taxpayer audio recording of the audit.¹²

With express statutory authorization for the IRS to define what constitutes a reasonable time, place and manner for the audit, the IRS may be able now to define uniformly, to its

clear advantage, what is reasonable with respect to those issues.

II. Taxpayer's Reliance on IRS Advice: Explanation of Contents of Notice.

Tax attorneys have been quick to conclude that to rely on the advice of an accountant for tax matters is negligence per se; a fortiori, to rely on the advice of an IRS employee which did not constitute official action by the IRS (viz., grant or denial of an extension request). Now penalties may be avoided if the taxpayer has made a request for advice in writing, the IRS has provided the advice in writing and the reliance was reasonable.¹³ By definition, telephonic advice may not be relied on, and the procedure for obtaining written advice is nowhere set forth.

III. IRS Collections.

The notice of intent to levy has been increased from ten days to thirty. Exempt amounts of wages for IRS levies are increased to the sum of the taxpayer's standard deduction plus all of the taxpayer's allowable personal deductions.¹⁴ For a family with three children the exempt wages would be increased from \$175 per week to about \$292 per week.

The bill also exempts from levy, absent specific authorization by a district director or assistant district director, a taxpayer's principal residence.¹⁵ One should note, however, that the lien would still attach to the residence, causing the IRS to be paid on sale of the premises, without any levy action.¹⁶ Certain other exempt amounts of property are increased

modestly;¹⁷ certain governmental benefit program payments become exempt,¹⁸ and levies are not permitted on the appearance date of an IRS summons.¹⁹

The Taxpayer Bill of Rights provides that taxpayers may seek review of the propriety of the tax lien (but not of the underlying assessment).²⁰ This in conjunction with the newly created right to seek civil redress

for unlawful failure to release a lien²¹ will aid taxpayers in obtaining timely "clearing of their record."

IV. Authority of the IRS Problem Resolution Office (PRO).

The IRS PRO has functioned traditionally to alleviate IRS action based on IRS error, viz., miscredit or non-

credit of a taxpayer's payment, etc. Now the IRS PRO, by act of the "Taxpayer Ombudsman," is granted authority to issue "Taxpayer Assistance Orders"²² when the ombudsman or his designée finds that the IRS is causing, or is about to cause, a taxpayer a significant hardship as a result of the manner in which the internal revenue laws are being administered [to that taxpayer].²³ Neither the committee report nor the statute define what is a "significant hardship," and thus, this grant of discretion appears fairly broad. Before becoming too excited, however, that taxpayers finally have achieved someone who will listen (and act with authority) at the IRS, one should note that a taxpayer assistance order may be overridden by a determination to the contrary by any of the following: a service center director, compliance center director, regional director of appeals, district director or any of their superiors.²⁴

V. Taxpayers' Suits Against the IRS.

The anti-injunction statute, IRC § 7421, and the lack of waiver of sovereign immunity²⁵ essentially insulated the IRS, hermetically, from civil litigation other than refund and information disclosure litigation. There was no general jurisdiction for claims of arbitrary and capricious actions of the IRS. The Taxpayer Bill of Rights now provides that taxpayers may sue for wrongful failure to release lien and for reckless or intentional disregard of tax laws or regulations by IRS employees in the collection (but not determination) of taxes.²⁶ All administrative remedies first must be exhausted.²⁷

VI. Recovery of Attorney's Fees.

Aside from IRC § 7430, attorney's fees were not recoverable in tax court litigation, even under the Equal Access to Justice Act,²⁸ because the United States tax court was not a "court of the United States" and because of the specific statutory exclusion found in 28 U.S.C. § 2412.²⁹ Attorney's fees were not recoverable

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in tax court under the civil rights attorney's fees clause, 42 U.S.C. §1988, because tax court proceedings were not brought by the government, but by the taxpayer. Thus, recovery of attorney's fees in tax court is only by IRC § 7430.

IRC § 7430 allowed qualifying³⁰ taxpayers to recover reasonable attorney's fees and costs if the taxpayer was the prevailing party and the position of the United States was not substantially justified,³¹ and if prior to litigation all administrative relief had been exhausted.³²

The Taxpayer Bill of Rights expands recovery to include some administrative actions of the IRS.

One should note the cases denying taxpayer recovery of attorney fees are legion. Those few successful taxpayers have had to turn very square corners, indeed.

VII. United States Tax Court Jurisdiction.

The US tax court (USTC) has jurisdiction to determine the correct tax liability, including penalties, for a tax year³³ properly before it, viz., upon timely prosecution of a petition pursuant to a Notice of Deficiency.³⁴ To the extent the USTC could only "determine" deficiencies or overpayments — a picture snapshot — it lacked traditional indicia of a court, viz., the ability to enter a judgment. Thus the USTC, even though denominated "court," has been viewed as not being a court, because its powers [initially] were no greater than those of its predecessor organization, the Board of Tax Appeals.³⁵ Until the Taxpayer Bill of Rights there was no jurisdiction over collection,³⁶ [over]payment,³⁷ or interest amounts (except to determine whether a transaction was tax motivated for the 20-percent interest surcharge).³⁸ Disputes over interest on tax amounts, for instance, had to be litigated before the U.S. District Court.³⁹

The United States tax court jurisdiction was so narrow that specifically, it did not have equity jurisdiction.⁴⁰ Under the Taxpayer Bill of Rights, the USTC jurisdiction is expanded to include [some] equity jurisdiction, viz., injunctive type relief

for a year properly before the court.⁴¹ Jurisdiction also is expanded to authorize the USTC to order a refund, as opposed to merely determining an overpayment.⁴² Jurisdiction is also expanded to determine interest amounts.⁴³

No mention is made in the committee reports as to whether the tax court should issue such a refund or-

der when the IRS has asserted, but not assessed, deficiencies as to other years, where if actual disbursement of the refund is made to an impecunious taxpayer, recoupment on the other years' deficiencies is remote. Also, no mention is made as to the effect of a refund order when the IRS is acting as an impound agent for unpaid child support or student

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loan obligations, nor, significantly, the limitation of offset rights under 11 U.S.C. § 553 for a taxpayer who is contemporaneously a bankruptcy petitioner.

Besides the problem with asserted but not assessed offsets in refund determinations, there are other changes in the tax court jurisdiction which may have unanticipated effects.

With the expanded jurisdiction of the USTC, it now functions similarly to an Article III court. The USTC under the Taxpayer Bill of Rights has jurisdiction to "order" a refund and to compute interest.⁴⁴ Such jurisdictional ability looks like a judgment, and it would meet the definitional test of a judgment per FRCP 54 (which rules do not apply to the USTC).

If the USTC has, by expansion of its jurisdiction, been transformed into a "Court of the United States," then it would seem automatic that the USTC would pick up writ jurisdiction pursuant to the All Writs Act.⁴⁵ The fact that it is an Article I court would not form an exception, as the other

principal Article I court, the United States Court of Military Appeals, has long held that it has had writ jurisdiction.⁴⁶

If the USTC has become a court of the United States, and thereby picked up writ jurisdiction, it would follow that action or nonaction by the IRS Problem Resolution Office with respect to its taxpayer assistance orders would be a prime area for writ review, provided that the USTC already had jurisdiction.⁴⁷

Given the possible imposition of a \$5,000 penalty for instituting a proceeding before the USTC solely for purposes of delay,⁴⁸ it may take a very brave, or very desperate, taxpayer who first attempts to seek a writ from the Tax Court.⁴⁹

VIII. Conclusion.

The Taxpayer Bill of Rights legislation with respect to taxpayer rights advisement and taxpayer interview rights will have little effect on the substantive jousting rules. The changes wrought in the collection rules will have beneficial effect for

delinquent taxpayers, and the right to sue for reckless or intentional disregard of the tax law will be a major assistance in dealing with the IRS. The expanded jurisdiction of the United States tax court is welcome, but the court with the most potent jurisdiction to deal with the IRS remains the United States bankruptcy court. □

¹IRC § 6331.

²IRC § 6321.

³IRC Regulation 301.6321-1.

⁴IRC § 6323; *U.S. v. Donnelly, Sr. Est., et al.* 25 AFTR2d 70-832, 397 U.S. 286, 25 LEd2d 312 (1970).

⁵IRC § 6334.

⁶IRC § 7605.

⁷Blaustein, *How To Do Business With The IRS*, p. 59.

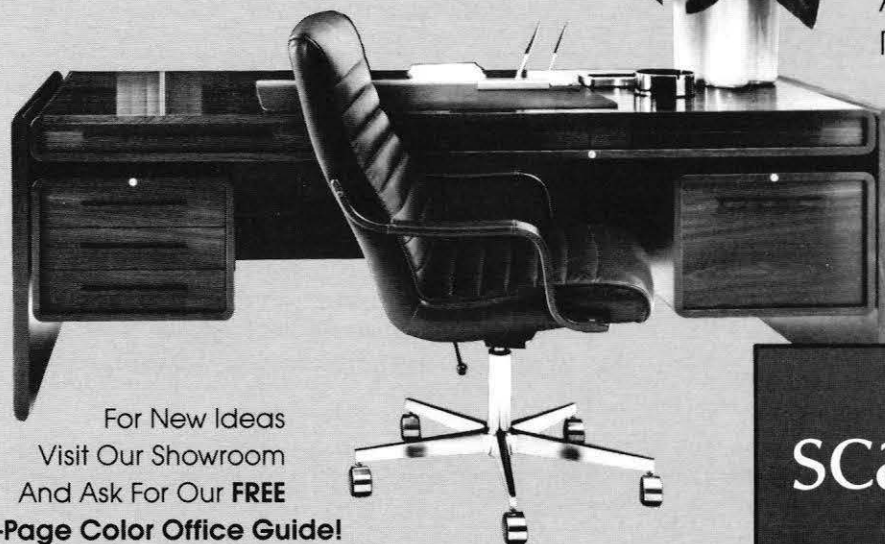
⁸Freese, *Defending Against IRS Collections*, June 1983 *Washington State Bar News*, p. 12.

⁹IRC § 7210.

¹⁰Act § 6228(b).

¹¹Act § 6228(a) adds new IRC § 7520; Consultation rights are set forth in IRC § 7520(b)(2); Taxpayer nonpresence rights are set forth in IRC § 7520(c).

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¹²IRC § 7520(a)(1).
¹³Act § 6229 amends IRC § 6404.
¹⁴Act § 6236 amends, inter alia, IRC § 6334.
¹⁵Id.
¹⁶IRC § 6321.
¹⁷Act § 6236(c) increases exempt amounts for fuel, furniture, personal effects, etc.
¹⁸Act § 6236(c)(4).
¹⁹Act § 6236(d) adds new paragraph (g) to IRC § 6331.
²⁰Act § 6238 redesignates IRC § 6326 as 6327 and then adds new IRC § 6326.
²¹Act § 6240 redesignates IRC § 7432 as IRC § 7433 and then adds new IRC § 7432.
²²Act § 6230 adds new IRC § 7811.
²³IRC § 7811(a).
²⁴IRC § 7811(c).
²⁵The Federal Tort Claims Act does *not* apply to acts of the IRS, 28 U.S.C. § 2401.
²⁶Act § 6240 redesignates IRC § 7432 as § 7433 and then adds new IRC § 7432; Act § 6241 redesignates IRC § 7433 as § 7434 and then adds new IRC § 7433.
²⁷IRC § 7432(d)(1) and IRC § 7433(d)(1).
²⁸5 U.S.C. § 504 and 28 U.S.C. § 2412(e).
²⁹*Benson v. U.S.*, 55 AFTR2d 85-1434 (DC NY; 1984).

³⁰Among others, there are net worth limitations.
³¹Act § 6239 amends IRC § 7430.
³²IRC § 7430(b)(1).
³³IRC § 6214(b).
³⁴IRC § 7442.
³⁵*Lincoln Electric Co. v. Commissioner*, 162 F2d 379 (6th Cir., 1947).
³⁶*E.g., Thomas E. Scofield*, ¶ 54,096 P-H MemoTC; *U.S. v. Jones*, 52 AFTR 1489 (DC, KY; 1957).
³⁷*Everett Knitting Works*, 1 BTA 5.
³⁸IRC § 6621(c)(4).
³⁹*E.g., Robert T. Benson*, ¶ 85,615 P-H MemoTC.
⁴⁰*The Hays Corp.* 40 TC 436 (1964).
⁴¹Act § 6245 amends IRC § 6863 allowing USTC review of sales of seized property related to a year already properly before the court; Act § 6243 amends IRC §§ 6213 and 7482 to allow the USTC to restrain premature assessments when the tax year is already properly before the court.
⁴²Act § 6244 amends IRC §§ 6512 and 6214.
⁴³Act § 6246 adds IRC § 7481(c).
⁴⁴Op cit IRC §§ 7481(c); 6512(b).
⁴⁵28 U.S.C. § 1651, which states:
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gress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.
 (b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

⁴⁶*United States v. Caprio*, 12 MJ 30 (COMA, 1981).
⁴⁷The All Writs Act has been interpreted as not granting any new jurisdictions to a court, but only aiding a court in the exercise of the jurisdiction it already has.
⁴⁸IRC § 6673.
⁴⁹In tax matters, many courts seem to have little patience for novel or ingenious arguments, *e. g., Burroughs v. Wallingford*, 780 F2d 502 (5th Cir., 1985) where the taxpayer contended that the IRS could not place a lien on his property because the Declaration of Independence stated that his right to wages was "unalienable." Taxpayer was assessed *double costs and attorney fees* for that argument.

David W. Freese is a graduate of Washington State University and the University of Washington School of Law. He practices in Edmonds.

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Last spring, I got into a very unpleasant conflict with a young associate at work, which pushed me back into the cycle. I kept quiet and tried to ignore it, assuming it would go away. It didn't. I became anxious and began to withdraw from others in my office, spending less and less time discussing cases, and more and more time alone and isolated. I began to seriously question my professional abilities and became overly anxious about the adequacy of my work. Away from the office I was no better: I didn't want to talk to friends, partly because I felt too low, but mostly because this was a professional problem. My sleep was disrupted — I'd waken two or three times a night worrying. As sleep deprivation mounted, my daytime anxiety and depression grew.

I had been reading the LAP column in the *Bar News*, but hadn't thought that this service was either necessary or available to me. After all, I wasn't a substance abuser, nor was I suicidal. I was "simply" having a problem with another lawyer, and I felt that I should be able to figure out what to do. Then I read the story of another attorney with "ordinary" problems like mine. I thought of calling, but it took me weeks to finally get up the courage. All the different "what if's" sprang to mind: What if they tell me my problems aren't the kind they deal with? What if they take this too seriously and read more into this than I want or need?

Once I made the call, I felt immediate relief. Here was someone who understood about lawyers and their

work and the unique problems associated with the profession. I met with the program director for three sessions and focused on my crisis. I explored my feelings of frustration and helplessness and worked out a specific plan to get out of my numbed-up, depressed state. Once that was accomplished, I was able to feel good about myself and my law practice again. I was surprised at how quickly I was able to work my problems through and how energized I felt once I took action.

There are many things about law practice which I thoroughly enjoy, but hassling with disgruntled clients and combative attorneys is definitely a downer. My experience with LAP has shown me that I can keep my emotional health — and possibly my sense of humor — through conflict. I don't have to resort to the withdrawal and isolation which I used to get me through tough childhood times. These are no longer appropriate or desirable coping behaviors. Thanks to LAP I now know that I possess the necessary adult insight and coping skills to help myself get through tough professional times. It's wonderful to know that the Bar supports this program and that it's available for me if I should need it again.

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THE BATTLE FOR THE TIDELANDS IN THE CONSTITUTIONAL CONVENTION

Part I, published last month, described the competing interests in the tidelands, and sketched the history of the Seattle waterfront. This Part II recounts the debate over the harbors article, and next month Part III will conclude with the final resolution of the tidelands issues.

by Charles K. Wiggins

Part II: The Harbors Article

The committee on public lands presented its proposed article on the school lands and the tidelands on August 1, 1889. The Spokane delegation, together with their eastern colleagues, unified in opposition to the proposed article.⁴¹ But on August 4 an extensive fire destroyed the business district of Spokane.⁴² Spokane delegate J.J. Browne, who owned a substantial portion of Spokane, returned home on leave, together with Allen.⁴³ The railroad lobbyists saw in this disaster an opportunity to free themselves of George Turner's opposition, both on the tideland issues and on the proposal to establish a railroad commission, which Turner stoutly advocated and the railroads vigorously opposed. Railroad lobbyists suggested to Turner that he return home to tend to his private affairs and run for the U.S. Senate in 1890, assisted by an election fund of \$25,000 contributed by the railroads.⁴⁴ Twenty-five years later, Turner described the incident, perhaps embellishing slightly, in the heat of his unsuccessful campaign for the U.S. Senate:

While these articles were under fire in the convention Spokane was swept by a great conflagration and my office, books and

papers, constituting the little wealth that I possessed, were destroyed. The corporations then took me up on the mountain and pointed out to me the beautiful land spread out below and promised me dominion over it and all that it contained if I would only go home and look over my wasted and devastated private interests.

The senate of the United States and a sufficient fund to assure it were some of the baubles held out before my supposedly ambitious eyes.... I remained at my post of duty until the end, and, not wavering once, assisted in the adoption of everything that is truly progressive in our state constitution.⁴⁵

Turner's biographer reports that his reply to the lobbyists was "brief, direct, adequate, just, forgivably profane and legally unprintable," earning Turner "a barbed-wire corsage for mastery of scathing invective."⁴⁶

The Spokane delegates managed to postpone the debate on the tidelands until August 13, when the convention took up both the article on tidelands and the article on harbors. The harbors article dealt specifically with the disposition of tidelands

in front of incorporated cities and whether those lands should be specially set aside for state ownership for the convenience of commerce and navigation. The committee proposed that the harbor lines be established by a legislatively appointed Harbors Commission. The Commission was to establish an outer harbor line at a depth of no less than 24 feet at ordinary low tide and an inner line between the outer line and the line of ordinary high tide, provided that the harbor area was to be from 200 to 600 feet in width. Within the harbor area, the state was prohibited from selling, leasing or giving any of the property to any private person, corporation or association.⁴⁷ Cities were given the right to extend their streets over tidelands.⁴⁸

The delegates debated the harbors article at length. Two main assaults were made on the article: to eliminate the inner harbor line, simply establishing an outer line beyond which wharves and improvements could not be built; and to give the cities control over their own harbor areas. P.C. Sullivan of Tacoma and Weir of Port Townsend both argued for the rights of private individuals who had spent millions of dollars on harbor improvements, particularly wharves. Turner responded that none of these

people had any right to occupy the tidelands and were technically trespassers, but that the Legislature could certainly compensate them for their property. Judge Thomas Burke, who had apparently been given the privileges of the floor for the day, asked whether it was right to leave out in the cold persons who had invested millions in improvements. Turner responded that he did not

take that position, but did believe that "for every dollar they have invested they have taken three, and they have got them in their pockets right now."⁴⁹ Eventually, the delegates adopted the harbors article as proposed, but they eliminated the 24-foot depth for the outer harbor line and changed the minimum harbor width from 200 feet to 50 feet.⁵⁰

The next day David Durie of Se-

attle again attempted to place control of the harbors in the cities rather than the state, proposing an additional section to the harbors article vesting all control in the cities.⁵¹ At this point, James Moore of Spokane introduced a resolution that any delegate of the convention holding an interest in or claim to any of the lands of the new state should disclose that interest in convention and refrain from voting on all questions directly or indirectly affecting the property.⁵² Moore pointed out that the convention had placed a similar requirement in the legislative article and argued that the same rule should apply to the convention itself. Moore claimed that 75 percent of the members of the Seattle City Council were tideland "jumpers," and he would not sit still while these interested persons voted away the interests of the state. S.G. Cosgrove of Garfield argued that it was improper to impeach any gentleman's motive in voting: What if the rule disqualified two-thirds of the members of the convention? Moore responded that he did not "expect that any ideas will get into the gentleman's head until his cap is removed and a surgical operation is performed."⁵³ The proceedings disintegrated into a cross-fire of personalities until the chairman was able to restore order. Moore continued his attack:

He referred to the settlers on tidelands as trespassers who had no equities. They tearfully demanded that they be left alone, the poor fellows who have made millions, then come down here with an army of lobbyists and an open sack. They have the audacity to come to a constitutional convention, supposed to be composed of honest men, and ask us to throw down the bars and step in to grab the peoples' property. "Why, Mr. Chairman," he exclaimed, "there are more graves of statesmen on these tidelands that we have any idea of."⁵⁴

Durie's proposed section was defeated by the largest margin to date, 70 to 3.⁵⁵ After the vote, Durie rose to a question of privilege to answer

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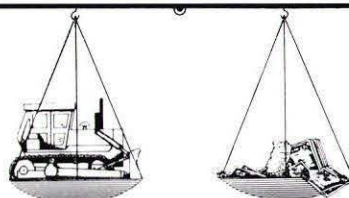
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some of the "cowardly insinuations that had been made with blatant demagoguery against members of city governments who are members of the convention." Durie explained that he was a member of the Seattle City Council and was interested in the Seattle Drydock Company, a fact which he had never concealed and had made known to the harbor committee. Chairman Eldridge concluded the episode by remarking that "a whole lot" of unparliamentary language had been used.⁵⁶

The Oregon Improvement Company

The newspapers carefully watched the tideland debates for any hint of bribery or corruption in the disposition of the tidelands. The *Seattle Post-Intelligencer* had warned from the outset that the Oregon Improvement Company would "besiege the constitutional convention with a powerful lobby, the object of its efforts being to obtain a title to the tidelands of Elliott Bay."⁵⁷ The *P.I.* warned that the OIC would play a "deep and silent game" in order to obtain a clause in the constitution confirming the old grant to the Seattle & Walla Walla Railroad or alternatively confirming all acts passed by the Territorial Legislature.⁵⁸ As the tideland debate proceeded, the *P.I.* complained that any provision allowing the sale of the tidelands, even at an appraised valuation, would result in robbing the state of millions of dollars: "The appraisement will be so 'managed' as to give the lands to the grabbers for a small fraction of their value."⁵⁹ The *Tacoma Morning Globe* also warned of lobbying efforts by OIC and other railroads:

The biggest and most powerful lobby since the convention began is actively at work on the tidelands question. There are four men here representing tidelands interests aggregating in value \$100 million. All this monied influence will endeavor to convince the delegates that the persons who have improved the land and who have titles, have rights which the state, the

United States or anybody else should not infringe upon. The railroads and the Oregon Improvement Company are principally interested, and they have formed a combination with the owners of riparian rights and others who have similar interests and stakes to secure action favorable to them.⁶⁰

The *Globe* reported a prominent

rumor that certain railroads had resorted to bribery to gain support for the "tidelands syndicate."⁶¹

Delegate Austin Mires recorded his own suspicions in his diary, writing on August 13, the day on which the tideland and harbor debate began:

T. C. Griffiths has been bought over by somebody. Also Fairweather and Manley. Mr. El-

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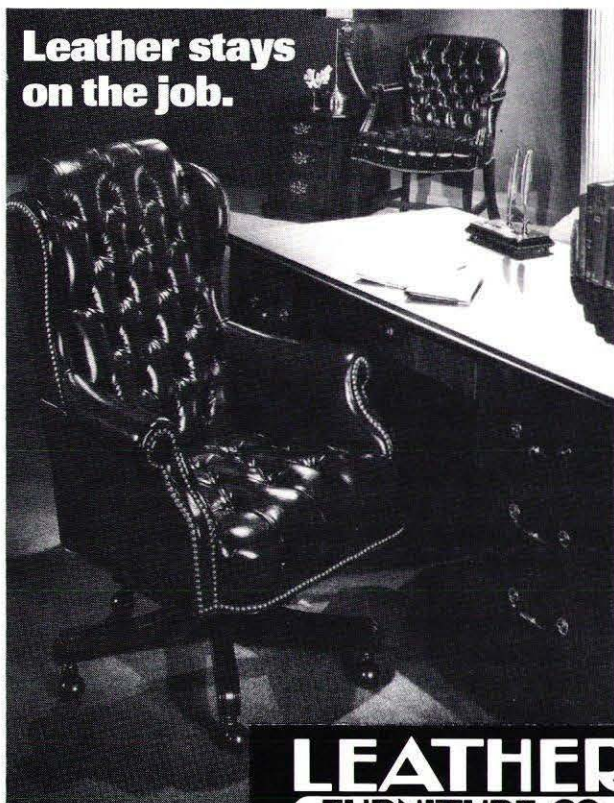
more, Struve and others are here lobbying in favor of tideland grabbers and corporations.⁶²

On August 14, Mires reported more optimistically that "the lobby seems to be losing its grip," and that "Griffitts is attempting to get back to the side of the people."⁶³ Mires decried the "strong tendency to throw away the valuable rights of the future state," observing that "corporate influence seems to have too much sway."⁶⁴

Correspondence in the files of the Oregon Improvement Company,⁶⁵ although unknown to Mires, confirms his suspicions that some delegates had "been bought over by somebody." OIC officials sought a confirmation of the 1873 grant of Elliott Bay to the Seattle & Walla Walla, but doubted they could achieve this goal because it would threaten the position of the Northern Pacific in Seattle and because the newspapers had warned against this possibility, especially the *Seattle Post-Intelligencer*, "whose editor seems lately to have run wild on this topic."⁶⁶ But E. H. Morrison, who appears to have been a lobbyist for the OIC, assured the OIC that the convention could be persuaded to confirm the grant.⁶⁷ Morrison had enlisted the services of delegate H.W. Fairweather of Sprague in Lincoln County, west of Spokane. Fairweather, a former superintendent for the Northern Pacific, was a well-established banker and businessman.⁶⁸

OIC officials met in Olympia with Morrison, Fairweather and Col. J. C. Haines, a prominent Seattle attorney representing the OIC:

[Morrison] stated the position to be — that neither money nor anything else would get that grant openly confirmed by the convention — but that he thought 40 men could be influenced to support the measure indirectly, say in an omnibus ratification of all territorial acts; and estimated the damages at from \$150,000 to \$200,000. I said alright, provided the goods were delivered and the constitution adopted I would see the



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matter through up to \$150,000. So it rests.⁶⁹

The president of the OIC approved of this plan, though not without misgivings as to its success.⁷⁰ With president Smith in New York City and resident manager McNeill shuttling between Seattle, Olympia and Portland, communication was difficult. OIC officials resorted to encoded telegrams, such as the following:

Handsome all Earl and dull eye that Druid proposed will mouse fiddlers of our haddock to Pachyderm by convention and man trap hereafter to implore it dreadless escalate possibility of erasing undone and filthier only as suggested when outparish all moused hamster elapse.⁷¹

This form of communication was less than ideal, and occasionally led to misunderstandings.⁷²

OIC officials discussed their efforts with territorial governor Miles Moore, who cautioned against an open confirmation of the Seattle & Walla Walla grant, warning that this might result in public rejection and a popular vote against ratification of the entire constitution.⁷³ OIC attorney Haines and Seattle resident manager McNeill traveled to Olympia on the night of Monday, August 12, in order to reinforce Morrison. They caucused all night, but were unable to "make a combination."⁷⁴ They determined to "work on a line of policy of preventing any negative action being taken by the convention."⁷⁵ □

(Footnote numbering continued from part I, March 1989 Bar News)

⁴⁰*Id.*

⁴¹*Tacoma Morning Globe*, August 9, 1889.

⁴²*Seattle P.I.*, August 6, 1889.

⁴³*Tacoma Morning Globe*, August 8, 1889.

⁴⁴Johnson, "George Turner, a Character from Plutarch," 18 *Wash. L. Rev.* 167, 172 (1943).

⁴⁵*Spokane Spokesman Review*, April 19, 1914.

⁴⁶Johnson, *supra*.

⁴⁷*Journal of the Convention, supra*, p. 783.

⁴⁸*Id.*, p. 791.

⁴⁹*Tacoma Morning Globe*, August 14, 1889.

⁵⁰*Journal of the Convention, supra*, p. 788.

⁵¹*Journal of the Convention, supra*, pp. 791-92.

⁵²*Tacoma Morning Globe*, August 15, 1889.

⁵³*Id.*

⁵⁴*Id.*

⁵⁵*Id.*

⁵⁶*Id.*

⁵⁷*Seattle P.I.*, July 4, 1889.

⁵⁸*Id.*

⁵⁹*Seattle P.I.*, August 15, 1889.

⁶⁰*Tacoma Morning Globe*, August 11, 1889.

⁶¹*Tacoma Morning Globe*, August 14, 1889.

⁶²Austin Mires' diary, August 13, 1889, Austin Mires Papers, Washington State University Library.

⁶³*Id.*, August 14, 1889.

⁶⁴*Id.*, August 15, 1889.

⁶⁵The University of Washington Libraries are the repository of the Oregon Improvement Company records, 1880-1896. The Pacific Coast Company purchased the OIC in 1896, and in 1963 the Pacific Coast Coal & Oil Company gave the OIC records to the U.W. Libraries.

⁶⁶OIC records, correspondence: Inter-office, Box 46, Folder 34, H.W. McNeill (Seattle resident manager) to Elijah Smith (OIC president, New York City), July 25, 1889; John Howard (San Francisco manager) to Elijah Smith, July 25, 1889.

⁶⁷OIC records, Morrison to Smith, July 27, 1889.

⁶⁸II *History of the Pacific Northwest: Oregon and Washington*, p. 321 (1889).

⁶⁹OIC records, correspondence: Inter-office, Box 46, Folder 36, McNeill to Smith, July 30, 1889.

⁷⁰OIC records, general outgoing correspondence, Smith to McNeill, August 9, 1889.

⁷¹OIC records, correspondence: Inter-office, telegram, Smith to McNeill, August 11, 1889. Translation:

If you all agree and advise that action proposed will secure confirmation of our title to tidelands Seattle by convention and ratification hereafter so making it absolute beyond possibility of being undone and consideration only as suggested when that is all secured, I will approve.

⁷²Such as Smith's petulant letter questioning the interpretation of Morrison's August 10 telegram: "Cipher word hash means location, which don't make sense." OIC records, Smith to Morrison, August 26, 1889.

⁷³OIC records, correspondence: Inter-office, Box 46, Folder 39, McNeill to Smith, August 10, 1889.

⁷⁴OIC records, correspondence: Inter-office, Box 46, Folder 40, McNeill to Smith, August 20, 1889.

⁷⁵*Id.*

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

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April 1990

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

CLE. For information: Starlene Colwell, (206) 624-9365.
6 The Family Lawyer: A Practicing Professional, Seattle. Sponsored by: WSBA/WSBA Family Law Section. For information: (206) 448-0433.
6 Suppressing Evidence, Seattle. Sponsored by: Washington Association of Criminal De-

fense Lawyers. For information: (206) 623-1302. Also April 7 in Spokane.
7 Suppressing Evidence, Spokane. See April 6 entry for details.
10 Medicine for Attorneys: The Key to Unlocking Damages, Vancouver, WA. Sponsored by: WSTLA. For information: (206) 464-1011. Also April 12 in Wenatchee.
12 Medicine for Attorneys: The Key to Unlocking Damages, Wenatchee. See April 10 entry for details.

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

20-21 14th Annual Trial Practice Seminar, Seattle. Sponsored by: SKCBA/YLD. For information: Mark Griffin, (206) 623-1900; Emilia Castillo, (206) 624-1913; and Scott Voorhees, (206) 623-5296. Enrollment is limited to 80 participants.

20-21 WSBA Board of Governors Meeting, Victoria, B.C. For information: (206) 448-0441.

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

21 Northwest Women's Law Center annual auction, Seattle. For information: (206) 682-9552.

21 Washington State Association of Legal Secretaries Seminar, Seattle. Participants may attend two of six workshops on stress management, real estate transactions, interoffice communications, unauthorized practice of law, federal court rules and procedures, and King County court rules changes. For information: Terri Highland, (206) 462-4000 days; (206) 454-8553 evenings.

23 Washington Construction Law, Seattle. Sponsored by: Federal Publications, Inc. For information: (202) 337-7000; FAX (202) 223-0755. Also May 4 in Spokane.

23 WSBA World Peace Through Law Section, noon, Seattle. For information: Brian Linn, (206) 242-9876.

24 Board of Governors Brown Bag Lunch, Seattle. Sponsored by: SKCBA Programs. For information: Starlene Colwell, (206) 624-9365.

24 Introducing the New Washington Condominium Act, Seattle. Sponsored by: WSBA CLE and Real Property, Probate & Trust Section. For information: (206) 448-0433.

27 Nuts and Bolts of Insurance Coverage, Seattle. Sponsored by: SKCBA Programs. For



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27 Appellate Practice in the '90s. *Sponsored by:* Martin Luther King Memorial Committee, seminar to benefit construction of MLK Memorial in south Seattle. *For information:* Edwards & Barbieri, (206) 624-0974. Also May 4 in Olympia.

27-28 Annual Trial Practice Seminar, Seattle. *Sponsored by:* SKCBA Trial Practice Committee. *For information:* Starlene Colwell, (206) 624-9365.

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

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

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

May 1990

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

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

4 Washington Construction Law, Spokane. See April 23 entry for details.

4 Appellate Practice in the '90s, Olympia. See April 27 entry for details.

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

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

7 Temple of Justice rededication ceremony, 2 p.m., Olympia. *For information:* Denise Kilborn, (206) 357-2024.

10-11 23d Annual Pacific Coast Labor Law Conference, Seattle. *Sponsored by:* UW School of Law and SKCBA Labor Law Section. *For information:* Steven B. Frank, (206) 682-6711; or Teresa A. Spellman, (206) 543-0888.

11 Depositions: Tactics, Strategies and Problems, Coeur d'Alene, ID. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059. Also May 12 in Yakima.

11 Federal Bar meeting, Eastern District of WA, attys & judges, Spokane. *For information:* Robert Whaley, (509) 838-6131.

12 Depositions: Tactics, Strategies and Problems, Yakima. See May 11 entry for details.

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

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

19 Evidence for the 1990s — Emerging Issues in Law and Technology, Seattle. *Sponsored by:* UW School of Law. *For information:* (206) 543-0059.

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

7-9 Washington Association of Criminal Defense Lawyers Annual Meeting and CLE, Lake Chelan. *For information:* (206) 623-1302.

8-10 WSBA Real Property, Probate & Trust Section Midyear Meeting, Blaine. *For information:* (206) 448-0433.

15 Fundraiser, Mary Ellen Krug Scholarship. *Sponsored by:* SKCBA Labor Law Section. *For information:* Michael Beck, (206) 728-9700.

15-16 WSBA Litigation Section Midyear Meeting, Lake Chelan. *For information:* (206) 448-0433.

15-16 WSBA Board of Governors Meeting, Port Ludlow. *For information:* (206) 448-0441.

22 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.)

June 1990

1-3 WSBA Family Law Section Midyear Meeting, Yakima. *For information:* (206) 448-0433.

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Bellevue, March 16-17, 1990

Present: President Vander Stoep, President-elect Halverson and the Governors. **Also Present:** Robert Bakemeier (WSBA/YLD President-elect); Richard Beaudry (WSTLA); Judge Christine Cary (Magistrates' Assn.); Chief Justice Keith Callow, Saturday; Harold Clarke (WSBA/YLD); Ken Davidson (East King County Bar Assn.); Frank Edmondson (Government Lawyers' Assn.); Mary Fairhurst (Washington Women Lawyers); John Fattorini (WSBA Legislative Liaison, Saturday); Peter Greenfield (SKCBA Trustees, Friday); Judge Donald Haley (Superior Court Judges' Assn.); Barbara Clark (Legal Foundation of Washington); John J. Michalik (WSBA Executive Director); Mike Larson (SKCBA/YLD); Lee Ripley (WSBA Disciplinary Counsel); Matt Sayre (SKCBA Trustees, Saturday); Lindsay Thompson (*Bar News* Editor/Clark County Trustees); Judge Philip Thompson (Court of Appeals); Robert Welden (WSBA General Counsel).

Ah, Bellevue. Something there is about the place that makes for a relaxed and pleasant meeting, even with the usual opener:

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

When they opened their public session, the Governors heard a series of reports from Board members who attended the Western States Bar Conference in Hawaii. This year, Governors Tolman, Curran and Gould and President Vander Stoep attended for the Association, along with Governor Stritmatter, who paid his own way. Their audience noted amusedly that the reports of the guys whose way the Association paid made rather brief reports, while Stritmatter went on at some length. Among the matters reported from the interchange of bar reps at the conference were that Colorado has an interesting program using retired lawyers for pro bono work; Utah has a "Thursday Night Lawyer" pro bono program; that the Nevada Bar is in a big dustup with the Supreme Court; that the Alaska Bar Association incurred the ire of a legislator and is being sunsetted; that the Colorado Bar has a 120-member board; that Oregon has a scholarship program to aid minority students to attend law school; that Colorado asks big firms to lend a lawyer to small towns for up to four months ("How many do you want?", asked Governor Ron Gould of megafirm Perkins Coie); that the New Mexico Bar gives CLE credit for viewing video presentations monthly on Saturdays and has a greatly expanded legal information computer network; that California Bar Association dues are now \$471 and counting, and that the old disciplinary system of hearing examiners has been replaced by six full-time trial judges and three appellate judges to hear disciplinary cases.

More Great News for the *Bar News*'

Advertising Base: Executive Director John Michalik announced that 606 people sat the February bar exam--a winter record. Another record: 220 attorney applicants, including 53 from California, 49 from Oregon, and 13 from Illinois. It looks as if the summer exam will set similar records.

The Campaign Begins: Nominations for the Board of Governors seats in three congressional districts and one King County at-large seat will be open until April 30.

Trust Accounts and Car Washes: The Governors considered two amendments to the Rules of Professional Conduct presented by RPC Committee chair

Doug Ferguson and WSBA Counsel Bob Welden.

The first would have amended RPC 1.14 to add a provision that a client or multiple parties with interests in trust funds could have them kept in an account other than those set forth in the present rule, such as brokerage firm money market accounts. The second amendment would require that such accounts, if used, provide insurance on those deposits. Part of the rationale was that lawyers could be construed to be under a fiduciary duty to get the highest interest rate possible for clients, and such alternatives to banks might be where such rates would be found.

Members of the Board were not satisfied with the proposal. One problem is that you don't always qualify for insurance coverage just by making a deposit. There was discussion of how to add a comment to the rule (disfavored) or adding warnings or cautions (hard to draft accurately) to tell lawyers they'd need to make sure trust account investments passed security muster. After a brief debate, the amendments were referred back to the RPC Committee for further drafting and consultation with banks, brokerage houses and the like.

The second proposal would withdraw Formal Opinion 171, which prohibits a lawyer from employing a disbarred lawyer in any capacity whatever, including the example used repeatedly in debate, washing cars. The problem arose when a Washington firm with an office in Oregon hired a disbarred lawyer in Oregon, where such things are allowed. Under the present formal opinion interpreting RLD.1.1 would make the Washington lawyers subject to discipline. A new formal opinion dealing with the Draconian present rule was proposed; it would interpret RLD 1.1 to prohibit lawyers from giving disbarred lawyers law-related employment, would allow Washington firms to hire them out of state where other states allowed it; and would limit the application of RLD 1.1 to Washington.

The debate was pretty much a rerun of past discussions: a minority of the Board felt, "when you're out, you're out." The majority thought the rule a bit severe. A lengthy and tangential discussion ensued about the effect of the ethics opinion on suspended lawyers in various circumstances (none), and whether the Disciplinary Board should be charged with approving employment of disbarred lawyers (no, they have a full plate already). Action: The new opinion was approved, 8-2, Schultz and Slater opposed.

A Thousand, Here, A Thousand There, and Pretty Soon It Adds Up to a Contingency Fund: The Office of the Administrator for the Courts asked for \$7,000 to help fund the reprinting of *A Citizen's Guide to Washington Courts*, the very successful orientation booklet. The Association has supported the booklet in previous editions from time to time at the proposed level of funding, along with the Superior Court Judges' Association, the Kreielsheimer and Seattle foundations, and other sources.

Budget Committee Chair and Association Treasurer Governor Bill Bergsten thought the idea an interesting one, but pointed out that groups wanting Association money need to get their requests timed to the Board's budget cycle to avoid piecemeal depletion of the contingency fund by allocations for operating and other support of programs from funds intended for emergencies. Budget Committee member Governor Lem Howell echoed Bergsten's concerns and proposed giving the project \$2,500. After a round of testimonials by judges and others present, Howell was moved to increase his proposal to \$5,000. Governor Jim Turner thought it a good idea but "out

of budget" and said he would stick to his policy of opposing such things. A motion to amend the grant to \$7,000 was approved 6-4, Budget Committee members Gould, Bergsten and Howell and Governor Turner opposed. Having gotten on record for fiscal responsibility, the Governors then crossed over to approve the main motion to give the \$7,000, 9-1, only stalwart Turner sticking to his guns.

Will Disaster Relief Bring Disaster to the Association? Litigation Section Chair Don Law and Public Affairs Director George Scott presented the latest draft of a plan for the Association to take an active, on-site role in mass disasters in Oregon via a unique "SWAT" team of lawyers to counter the ambulance chasers and insurance minions who turn up at such calamities. Trouble is, having them out there subjects them and/or the Association to a so-far unascertained level of liability if they give out advice on site. Governor Steve DeForest thought the team's role no riskier than what the Tel-Law or Speakers' Bureau does in advising people. But others said the Tel-Law example was inapt: Tel-Law is carefully scripted and reviewed by experts, and never varies.

Governor Curran thought it prudent to defer action and let the committee further evaluate the insurance risk. Governor Lem Howell countered that the Board seemed to relish nothing more than deferring action on things. "It's time to act," he said. Curran then moved to defer action for a month and have the Disaster Response Plan Committee work on the insurance question some more. The Board tied, 5-5, Governors Stritmatter, DeForest, Schultz, Howell and Tolman opposed. The President voted aye to break the tie; the question was put over a month.

Is There a Teapot in the House? We've Got a Tempest Out Here... The Board returned to the heated issue of how lawyers balance the confidentiality requirements of RPC 1.6 and the laws requiring lawyers who hold public office to disclose business clients paying a lawyer or firm \$5,000 or more in a year. The press has beaten the drum on the matter from one end of Washington to the other, making out that lawyers are trying to evade the disclosure laws.

After some discussion, it developed that the lawyer who precipitated the issue had declined to seek the approval of his clients to disclose their identities. Had he done so and had some said no, he could have sought a hardship variance from the Public Disclosure Commission.

Well, members of the Board said, that's different. This fellow hadn't really met the threshold question of whether he was entitled to a hardship variance from the reporting requirements: he didn't want to have to go through the exercise.

After some considerable discussion on trying to draft some guidelines for lawyers thinking of public service, Governor Lem Howell proposed putting the matter off to the next day so the Governors could try to draft something overnight. "We shouldn't try to draft this around the table," he said. Some Governors demurred; Governor Gould moved to table the matter. He won, 8-2, Governors Curran and DeForest opposed.

Saturday morning, Governors Stritmatter and Howell presented a draft which the Governors then went at in a grammarian's roundelay. Eventually they agreed that lawyers should comply with the disclosure law, first disclosing clients who are already a matter of record through litigation, Martindale-Hubbell listings or otherwise known to the public; then seek the consent of the other disclosable clients. If any

decline to consent, then the PDC should be approached for a waiver. A motion to approve the guidelines passed 8-0, Governors Curran and Turner abstaining on grounds they thought the Rules of Professional Conduct Committee should pass on the guidelines first.

Well, the Convention's Going to the Dogs, But This Time We Intend It: Governor Jeff Tolman reported on efforts to revive the annual bar convention, set for Spokane this September. It'll be shorter (September 13-15). Sixteen sections and the Young Lawyers Division will be putting on CLEs, Tolman said, and none of this esoteric stuff like "Banana Tariffs When Shipped Through Third Parties: The Underripeness Exceptions." You'll be able to get sixteen CLE credits on really useful subjects. Speakers will include House Speaker Thomas Foley, Houston trial lawyer Richard "Racehorse" Haynes, ESPN personality Roy Firestone and a Cousteau Society presentation featuring Jacques Cousteau's son talking about the long-term effects of the Exxon Valdez oil spill. Entertainments include a night at the dog tracks in Coeur d'Alene, golf at a good course, stuff for kids and a big party.

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

- heard reports from Jeff Tolman on the meeting of the Superior Court Judges' Association; from former Board member Mike Carlson on the Superior Court Judges' Employment Benefits Committee, from WSBA Legislative Liaison John Fattorini on the end of the Legislature; from ABA delegate Tom Fitzpatrick on the controversies of the ABA midyear meeting; from John Leary on the work of the Law School Liaison Committee; from Chief Justice Keith Callow on the work of the Federal Courts Study Committee; and from East King County Bar Association president Ken Davidson on the strains growth in the Bellevue area have placed on social and legal service provisions;

- noted the President's appointment of Governors Stritmatter, Curran and Schultz to propose recipients of the Association's annual awards;

- had lunch with the East King County Bar Association, with the largest turnout ever for such an event anywhere in Washington;

- extended a line of credit to the Young Lawyers Division to cover emergency transition costs of getting *De Novo*, the Division newspaper, on its feet with a new publisher after two prior publishers went broke in two months; and

- closed the meeting by going back into executive session.

Coming meetings: Victoria, B.C., April 20-21; Walla Walla, May 18-19; Port Ludlow, June 15-16; Moclips, July 20-21; Vancouver, WA August 17-18; Spokane, September 13-15 (Bar Convention).

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

A late-breaking request: Amendments to the Local Rules of Bankruptcy Procedure for the Western District of Washington have been proposed by the Local Rules Advisory Committee, and comments are requested from the Bar and the public generally. Copies of the proposed rules are available from the office of the Bankruptcy Court Clerk at 315 Park Place Bldg., 1200 Sixth Ave., Seattle, WA 98101 or at Tacoma Financial Center, 1145 Broadway Plaza, Suite 250, Tacoma, WA 98402. Comments and suggestions should be submitted to the Seattle office of the Bankruptcy Court Clerk, Attn: Local Rules, no later than April 30, 1990.



Notices of Interest to Association Members

Disciplinary Notices

Suspension and Censure: Bellevue attorney **Kenneth B. Rice** (admitted 1973) was ordered suspended from the practice of law on February 6, 1990, for a period of two years, with the effective date of suspension being July 1, 1988. The suspension order was based upon a hearings officer's findings that, following his 60-day suspension in 1985, Rice prepared and signed a false statement for submission to a court and failed to timely file a statement of compliance with RLD 8.3 with the Bar Association.

The reinstatement of Rice to the practice of law is conditioned upon a psychiatric report that he has no psychiatric or emotional problems that would interfere with his practice of law. Upon reinstatement, Rice will be placed on probation for two years pursuant to RLD 5.2(a), subject to supervision and continued treatment or counselling as determined by his psychiatrist.

In addition, Rice stipulated to a Censure for failing to recognize a conflict of interest in his representation of two clients.

Judicial Admonishment: Pacific County Court District Judge **Douglas**

E. Goelz has been admonished by the Commission on Judicial Conduct by order dated February 2, 1990. The admonishment was issued pursuant to a stipulation and agreement pursuant to WAC 292-12-010(6) for violation of Canons 1, 2, 3(C)(1)(c), 3(C)(1)(d)(iii) and 5(C)(1) of the Code of Judicial Conduct. The parties stipulated that while serving as a part-time district court judge of Pacific County on December 8, 1988, Goelz entered into a contract with the Pacific County prosecutor's office to act as an attorney handling paternity cases in Pacific County. The Commission found Goelz's conduct an inadvertent, though technical, violation of the Canons and cautioned him not to continue such conduct.

Public Notices

Notice In Re: Filing of Documents, King County: The King County Department of Judicial Administration has issued a notice designed to clarify seemingly contradictory directions contained in Superior Court Civil Rule 5(i) and King County Local Rules 33, 34, and 36.

Civil Rule 5(i) directs that *discov-*

ery materials are not to be filed with the court unless for use in a trial or proceeding or on order of the court.

King County Local Rules 33, 34, and 36 state that the face sheet of the interrogatories, requests for production, requests for admissions, etc. may be filed with the clerk. These same rules state that the requesting party shall file the original answers to these interrogatories, etc. with the clerk of the court.

Requirement: Filing of the "Face Sheet" of the interrogatories, requests for Production and Requests for admission is still required. It is *not a requirement* that the answers to interrogatories, answers to requests for production and answers to requests for admissions be filed with the court. The filing of these documents is governed by superior court civil rule 5(i), which takes precedence over the filing requirements of King County local rules 33(a)(2), 34(a)(3), and 36(a)(3).

ABA Award Nominations Sought: Nominations are open for the ABA 1990 Pro Bono Publico Award, which recognizes lawyers who "enhance the human dignity of others by improving or delivering volunteer legal service to the poor." For information on nominating procedures, contact Tishia Jordan at the ABA, 750 N. Lake Shore Drive, Chicago, IL 60611, (312) 988-5764. Nominations close April 15.

Nominations are also sought for the Livingston Hall Juvenile Justice Award of the ABA's Juvenile Justice Center. The award honors lawyers practicing in the juvenile-justice field with the highest degree of skill and professionalism. Nomination forms are available from the ABA Juvenile Justice Center, 1800 M Street N.W., Washington, D.C. 20036, (202) 331-2260. Nominations close April 15.

Environmental Group Seeks Volunteer Lawyers and Paralegals: The Legal Committee of the Sierra Club's local chapter invites lawyers and paralegals interested in environmen-

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tal issues to join the committee. The committee, revitalized in 1989, has begun providing a network of legal talent throughout the state to effectively address important environmental issues. An adjunct to the chapter conservation committee, the legal committee supplements, rather than duplicates, the efforts of the Sierra Club Legal Defense Fund, an entirely separate entity from the Cascade Chapter.

The committee is establishing a working file of lawyers and law firms willing to accept litigation on behalf of the Cascade Chapter on a pro bono basis, and will soon address new requests for litigation assistance. Persons interested in volunteering for the committee are invited to send name, address and telephone number to Gail Meyer, Legal Committee, Cascade Chapter, Sierra Club, 1516 Melrose, Seattle, WA 98122, or call Eric Broman, (206) 624-1101.

State Law Library Recent Acquisitions:

Listed below are some of the new titles recently acquired by the State Law Library, and available for loan by telephone at (206) 357-2136, or by mail from the Washington State Law Library, Temple of Justice, AV-02, Olympia, WA 98504-0502. A bimonthly *Selected Recent Acquisitions* list, generally containing 150 to 250 new titles, is also available. Copies may be obtained by mail from the Washington State Law Library at the above address.

(1) CAPITAL PUNISHMENT: Donald D. Hook and Lothar Kahn, *Death in the balance: the debate over capital punishment*. Lexington, MA: Lexington Books, 1989. Pp. 160; (2) CONSTRUCTION INDUSTRY — LAW AND LEGISLATION: David C. Groff, Bruce P. Babbitt and William R. Squires III, *Washington construction law and mechanics' liens*. Eau Claire, WI: Professional Education Systems, Inc., 1988. Pp. 252; (3) FAMILY VIOLENCE — LAW AND LEGISLATION: Leonard and Cheryl L. Karp, *Domestic torts: family violence, conflict and sexual abuse*. Family Law Series. Colorado Springs, CO: Shepard's/McGraw-Hill, Inc.,

1989. Pp. 787; (4) INTELLECTUAL PROPERTY — VALUATION: Gordon V. Smith and Russell L. Parr, *Valuation of intellectual property and intangible assets*. New York: John Wiley & Sons, 1989. Pp. 432; (5) LAW — METHODOLOGY: Ruggero J. Alaisert, *Logic for lawyers: a guide to clear legal thinking*. New York, NY: Clark Boardman Company, Ltd., 1989. Pp. 278; (6) LAW — VOCATIONAL GUIDANCE: *Changing jobs: a handbook for lawyers*. Carol M. Kanarek, editor. Chicago, IL: American Bar Association, Young Lawyers Division, 1989. Pp. 200; (7) WETLANDS — LAW AND LEGISLATION: William L. Want, *Law of wetlands regulation*. New York, NY: Clark Boardman Company, Ltd., 1989. . 1 vol. (loose-leaf).

In re RCW 19.52.120(1): Legal Interest Rates

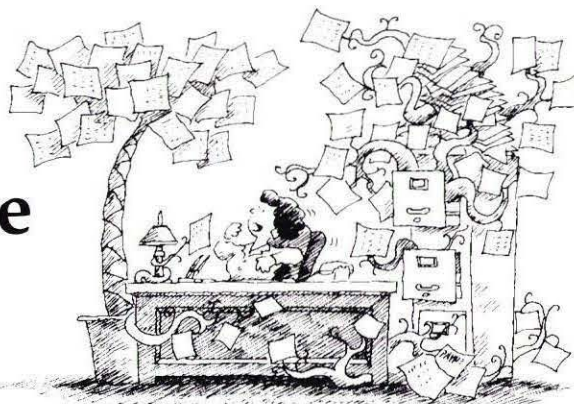
The average coupon equivalent yield from the first auction of 26-week treasury bills in March 1990 is

8.22%. The maximum allowable interest permissible for **April 1990** is therefore **12.22%**. Compilations of the average coupon equivalent yields from auctions of 26-week treasury bills appear on page 39 in the October 1987 *Bar News* for 1982-1984, and on page 37 of the June 1989 *Bar News* for 1984-1989.

(Items for inclusion in "Digest" should be sent to Lindsay Thompson, Editor, *Bar News*, 7414 N.E. Hazel Dell Avenue, Suite A, Vancouver, WA 98665. Deadline is the 15th of each month for the second issue following.)

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

Planning and zoning. Plaintiffs challenge amendment to city's zoning ordinance. Before amendment, zoning permitted development plaintiffs want to make, but amendment would prevent such development. They had platted land under original ordinance, but had not applied for building permit. Inter alia, plaintiffs contend they had vested right to build on their land under the ordinance as it stood before amendment. *Held*, plaintiffs had no vested right, because their right to build would have become vested only when they applied for building permit. *Tekoa Construction, Inc., v. City of Seattle*, 56 Wn.App. 28, 781 P.2d 1324 (Div. 1, 11/13/89).

— W. B. Stoebuck

Real Property. (Case 1.) Plaintiffs

and defendants own homes in same subdivision. Restrictive covenants in subdivision prohibited "business, industry or commercial enterprise of any kind or nature." Defendants operate in their home a residence for elderly persons that is licensed by State of Washington; apparently, defendants had from six to nine residents in parts of their home that were specifically fitted out for them. Defendants defend on grounds that their activity does not violate language of covenant and that plaintiffs have not proven any actual damages. *Held*, judgment for plaintiffs affirmed. (a) The residence for elderly persons was a "business." (b) A person who has the benefit of a restrictive covenant may enforce it by injunction without showing actual or substantial damages. *Hagemann v. Worth*, 56 Wn.App. 85, 782 P.2d 1072

(Div. 3, 11/28/89).

(Case 2.) When purchasers were contemplating buying a home, seller's broker negligently misrepresented that it was on sewer line. They closed, became owners and took possession. Now they seek damages against broker for misrepresentation. *Held*, purchasers may recover damages after closing; closing did not "waive" their action for damages, though it did "waive" an action for rescission. *Dictum* that, before closing they could have elected between damages and rescission for (material?) misrepresentation. *Johnson v. Brado*, 56 Wn.App. 163, 783 P.2d 92 (Div. 3, 12/7/89).

(Case 3.) Plaintiffs' home abuts on city street at curve in street. Several years ago, city widened street in that area, increasing speed of traffic. As result, several automobiles have failed to negotiate curve and have done damage to plaintiffs' premises. Plaintiffs' evidence shows that value of plaintiffs' land has thereby been reduced from \$43,500 to between \$18,500 and \$25,000. *Held*, city's actions have caused plaintiff a compensable eminent domain "taking." Court says: "A 'taking' has occurred when government conduct interferes with the use and enjoyment of private property, and with a subsequent decline in market value." (Comment. Decision goes too far. Words "a [any amount?] subsequent decline in market value" allow "takings" at too low a threshold level. Also, the governmental activity was not the direct cause of the plaintiffs' loss. I know of no other "taking" with facts like this. — W.B.S.) *Lambier v. City of Kennewick*, 56 Wn.App. 275, 783 P.2d 596 (Div. 3, 12/12/89).

(Case 4.) *Held*, inter alia, when closing of real estate sale and delivery of title was delayed for 11 months by seller's failure to clear title, buyer was entitled to rescind. *Reeves v. McClain*, 56 Wn.App. 301, 783 P.2d 606 (Div. 3, 12/14/89).

— W. B. Stoebuck

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Formal Opinion 183
(1990)

**Disclosure of Client Confidences or Secrets
by a Legal Service Office to the
Legal Service Corporation or Other Third Party**

Issue:

May a legal service office which provides legal services to the indigent disclose client confidences or secrets to the Legal Service Corporation or other third party which provides funding for the local office?

Answer:

A legal service office may not disclose information to third parties which would disclose or lead to disclosure of confidences or secrets of clients without the informed consent of the client pursuant to RPC 1.6.

Discussion:

Legal service offices which provide legal services for the indigent in this state receive financial support from the federally funded Legal Service Corporation (LSC) as well as from other sources. For purposes of auditing the use of the funds provided and monitoring the work of the local offices, the LSC requires that the local legal service offices give the LSC access to various records including financial records, case information and statistics, and information relating to the legal work done by legal service lawyers outside of their normal legal service employment. These records would normally include specific client information including the names of clients and the nature of the legal service provided.

It is our opinion that a legal service office may not disclose to third parties, including the LSC, original records or other information which includes or would lead to disclosure of client-identifying information without the informed consent of each client. The relevant Washington rule is Rule 1.6 of the Rules of Professional Conduct, which provides:

(a) A lawyer shall not reveal confidences or secrets relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in section (b).

(b) A lawyer may reveal such confidences or secrets to the extent the lawyer reasonably believes necessary:

(1) To prevent the client from committing a crime; or

(2) To establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based on conduct in which the client was involved, to respond to allegations in any proceeding concerning the lawyer's representation of the client, or pursuant to court order.

"Confidence" is defined in the Rules of Professional Conduct as "information protected by the attorney-client privilege under applicable law." "Secret" is defined as "other information gained in the professional relationship that the client has requested be held inviolate, disclosure of which would be embarrassing or would be likely to be

detrimental to the client."

It is important to understand the distinction between "confidence" and "secret." The Washington State Supreme Court has held: "As a general rule, 'the identity of an attorney's client and the nature of his fee arrangements with his client are not confidential communications protected by the attorney-client privilege,' *United States v. Hodge & Zweig*, 548 F.2d 1347, 1353 (9th Cir., 1977)." *Seventh Elect Church v. Rogers*, 102 Wn. 2d 527, 531, 688 P.2d 506 (1984). Citing the former Code of Professional Responsibility, which used language identical to the Rules of Professional Conduct to define "confidence" and "secret," the Court said that "confidences are coextensive with the statutory attorney-client privilege."

But in that case the Court noted that the rule of confidentiality in the ethics rules "is considerably broader than the statutory attorney-client privilege," quoting from the predecessor rule to RPC 1.6 defining "secrets" in language identical to the RPC definition. In *Seventh Elect*, the Court noted that the client had specifically requested that the information sought not be disclosed, and therefore held that it was "a 'secret' within the provisions of the Code." 102 Wn. 2d at 534.

Although the clients of a legal service office may not have specifically requested that the information sought by the LSC not be disclosed, the information would nonetheless constitute "secrets" of those clients because disclosure of the information contained in such records "would be embarrassing or would be likely to be detrimental to the client." Such records could include information identifying clients on whose behalf payments were made to psychiatrists; names of clients whose representation by the local legal service office is not otherwise a matter of public record; and specific expenses for specific work done in representing specific clients, which might disclose strategies in representing those clients. This is specifically the kind of information about clients that the Rules of Professional Conduct seek to protect.

This opinion is well-supported by prior opinions of the Rules of Professional Conduct Committee as well as by opinions from the American Bar Association and other jurisdictions. The Rules of Professional Conduct Committee has issued informal opinions that a proposed contract between a legal service office and the state which would require disclosure of client identity and general activities and time spent in representing the clients was prohibited by the confidentiality rule. It has also issued an informal opinion that a legal service office may not disclose to the LSC the identity and general nature of representation of clients for whom the legal service lawyer was working outside of the legal service practice. None of those opinions prohibiting the disclosure of client information is based on the fact that a client had requested that the information not be disclosed, but rather that the disclosure would be embarrassing or detrimental to the clients.

The American Bar Association has issued a number of formal and informal opinions consistent with the opinions issued by the Rules of Professional Conduct Committee, including formal opinion 334 and informal opinions 1081 and 1287.

The fact that representation of some of these clients by legal service lawyers is a matter of public record does not constitute a waiver of claims of confidentiality as to other confidences or secrets. Merely because it was known that a lawyer represented a specific client would not entitle disclosure to a third party of information such as that the client had consulted a psychiatrist or had employed an investigator or expert witness, or any other matter which constituted a confidence or secret. The fact that others may share the knowledge that constitutes confidences or secrets of a lawyer's client does not diminish the lawyer's obligation to hold those confidences and secrets inviolate. See *In re McMurray*, 99 Wn. 2d 920 at 928, 665 P.2d 1352 (1983).

Therefore, it is the opinion of the Washington State Bar Association that Rule 1.6 of the Rules of Professional Conduct prohibits a legal service office or its employees from disclosing original records or other information which contain client confidences or secrets without first obtaining the informed consent of each client to disclose that information.

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NEWS FROM HOME

Eric S. Buchanan joined Stanislaw, Ashbaugh, Chism, Jacobson and Riper as an attorney in the Seattle law firm's Real Estate Group, **Geoffrey P. Chism**, partner and group leader, announced in late January. Buchanan, who earned his J.D. at Howard University School of Law in 1985, formerly was with Perkins Coie in Seattle. He also has experience in environmental law and, assigned to Perkins Coie's Anchorage office for five months beginning in late 1987, handled various matters in connection with the liquidation of savings and loan associations. He is admitted to practice law in Washington state, Pennsylvania and Washington, D.C.

THE JUDICIARY

The Supreme Court's newest member, former Spokane attorney and judge **Richard P. Guy**, was formally

inducted into the Court in ceremonies at the Temple of Justice in Olympia on February 9. Guy was sworn in at ceremonies in Spokane last November, after his appointment by Governor Gardner.

Three new Pierce County judges began hearing cases February 12. **Karen L. Strombom**, formerly a partner in a Tacoma law firm, **Frederick B. Hayes**, a Tacoma attorney, and **Terry Sebring**, former legal counsel to Governor Gardner, were sworn in in January.

Sam Rutherford has been appointed Chelan municipal court judge, effective January 1, 1990. He replaced Chelan lawyer **Jack Doty**, who held the post from 1982 to 1989.

ASIAN BAR ASSOCIATION OF WASHINGTON

Mayor **Norm Rice** kicked off the first membership meeting of 1990 for the Asian Bar Association of Washington (ABAW). Rice spoke about the challenges ahead for Se-

attle: better schools, reduced crime, livable neighborhoods, and negotiation, rather than litigation. Rice challenged ABAW members to get involved and make a difference in the city.

In February, **Sharon Sakamoto**, **Rodney Kawakami** and **Peggy Nagae Lum** were featured speakers at two different brown-bag lunch programs at the University of Washington. Sakamoto and Kawakami spoke about their experiences representing **Gordon Hirabayashi** in successfully challenging his convictions for curfew and evacuation violations during World War II. Lum spoke on interviewing for jobs and maintaining ideals and principles as law students and lawyers.

1990 ABAW officers include: president, **Peggy Nagae Lum**; president-elect, **Gary Maehara**; vice president, **Russ Aoki**; secretary, **Karen Akiyama**; treasurer, **Dave Hoekendorf**.

1990 committee chairs are: newsletter, **Mike Leong**; judicial rating, **Dean Lum**; student liaison, **Eileen Kato**; education, **Dan Woo** and **Marcia Fujimoto Louie**; legal committee, **Karen Narasaki**; membership/social, **Cynthia Kadoshima**.

ABAW committee activities include:

Student Liaison/Scholarship Committee: The committee is concentrating on three projects: (1) a scholarship fund for law students; (2) a mentorship program for law students; and (3) active participation in the next Minority Job Fair.

Legal Committee: ABAW has been asked to join other Asian/Pacific American attorneys working on the **James Loo** case. Loo was killed by Robert and Lloyd Pinche in North Carolina. The Loo family believes that the killing was racially motivated and is considering an action for civil damages.

In addition, ABAW has supported passage of SB No. 5953 to expand the current jury source; SHB No. 3006 to create a permanent Washington State Minority Justice Commission and HB No. 2237 to direct law enforcement agencies to monitor, record and classify information on



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crimes motivated by animosity toward a person because of race, religion, national origin, sexual orientation, ancestry or mental, physical or sensory handicap.

Education Committee: Last year the ABAW Education Committee organized a People's Law School program for Seattle's International District. Over 80 persons attended the seven-week program, which covered topics such as the court system and family, criminal, small-business, estate planning, real estate, personal injury and employment law. The program featured local Asian/Pacific American judges, attorneys and legislators. This year the committee plans to sponsor another People's Law School program, as well as monthly brown-bag lunch programs on topics such as marketing, client development, leadership and public speaking.

Judicial Rating Committee: The ABAW Judicial Rating Committee has become an officially recognized rating committee by the King County Council. We now have expanded our rating activities to cover municipal as well as county court appointees and candidates.

Membership/Social Committee: The Membership Committee's goal for 1990 is to increase ABAW membership from 100 to 150. The committee will also organize a midsummer picnic and informal networking, and it will assist with the annual banquet.

Newsletter Committee: ABAW has a quarterly newsletter that keeps members informed about association activities, legislative issues and national concerns.

ABAW is an association of Asian/Pacific American attorneys and judges. The next membership meeting is May 3. For membership information, please contact Cynthia Kadoshima, (206) 223-1313.

EAST KING COUNTY REPORT

by **RANDOLPH I. GORDON**

Time. Einstein reportedly said: "There is no more commonplace statement than that we live in a three-dimensional space-time continuum." Maybe. Kant found the question of whether the universe was infinite in time or began after passage of an infinite time to be logically irresolvable. For most of us who spend more time

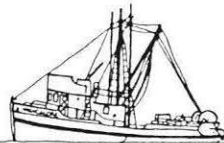
thinking about the Big Ten than the Big Bang, time remains as much a mystery as when St. Augustine considered it 1,500 years ago. According to both St. Augustine and Lucasian Professor Hawking, time is a property of the universe as created. Apparently, it makes no more sense to ask how much time passed before the beginning, than it does to ask "How far?" without naming a destination. There are two subjective properties of time that we seem comfortable with, however: duration and chronology — how long and in what order.

Consider the relative duration of the following: (1) *Apollo II* (first moon landing) (8 days, 3 hours, 18 minutes); (2) Columbus' first voyage (36 days); (3) facade of Notre Dame Cathedral (87 years); (4) King County Council member **Brian Derdowski's** time in office as of this writing (c. 50 days).

Derdowski, speaking at EKCBA's February general meeting on East-side growth, described with energy and enthusiasm his six- and seven-day-a-week effort to learn about problems in county government and the needs of his constituents. Describing building and land develop-

ment as a "production line" that ought properly to be a "job shop," he suggested that a case manager system would be fairer to both developers and communities by more clearly defining responsibility and accountability. Praising the dedication of county personnel, he urged that cooperation between county and local workers at the operational level was the way to "get the job done." Regional councils of leadership, he suggested, were more likely to sharpen jurisdictional disputes than solve problems. Time will tell. (But, remember, Columbus had been home two weeks by now.)

Synchronously, we see the fall of Rome and the height of Mayan civilization. Likewise, consider the following synchronies. Effective January 1, the firm of **Joseph Moschetto** has been purchased by Marijean Moschetto and Joseph Koplín (Moschetto and Koplín, Inc., P.S.). Ms. Moschetto is appointed as trustee to the EKCBA board to fill the vacancy left by vice president/president-elect **Steve Fisher**. The Eastside branch of Davis, Wright and Tremaine, following the January 1 merger of Davis, Wright & Jones and Ragen, Tre-



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maine, Krieger, Schmeer & Neill of Portland, is home base for at least 20 of the over 230 lawyers in the combined entity. **Rhys Farren**, formerly a senior officer with Seafirst, associates with the firm. Williams, Kastner & Gibbs has 19 Eastside lawyers including two new partners, **John Thorton** (tax, business, estate planning) and **Bruce Thurston** (bankruptcy), with associate **Kary Krismer**. **James Van Osteran** joins Perkins, Coie as a partner, with **David Nold**, **Suzanne Larsen** and **Kelly Browne** associating

with the firm. The Legal Foundation of Washington awards \$10,000 to the Eastside Legal Assistance Program; the Foundation makes annual grant awards of \$3 million in support of civil legal services for the poor, law-related education and alternative-dispute resolution. **Ron Dickinson** and **Marty Snodgrass** are appointed to fill the remaining attorney vacancies on the ELAP Board.

William L. Kinzel, of Kinzel, Allen & Skone, Inc., P.S., of Bellevue, has been inducted as a Fellow of the

American College of Trial Lawyers before 1,200 people at the annual banquet in New Orleans. An alumnus of the University of Washington and Eastside practitioner for 20 years, Kinzel was formerly a chief criminal deputy prosecuting attorney for King County. Membership is by invitation of the Board of Regents.

Have a good time.

MICRONESIA REPORT

by **STEPHEN A. COHEN**

The Washington legal community in the Northern Mariana Islands has been enlarged by two new members. King County attorney **Jon Hunt** has joined the Civil Division of the attorney general's office, and Thurston County attorney **Samuel Thompson** has become the Commonwealth Supreme Court's first law clerk.

There have also been a number of job changes among the Washington crew in the Northern Marianas. Gonzaga Law graduate **Edward Manibusan** resigned his post as attorney general to go into private practice with the newly renamed Salas, Gebhardt and Manibusan, and Gonzaga Law graduate **Robert Naraja** was appointed as Ed's successor. Robert would enjoy hearing from his Gonzaga classmates and can be reached c/o Attorney General's Office, Capitol Hill, Saipan, MP 96950.

Northern Marianas Assistant Attorney General **David Webber** was elevated to the post of chief of the Civil Division. **Tim Bruce** resigned as legal counsel to the Northern Marianas Senate to become special legal counsel to the governor, and **Maile Huvar Bruce** left her position as administrator of the Coastal Resources Management Office to become an attorney for the Hawaii State House of Representatives.

The Washingtonians have continued their proclivity for travel. Northern Marianas Assistant Attorney General **Pat Halsell** and Northern Marianas Assistant Public Defender **Ronald Hammett** returned from trips to Bali. **John Biehl** and **David Nevitt**, partners in the Saipan office of Carlsmith, Wichman, Case, Mukai and Ichiki, were respectively in Hawaii and Australia, and the

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forementioned Tim Bruce was in Hawaii and the Philippines.

Dave Webber was in Washington, D.C., for a session of the Supreme Court, where he witnessed oral argument on a case in which the Northern Mariana Islands submitted an amicus brief, and **Jon Hunt** was in Washington, Oregon, Tennessee, Kentucky and Florida for the taking of depositions.

Assistant Attorney General **Richard Weil** was in Thailand, Malaysia and Singapore, and Special Assistant Attorney General **Stephen A. Cohen** was in the Philippines, Thailand, Malaysia, Singapore and Indonesia. While in Malaysia and Singapore, Steve attended sessions of the supreme courts of both countries and visited their national law schools. The University of Washington School of Law should be pleased to learn that Singapore's law school subscribes to and keeps current the *Washington Law Review*.

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

The 82d Annual Lincoln's Day Banquet was held on Friday, February 9, as Lincoln's real birthday fell on a Monday and everyone had to work. Guest speaker was an assistant attorney general from Minnesota named **Alan Page**. He made some passing reference to Lincoln but spoke mostly on the subject of education for minorities. The speaker was gracious enough to respond to questions until **Bill Rohrs**, ex-football star from Tufts University, brought the evening to a close with some convoluted question about racism in professional football. Lincoln would have been proud.

New bar association officers were introduced at the banquet, including **Ron Coleman**, president, **Dan Hanula**, vice president, and **Steve Causseaux**, **Sally Leighton** and your humble correspondent as trustees. Future Pierce County reports will be replete with much inside bar association information heretofore unavailable to our readers.

Tacoma made prime-time television, being featured on CBS's *48 Hours*. The program was about drug problems and what we locals are doing or not doing about them. Ap-

pearing in speaking roles were superior court judge **J. Kelley Arnold**, public defenders **Larry McNerthney** and **Doug Tufts**, and deputy prosecuting attorney **Bill Hurney**. Dope dealers, police officers and concerned citizens played themselves. Some of the outdoor scenes had to be shot in Seattle as Tacoma is only open four nights per week in the winter. Plea bargaining was shown to a horrified national TV audience, although the judge jokes, which are usually a part of such proceedings, were apparent-

ly cut by the show's directors. Next week CBS may visit Puyallup to look into the parking ticket crisis.

Retired attorneys and judges, including **Ruben Carlson**, **Leo McGavick**, **Pat Steele**, **Horace Geer** and **Hardyn Soule**, meet periodically for lunch to discuss the old days before TV made everything so simple. Anyone wishing information on the group's lunch meetings should call **Joyce Feely** at the bar office. The lunches are long and leisurely as none of these fellows is concerned

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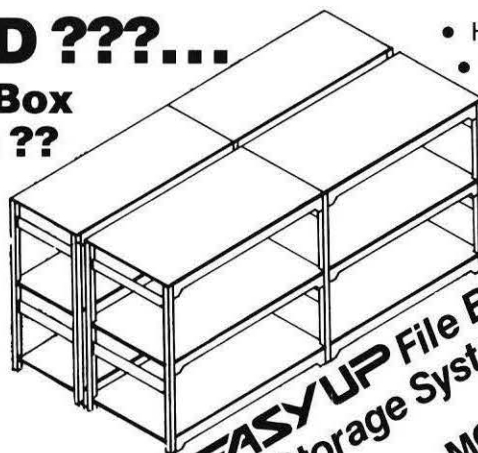
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with billable hours, nor do they have to appear on the 1:30 p.m. show cause docket.

Eileen M. Lawrence has joined Burgess, Kennedy and Fitzner as an associate. **Robyn Koppe** has been made a partner in Tuell, Anderson, Fisher and Koppe, and **Richard L. Hoefel** and **Todd J. Tuell** have been hired as associates.

SEATTLE-KING REPORT

by JAMES A. VARNELL

Office Moves. **Mark Roberts, Jane Harbaugh Graham, Laura Treadgold Oles** and **Dirk Giseburt** have become partners at Davis Wright Tremaine. Ryan Swanson & Cleveland has named **Thao Tiedt, Philip Roberts** and **Robert Condie** as partners; **Barbara Duffy** has become associated with the firm. **John A. Holmes, Noreen M. Nearn** and **Clifford D. Sethness** have become partners at Graham & Dunn. **George C. Mastrodonato** has become counsel at Lane Powell Moss & Miller. Stafford Frey Cooper & Stewart has elected **Jan Sokol** as managing partner.

Steven Rovig, Joel Bodansky and

Gregory Keller have become principals at Hillis Clark Martin & Peterson. Heller, Ehrman, White & McAuliffe has named **Molly Burke, Patrick Dunn, Leslie Nellerhoe, Mark Parris, Bruce Schroeder, Richard Thaler** and **Patricia Wagner** as partners. **David G. Knibb** and **Kenneth E. Rekow** have joined the Seattle office of Sylvester Rudd Petrie & Cruzen. **James H. Jordan, Jr., Beth M. Andrus** and **Brian D. Peyton** have become associates at Miller, Nash, Wiener, Hager & Carlsen. **Thomas M. Kilbane** and **Robie Russell** have joined Lindsay, Hart, Neil & Weigler.

Stoel Rives Boley Jones & Grey has named **Franklin G. Dinces, J. Mark Morford, Barbara L. Nay** and **Beth A. Ugoretz** as partners. **Timothy T. Black** has been named managing partner at Tousley Brain. **Eric S. Buchanan** has joined Stanislaw, Ashbaugh, Chism, Jacobson and Riper. **Christopher Osborn** has become a partner at Short Cressman & Burgess; **Charles Stringer** has joined the firm as an associate. **Jan Bush, Colin Reid** and **Randall R. Steichen** have joined Ulin, Dann & Lambe; **Philip**

E. Hickey and **Mark S. Beaufait** have become partners in the firm. **Dinah C. Pomeroy** has joined Rosenow, Hale & Johnson as a partner. **John W. Schedler** has joined Reed McClure Mocerri Thonn & Moriarty as a director, and **Michael P. Monroe** and **Sam Pailca** are new associates.

Brent Carson and **Keith E. Moxon** have become partners of Buck & Gordon. **James T. Hopkins** has become a partner of Bryan, Schiffrin & McMonagle; **Daniel W. Galvin, Janette A. Keiser, Richard R. Roland, Mark A. Clausen** and **John T. Jozwick** have become associated with the firm. **David T. McDonald, Linda K. Norman, Karl J. Quackenbush** and **G. William Shaw** have formed McDonald & Quackenbush with offices in the Washington Mutual Tower. **Judith A. Lonnquist** and **Marilyn J. Endriss** have relocated their offices to the Seattle Tower. **Dona Cloud** has been appointed a deputy hearing examiner with the city of Seattle Office of Hearing Examiner.

Of Note. **Charles E. Peery** has become a Fellow of the American College of Trial Lawyers.

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Personality Profile. Added this month as a regular feature of this column is a brief profile of a distinguished (?) Seattle attorney, which, it is respectfully submitted, would be interesting to the most avid super-market tabloid reader. The initial subject of this profile is one **Karl B. Tegland**, a 1972 graduate of the University of Washington School of Law, former member of the UW law school faculty, frequent CLE lecturer and, probably little-known to his peers, a country-rock guitarist dating back to his Minnesota high school days. Tegland is the author of *Washington Practice: Evidence Vols. (5, 5A & 5B)* and a co-author of *Trial Practice — Civil* (vols. 14 and 15 of *Washington Practice*) with **Lewis Orland**. He is also the editor and publisher of *Litigation Today*, a newsletter with commentary and analysis for Washington practitioners and judges. We are thankful that the title of the initial section has been changed (after 27 issues) from "Welcome to Litigation Today" to "Editor's Page." While Karl is recognized as one of the leading authorities in the evidence field in Washington, his

real expertise, we are told, lies in the Fender Stratocaster guitar that (along with a high-decibel amplifier) graces his Bothell office.

SPOKANE COUNTY REPORT
by **BERNARD McNALLEN**

Kudos: The Spokane Bar Association is proud to announce the recipients of the pro bono awards for outstanding service during 1989.

Two Spokane law firms have been selected as the Pro Bono Law Firm of the Year — in the large firm category: Lukins Annis; in the smaller firm category: Huppini, Ewing, Anderson.

Individual attorneys selected as the Pro Bono Attorney of the Year are **David Smith, Lew Schrawyer, Dale Raugust** and **Guillermo Romero**.

Individual attorneys receiving honorable mention are **Richard C. Dullanty, Jr., Frank Malone, Bryan Geissler, Dana Kelley** and **Tom Mableson**.

Upcoming Events: The pro bono section of the Spokane Bar Association presented for participating pro

bono attorneys the annual seminar on March 6 from 1 p.m. to 5 p.m. at Cavanaugh's River Inn with a reception immediately following 5 p.m. to 7 p.m. This free seminar was approved for four (4) CLE credits.

Elected: The Spokane firm of Paine, Hamblen, Coffin, Brooke & Miller has invited three associates into the partnership: **John T. Powers, Jr., Ausey H. Robnett III** and **Janet D. Robnett** became partners as of January 1.

**WASHINGTON
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WWL has completed and distributed to all CLE sponsoring agencies a CLE speakers' list. The list is composed of volunteers drawn from WWL members. It will be updated on a yearly basis and is available through the organization. The Women's Legislative Reception was held on January 24 in the Capitol Rotunda. The Seattle/King County Chapter has announced its intention to provide two (2) \$1,000 scholarships, one to a UPS law student and one to a UW law student. **Rosa**

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Parks will be speaking at the University of Washington on April 18.

WHATCOM COUNTY REPORT

by MICK MOYNIHAN

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

to do some traveling and enjoy a few relaxing years without the stress of a law practice and port business at the same time.

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

And, speaking of weddings, **Richard Baum** and **Mary Summers** were married this past summer, and **John Aabe** and **Judy Proller** also tied the

knot. I thought that it would be a good idea to do a column on lawyers who are married to other lawyers, but that will have to wait for some future column. I believe that there are seven couples in this area that fit that description.

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

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

IN MEMORIAM

Sherman R. Huffine, 81, died February 2, 1990, in Seattle. A 1930 graduate of the University of Washington School of Law, where he was a member of the law review, the Order of the Coif and Delta Upsilon fraternity, Huffine practiced in New York City for several years before returning to Olympia as secretary of the Olympia Brewing Company. He retired in 1973 as vice president for legal affairs, and remained on the company's board of directors until its sale a few years ago.

Active in the arts communities of Olympia and Seattle, Huffine was an emeritus trustee of the Seattle Symphony and honorary trustee of the Seattle Opera Association, and a member of the Seattle Chamber Music Festival. He was a past board member of the Washington State Foundation for the Handicapped, past president of the Olympia Kiwanis Club, the AAA in Washington, South Puget Sound Community College Foundation, United Way of Thurston County, a board member of the Pacific Grant Makers' Forum and a vestryman of St. Paul's Episcopal Church in Olympia. Survivors include his wife, three children and a brother.

Thomas Malott, 78, died January 21, 1990. A resident of Freeland, Malott served on the Board of Governors of the Bar Association from 1961 to 1964. His last will and testament included a specific bequest to the Spokane County Bar Association and includes the comment, "I suggest it be spent in a foolish manner."



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Evangeline Starr, 93, a longtime Washington lawyer and judge, died January 26, 1990, in Seattle. The daughter of a lawyer and the sister of a law professor, Starr was a graduate of the University of Washington and a cum laude graduate of its School of Law. She was admitted to practice in 1922 and worked until a fall injured her in 1989.

Starr spent several decades in public service, working as a divorce proctor and deputy prosecutor before becoming a justice court judge in 1943. She held that post until retirement in 1971, when she returned to private practice. She took pride in never having missed a day's work from illness during her 28 years on the bench.

Starr was also a prominent advocate of women's rights in Washington for over half a century. She was a founder of the National Organization for Women in Washington and consistently supported efforts to remove legal disabilities of women. Active in many civic and legal organizations, Starr was named Seattle Business Woman of the Year in 1955. She is survived by a niece.

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U.S. Bancorp seeks attorney with strong credentials, banking law background, and supervisory experience to manage its five-lawyer Seattle office. U.S. Bancorp offers a competitive salary and benefit package. Submit resumé to Law Division, U.S. Bancorp, 111 S.W. Fifth Ave., Portland, OR 97204. U.S. Bancorp is an Equal Opportunity Employer.

Part-time lawyers needed to assist with civil litigation; compensation rate: \$25-\$50/hr; reply: Ms. Robinson, P.O. Box 16254, Seattle, WA 98116.

Attention Attorneys: Paralegal training school seeks practicing attorneys interested in teaching in the Seattle area. Commitment is one night per week, five to ten weeks. Compensation is \$45 per evening. Courses being offered are American Jurisprudence, Criminal Law, Family Law, Torts and Personal Injury Litigation, Real Estate, Litigation, Busi-

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Kerr Stores Legal Search handles placement for attorneys and legal support staff in the Pacific Northwest, Alaska, Hawaii. Send letter and resumé in strictest confidence to 624 Skinner Building, Seattle, WA 98101; (206) 625-1855.

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WILL SEARCH

Joseph Fred Smith: Anyone with knowledge of a will executed by Joseph Fred Smith, please call Theresa Schrempp at (206) 340-2555. Mr. Smith was a fisherman who was born on April 16, 1908, in the Magnolia neighborhood of Seattle, and lived in that neighborhood until shortly before his death on November 10, 1988.

MISCELLANEOUS

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

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Ideal for the non-evasive. ADD \$30 when located.	
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