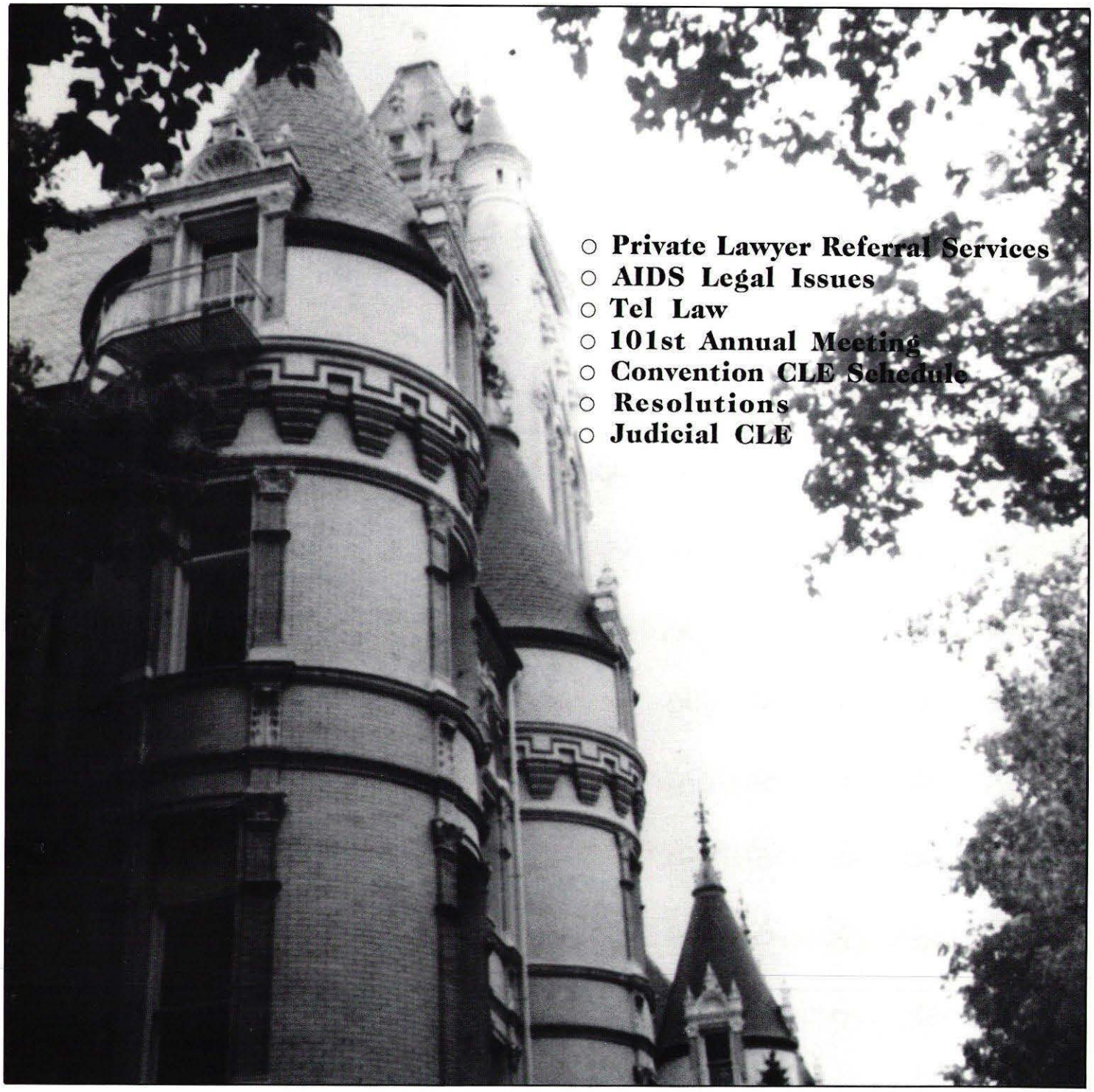
Washington State Bar News
Vol. 44, No. 8, August 1990



- Private Lawyer Referral Services
- AIDS Legal Issues
- Tel Law
- 101st Annual Meeting
- Convention CLE Schedule
- Resolutions
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Ethics ○ Annual Meeting

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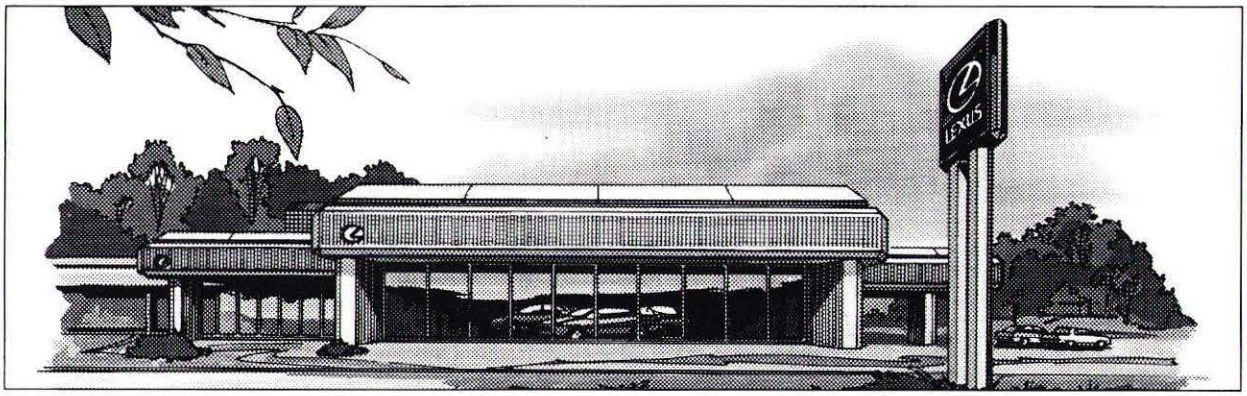

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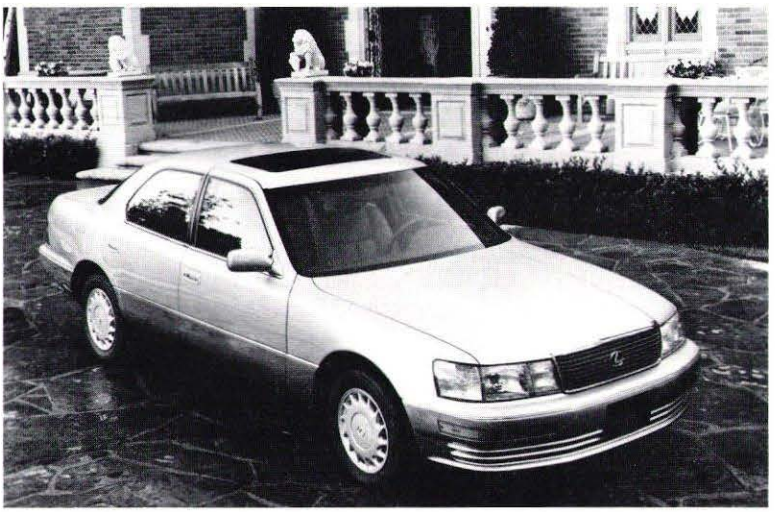

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Washington State Bar News
Vol. 44, No. 8, August 1990

FEATURES

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ANNUAL MEETING & CONVENTION

DEPARTMENTS

ART CREDITS

Cover: Looking up at a Norman turret of the Spokane County Superior Court, a "must see"" for September WSBA Convention attendees. Photo by Benella Caminiti.
Line drawings of French engraver Gustav Dore´ decorate this month's features.
An aerial photo of the convention center on the Spokane River appears on page 11.

WSBA Telephone Numbers

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

LETTERS

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

New Reporting Requirements

Editor:

Attorneys representing clients in negligence suits should be aware of recent legislation that has added a notice requirement to RCW 43.20B. The new section, effective on June 7, 1990, provides as follows:

An attorney representing a person who, as a result of injuries or illness sustained through the negligence or wrong of another, has received, is receiving, or has applied to receive assistance under chapter 74.09 RCW, or residential care provided by the department at a hospital for the mentally ill or habilitative care center for the developmentally disabled, shall:

(1) Notify the department at the time of filing any claim against a third party, commencing an action at law, negotiating a settlement, or accepting a settlement offer from the tort feasor or the tort feasor's insurer, or both; and

(2) Give the department 30 days' notice before any judgment, award, or settlement may be satisfied in any action or any claim by the applicant or recipient to recover damages for such injuries or illness.

Laws of 1990, ch. 100 s8.

Notice required by this statute may be mailed to the following address: Department of Social and Health Services, Office of Provider Services, Medical Recovery Unit, P.O. Box 9256, Mail Stop HA-11, Olympia, WA 98504.

Notice may also be provided by telephone at (800) 562-6136 or by fax at (206) 753-3077.

ADRIENNE SMITH
Assistant Attorney General
Olympia

Making a Living Off Living Trusts

Editor:

My consumer protection staff has been getting complaints recently about the sale of estate-planning documents known as living trusts. My main concern is that they're often sold by insurance agents who may not be qualified to advise consumers about legal matters. Citizens who call my office about living trusts are being told to go see an attorney. There is just no need for an unqualified salesperson getting between the client and the expert.

People are upset with the high prices charged for these documents, as well as the scare tactics and distortions of fact used to sell them. The fear of inheritance taxes (practically nonexistent under Washington law) and estate taxes is being exploited, ignoring current state and federal law.

One insurance agent convinced a Washington couple of modest means that they'd lose their property to taxes

and probate costs if they didn't buy his program. They withdrew their savings and paid $1,365 for a living trust. It came in a fancy binder, but it was nothing more than a kit full of blank legal forms, including quitclaim deeds and wills, which they would have to fill in themselves. A lawyer the couple consulted told them that a proper estate-planning package, tailored to their needs and to Washington law, would have been one-tenth the price of the mass-produced packet of forms.

Part of the sales spiel used to sell living trusts is intended to create distrust of lawyers and our legal system, yet Washington's laws are better than those of many states. Even when probate is necessary, it could cost less than those high-priced blank forms.

Because living trusts are not insurance products, I do not have the authority to stop their sale, but if agents are misleading consumers in order to sell them, those agents could face action against their licenses. I encourage lawyers who run across such cases, involving licensees of my office, to provide us with the details.

RICHARD G. (DICK) MARQUARDT
Insurance Commissioner
Olympia

You Shouldn't Have to Sit Together to Get CLE Credit

Editor:

Douglas Palmer's proposal ("Letters," April 1990) makes sense. If the purpose of CLE is to learn, the Bar should not withhold credit from a most effective means of learning—viewing/listening to tapes individually.

If CLE, however, is a sham to pretend to the public to keep up with our profession, it makes sense to continue to require us to plant our bodies in front of some speaker, whether or not useful information is imparted.

Let us hope that learning and client interest come first (the "President's Corner" in the same issue reminds us that it must, if we are to be professionals). If we learn as effectively as possible and put our clients' interest first, that will achieve good public relations for the Bar.

MARILYN SCHWAM
Moscow, Idaho

Natural Partnerships

Editor:

Thank you to the Bar Association for my handy 1990 Directory/Reference issue. In reviewing it, I noticed that several "natural" partnerships are not yet formed, including:

Abbott & Costello
Jack, McQueen, King & Acey
Alexander, Graham, Bell & Ringer
Justice, Oliver, Wendells, Holmes & Law
Amos & Andrews
Knight & Day
Barbie & Kinn
Lake, Pond, Poole, Rivers & Waters
Barnun & Baily
Lande, Lord & Tennant
Beach, Ball, Sun, Burns, Sand, Towle & Fun
Little, Redd, Wright, Eng, Hood & Wolfe
Benson & Hedges
Lord, Barron, Prince, Duke, King, Crown, Kastle & Noble
Black & Blue
Lyon & Tiger
Bush, Reagan, Carter, Ford, Nixon, Johnson, Kennedy & Whitehouse
Matthews, Marks, Lukes & Johns

Cain & Able
Montgomery, Ward, Sears & Rohrbach
Card & Deal
Palm, Tree & Sun
Cherry, Peach & Pitts
Peters, Pan, Tinker & Bell
Crosby, Stiles, Nash & Young
Pope, Priest, Nunn, Church & Devine
Docter & Lawyer
Rank & Filer
Dow, Jones, Wall, Street & Moneymaker
Rogers & Hammersten
East, West, North & Southon
Rose & Thorne
Felix & Oscarsson
Redd, White & Blue
Flatt & Rounds
Salter & Pepper
Friend & Foe
Shaker & Baker
Gilbert & Sullivan
Sly & Fox
Goff, Ball, Swingen, Wood, Fair, Way, Irons, Sand, Bunker, Green, Bird, Parr, Bogue & Hole
Studebaker, Ford, Pinto, Olds, Lincoln & Carr
Gold, Dee, Locke, & Barer
Sweet & Sauer
Gold, Frank, Eng, Cease & Murr
Tall & Short
Golden, Rule & Goodfriend
Toole & Dye
Grim & Barrett
Valentine, Hart, Flowers & Love
Hale & Hardy
Walker & Running
Hamed, Burger, French Fry & Milk
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Hand & Glover
Wise, Smart & Virtue
Hart & Soule
Wine, Woolman & Song
Hatfield & McCoy
Winter, Spring Summer & McFaul
Hemmen & Hahn
Wright & Wong
Hunt & Peck
Wynne, Place & Chow
Irons & Steele
Rein, Quist, Brennan, Skeel, Lea, Day, O'Connor, Marshall, Kennedy, Stevens, Black, Munn & White

RICHARD McCARTAN
Olympia

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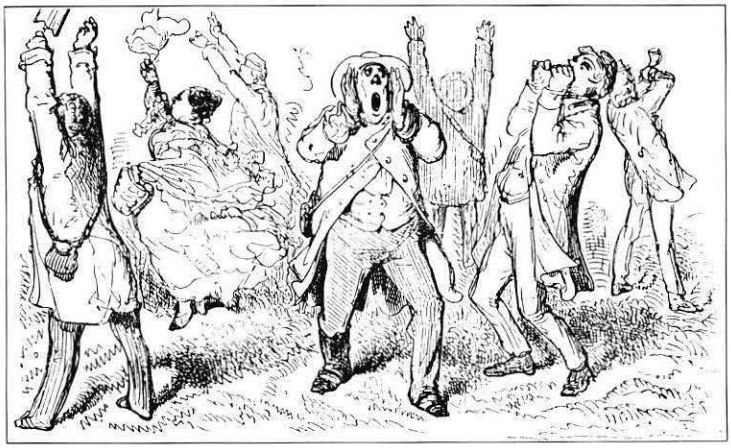


Private Lawyer Referral Services: Ethics and Advertising in a Crowded Market

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

It will not have escaped the notice of most persons that there are a lot of lawyers admitted to practice law in Washington state today. At the time this is being written, there are 15,239 active members of the Bar, and an additional 406 passed the winter Bar examination and will have joined the Bar by the time this is published. While not all of those lawyers are engaged in the private practice of law, from previous surveys of the bar membership it is a fair guess that about two-thirds, or more than 10,000 of the lawyers in this state, are in private practice.

As a consequence, many lawyers are looking for ways to attract new clients by marketing their services by means that are both successful and ethical. And in response to that search, many entrepreneurs have developed marketing programs which they are offering to lawyers. Because much of this is new to lawyers, they often make inquiry to the Rules of Professional Conduct Committee for advice on the ethics of a possible marketing program, and the Committee has issued certain informal opinions on which this article is based.[1]

The subject of lawyer advertising and solicitation has been evolving since the United States Supreme Court decided in the 1977 case *Bates v. Arizona*[2] that states could not prohibit nonmisleading lawyer advertising. After that, court decisions and disciplinary rules gradually broadened the area of permissible advertising and solicitation.

The pertinent Washington ethics rules are in Title 7 of the Rules of Professional Conduct. As with many things in life, the rules are fairly straightforward, but their application in the day-to-day world may not always be so clear. Basically, a lawyer may advertise through most available media, so long as the advertisement is not false or misleading. Permissible advertising or solicitation now includes direct-mail solicitation to targeted individuals who may be known to need legal services.[3] A lawyer may not solicit new clients by telephone or in person.[4] And a lawyer may not use the word "specialist" in his or her advertising or solicitation.[5]

The specific form of advertising that this article addresses is private, for-profit lawyer referral services. These are distinguished from Bar Association lawyer referral services. The former Code of Professional Responsibility was interpreted to prohibit lawyers from accepting referrals from private, for-profit referral agencies; however, that prohibition was not carried into the Rules of Professional Conduct when they were adopted in 1985. Private referral programs come in many forms, but there seem to be only two operative models. The first typically markets an 800 toll-free telephone number under some name like "U-Needa-Lawyer." It runs ads on television, in newspapers and in free shoppers' guides. These programs charge the lawyer a fee, often substantial, to be included on their referral panel lists. The ethical issue arises when the consumer/potential client calls the 800 number.

Some of these types of referral programs offer to sell lawyers "exclusive" rights to receive referrals based upon areas of practice, residence ZIP codes, or other criteria. The RPC Committee, in reviewing several inquiries concerning these types of programs, has concluded that if the consumer is given the name of only one lawyer, based upon the consumer's ZIP code or some other qualification, that constitutes a *recommendation* of that lawyer's services for which the lawyer has paid a fee. Therefore a lawyer's participation in such a program would violate RPC 7.2(c), which prohibits a lawyer from giving anything of value to a person for *recommending* the lawyer's services, except for the reasonable costs of advertising. But, the Committee has concluded, if that consumer is given the names of a number or all of the lawyers participating in the referral program, all of whom have paid a fee to the referral service, that does not constitute a recommendation and therefore it does not violate the rule. This distinction is apparently based on the Committee's conclusion that if the potential client is provided the name of only one lawyer, there is an implication that that lawyer is somehow specially suited to meet this client's needs, but if the client is given a number of names (and typically also provided other resume´-type information about each lawyer), it is clear to the client/consumer that the decision of which lawyer to employ is hers or his to make.

The other referral service model is similar, except that instead of marketing the program under some trade name, the advertisement, whether written or broadcast, includes the names of *all* of the lawyers participating in it. This type of advertising program, the Committee has concluded, constitutes a joint or "pooled" advertisement by those lawyers, and it is permissible under the

rules since, from the advertisement itself, it is clear who is running the ad and that the participating lawyers are merely advertising their services and not purporting to be some disinterested referral service.

The Bar Association does not recommend, certify or endorse any advertising program of any sort, other than the WSBA Lawyer Referral Service. From comments of some lawyers who have participated in these types of private referral services it appears that some of them have been useful for some lawyers, while other lawyers have indicated that the particular program they participated in was not worthwhile.

Any lawyer considering participating in one of these programs should remember that the persons developing and marketing the program may or may not be aware of Washington's ethical rules.[6] Some referral programs that may be offered here have been developed in other states whose ethical rules may not be identical to Washington's. The persons marketing these programs are chiefly interested in selling their product. As with any service or product that a lawyer purchases, the lawyer should examine the offered program carefully, decide whether it meets that lawyer's needs in reaching the community he or she seeks to serve, and make a reasoned decision whether to invest the funds necessary to participate in the program. The lawyer also has the duty to ensure that his or her participation in a referral program will not violate the Rules of Professional Conduct.

As marketing professionals say, "advertising works," but it has to be the right advertisement selling the right product to the right audience. And for lawyers, it has to be ethical.

[1]Informal opinions are provided for the education of the Bar and reflect the opinion of the Rules of Professional Conduct Committee. They are provided pursuant to authorization granted by the Board of Governors, but are not individually approved by the Board and do not constitute the official position of the Association.

[2]433 U.S. 350, 97 S. Ct. 2691, 53 L.Ed.2d 810 (1977)

[3]*Shapiro v. Kentucky Bar Association*, 486 U.S. 466, 108 S.Ct. 1916, 100 LEd.2d 475 (1988).

[4]*Ohralik v. Ohio State Bar Association*, 436 U.S. 447, 98 S.Ct. 1912, 56 L.Ed.2d 444 (1978).

[5]A challenge to this restriction is presently before the United States Supreme Court: *Peel v. Attorney Registration and Disciplinary Commission of Illinois* (No. 88-1775) (argued January 17, 1990).

[6]It is also inportant to remember that in the "entrepeneurial" areas of the practice of law, such as advertising, lawyers are subject to the provision s of the Consumer Protection Act (RC@ 19.86). Short v. Demopolis, 103 Wn.2d 52, 691 P.2d 163 (1984).

Business or Profession?

by **C. James Frush**

Some fifteen years ago when I was graduating from law school, a friend accused me of taking a job with a firm that was "keeping alive traditions that died before you were born." There was some truth in what he said. The firm had been around a long time, some called it "white-shoe," and it did make it a practice of teaching its young lawyers certain approaches to different aspects of our practice. One of its cardinal tenets, oft repeated, was "we are gentlemen first, lawyers second, and businessmen last."

There was not a single woman partner at the time, so perhaps the sexism is understandable; thankfully, that aspect of the legal profession has certainly changed. How much else has changed as well?

These days, the term "professional" often has a pejorative meaning, for example, those damn yuppie lawyers. And nowadays, everyone from real estate brokers to hair dressers have "clients." What has happened to professionalism, what does it mean?

Law teacher Roscoe Pound of Harvard Law School said:

> The term [profession] refers to a group...pursuing a learned art as a common calling in the spirit of public service -- no less a public service because it may incidentally be a means of livelihood. Pursuant of the learned art in the spirit of a public service is the primary purpose.
>
> R. Pound, *A Lawyer From Antiquity to Modern Times*, 5 (1953).

About the time I was leaving law school, Chief Judge Charles D. Breitel, of the New York Court of Appeals, that state's highest judicial body, stated:

> A profession is not a business. It is distinguished by the requirements of essential formal training and learning, admission to practice by qualifying licensure, a code of ethics imposing standards qualitatively and extensively beyond those that prevail or are tolerated in the market place, a system for discipline of its members for violation of the code of ethics, a duty to subordinate financial reward to social responsibility, and, notably, an obligation on its members, even in non-professional matters, to conduct themselves as members of learned, disciplined, and honorable occupation.
>
> *Matter of Freeman*, 34 N.Y.2d 1, 7; 311 N.E. 2d 480, 483 (1974).

These are wonderful words, stirring words, important words, but "in practice" this question is not so easily answered. And it is so serious and troubling a question that five years ago the ABA created the Commission on Professionalism in response to criticisms about the bar. Regrettably, its reports indicate that the public at large and the bar itself feel that professionalism among lawyers has declined and is declining and that few lawyers are rated as deserving to be called "professionals." More to the point, a recent California State Bar survey concluded that the public believes lawyers are "greedy, arrogant, and untrustworthy."

The profession has changed and will change. Mergers, more mergers, boutiques, advertising, prepaid legal services, legal clinics, gargantuan firms spanning states, regions and the world, an escalation of prices which has rendered legal services unaffordable even for those with substantial money and property, a decline in litigation, the proliferation of lawyers, and a whole host of similar changes that all relate to and impact the business versus profession question have all occurred since I left law school. But is that business-profession relationship an adversarial one?

Change is inevitable. But the manner of that change, the means to the end, must always remain the focus of any true lawyer, whether in the cases (s)he practices or the practice itself.

Recently the president of the National Association of Criminal Defense

Lawyers, Neal R. Sonnett, vigorously and publicly criticized many members of his special fraternity, some of whom were his friends. Commenting on an article which appeared in last November's *Newsweek*, he noted that the defense attorneys profiled there had "jumped at the opportunity to demonstrate obnoxious flamboyance" and that their conduct "embarrasses our entire profession, and deserves our collective criticism and scorn." It has been refreshing and rewarding to see that these brave and painful acts of Neal Sonnett have been fully supported by members of his bar, even to the extent that one of those criticized wrote him to state that he agreed with "much of what you wrote...you are right, the article conveyed, among other negative connotations, 'obnoxious flamboyance'...if my participation in that article has embarrassed the criminal defense bar, I regret that, for that was clearly not my intention." Quote from Sonnett, "President's Column," *The Champion*, Vol. 14 No. 3, April 1990. Sonnett lays much of the blame for these problems on the fact that "my friends left the clear impression that financial gain was paramount,..." *The Champion, supra* at 4.

The report of the ABA Commission on Professionalism agrees with Sonnett and, in its recommendations, urges lawyers to "resist the temptation to make the acquisition of wealth a primary goal of law practice."...[T]he Commission believes that many of the problems outlined in this report could begin to be addressed by subordinating a lawyer's drive to make money as a primary goal of law practice." *Report of the Commission on Professionalism*, adopted by the ABA House of Delegates in August 1986.

It's not that easy. Those of use who have been in private practice for any length of time know the fears and risks of attracting and maintaining business, running an office, meeting a payroll, and at the same time, to have "clients" and not "customers," to practice a learned art, to seek in our practice an attainment of the concepts of fairness and justice.

We must charge fees and sometimes, quite honestly, high fees. Overhead is a monster. With our dedicated and hardworking staffs, their families, our families, the government taxman, most of us have no choice but to earn a "means of livelihood." Our own Model Code of Professional Responsibility, EC 2-17, instructs us:

> Adequate consideration is necessary in order to enable the lawyer to serve his clients effectively and to preserve the integrity and independence of the profession.

In fact, that American Bar Association, in Opinion 302 (1961), concluded that the failure to charge for adequate consideration may affect the quality of representation such that the administration of justice and the welfare of the profession are injured.

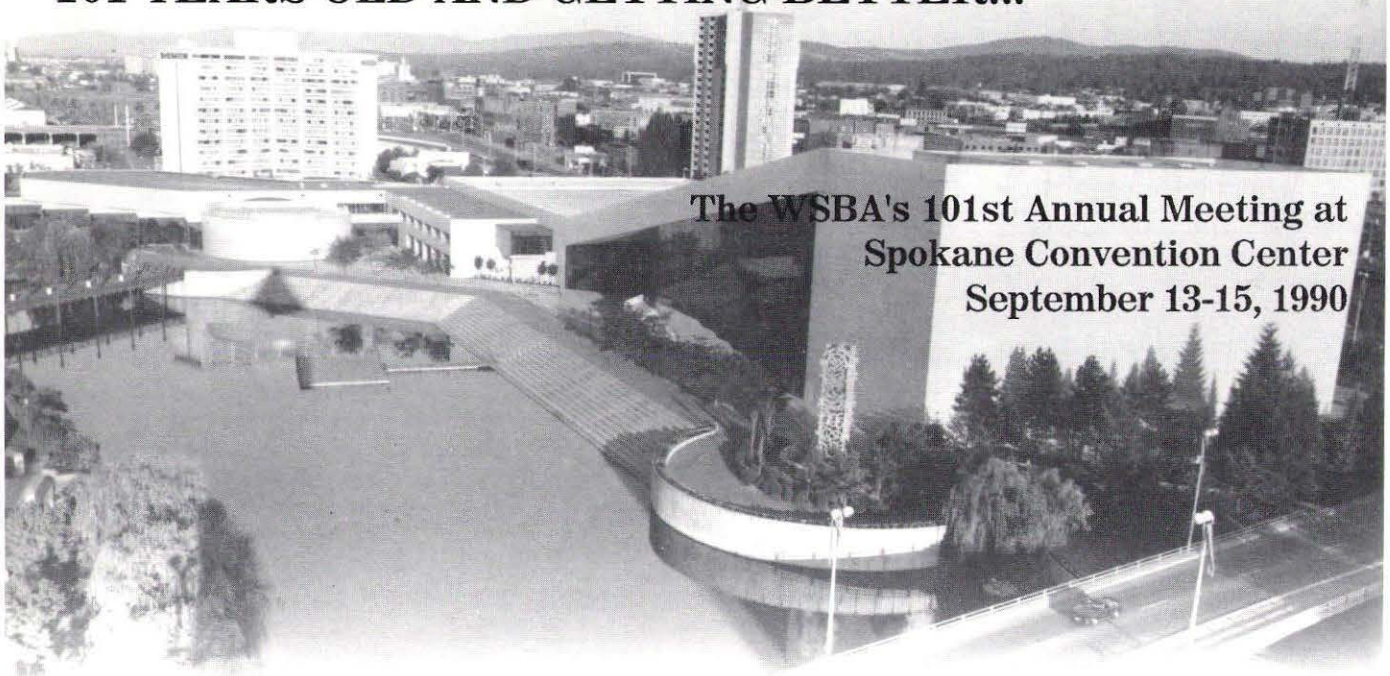
Of course we must charge reasonable fees, else how can we charge any fees at all in the long run and, perhaps more importantly, how can we give away a proper proportion of our practice to those who cannot afford legal services. We are a business and cannot and should not try to deny that fact. Attention must be paid to the bottom line. We must practice our learned art with a diligence that assures that our offices remain open.

They will, but will we remain professionals? Not necessarily. And why not?

For many reasons. Too many of us do not practice an art and are not involved in public service. Too many of us are fixated on the business side of things. Too many of us forget that in "doing well" we should ensure that we are "doing good." It is a question of professionalism. That old white-shoe firm of mine was right. Oh, we must remember that we are also businessmen. We must be both professionals and businessmen, but we must first be professionals. We must continually strive for art and public service. The fairness and justice we rely upon in our arguments must be focused as well on our business. The choice is ours. □

WSBA member C. James Frush practices law in Seattle.

101 YEARS OLD AND GETTING BETTER...



Late Summer in Spokane—a great place to be. The tamaracks are turning, temperatures range between 70 and 80 degrees, and around the county there is the smell of the piney woods. Spokane is five hours and 288 driving miles east of Seattle, and just an hour from the vacation spots of northern Idaho. The 1974 World's Fair at Spokane bequeathed the city a national class convention center just above the falls on the Spokane River. It is now beautifully landscaped and complete with an opera house and International Agricultural Center.

The Programs—In three days you can get the year's CLE credits by choosing among 18 three-hour seminars. Thursday's sessions include "Highlights of What the General Practitioner Needs to Know," through consumer protection regulation, bankruptcy and administrative law.

On Friday and Saturday, all of the Bar's other sections will present programs, and there will be added features like "The Practical Side of Voir Dire."

Saturday options include a Young Lawyer Division-. sponsored seminar on "Tools of the Trade."

Internationally Known Speakers—The Bar will be honored to have Speaker of the U.S. House of Representatives, the Honorable Thomas S. Foley, a graduate of the University of Washington School of Law, address the convention. Foley's district includes the eastern fourth of the state. The Speaker has long been recognized as one of Congress's "class acts."

ABA president John J. Curtin, Jr. will give an overview of what is underway in the Bar nationally.

Exhibits—Half the main hall—17,000 square feet—will be home to the exhibits of 45 national leading corporations. They offer your best options for hardware, software, services, supplies and recreation.

Special Events—The Bar will host a light luncheon for the entire convention in the exhibit area at noon on Thursday, and a cocktail party and raffle at 5:30 p.m. Friday evening. Over $2,500 worth of prizes will be raffled, including two 25" television sets, two Cuisinarts and a weekend at the Westin Hotel, Seattle. You must have tickets punched by the exhibitors and have them in the bowl in the center of the exhibit area by 5 p.m. Friday to be eligible.

Special Happenings—This marks the 20th anniversary of the Earth Day celebration. The Cousteau Society will present "Environmental Issues of the 1990s" on Thursday afternoon, September 13, for all registrants, spouses and families, without charge. There will be a tour of the Green Bluff Orchards and Arbor Crest wineries on Saturday. The annual golf tournament will be held on Thursday and Friday evenings. Friday afternoon, a bus will leave the Spokane Center for the stateline greyhound park for an evening of racing; the package is just $20. And who doesn't want to wind up with Pete Fountain at Saturday night's "Down the Mississippi Theme Party" dinner show and dance? New Orleans' biggest name at our doorstep! Things will get underway on "Bourbon Street" at 6:30 p.m. You can join us for an unbelievable $10 a head!!

The 1990 Annual Meeting will be a short, snappy, and successful sendoff for our second century.

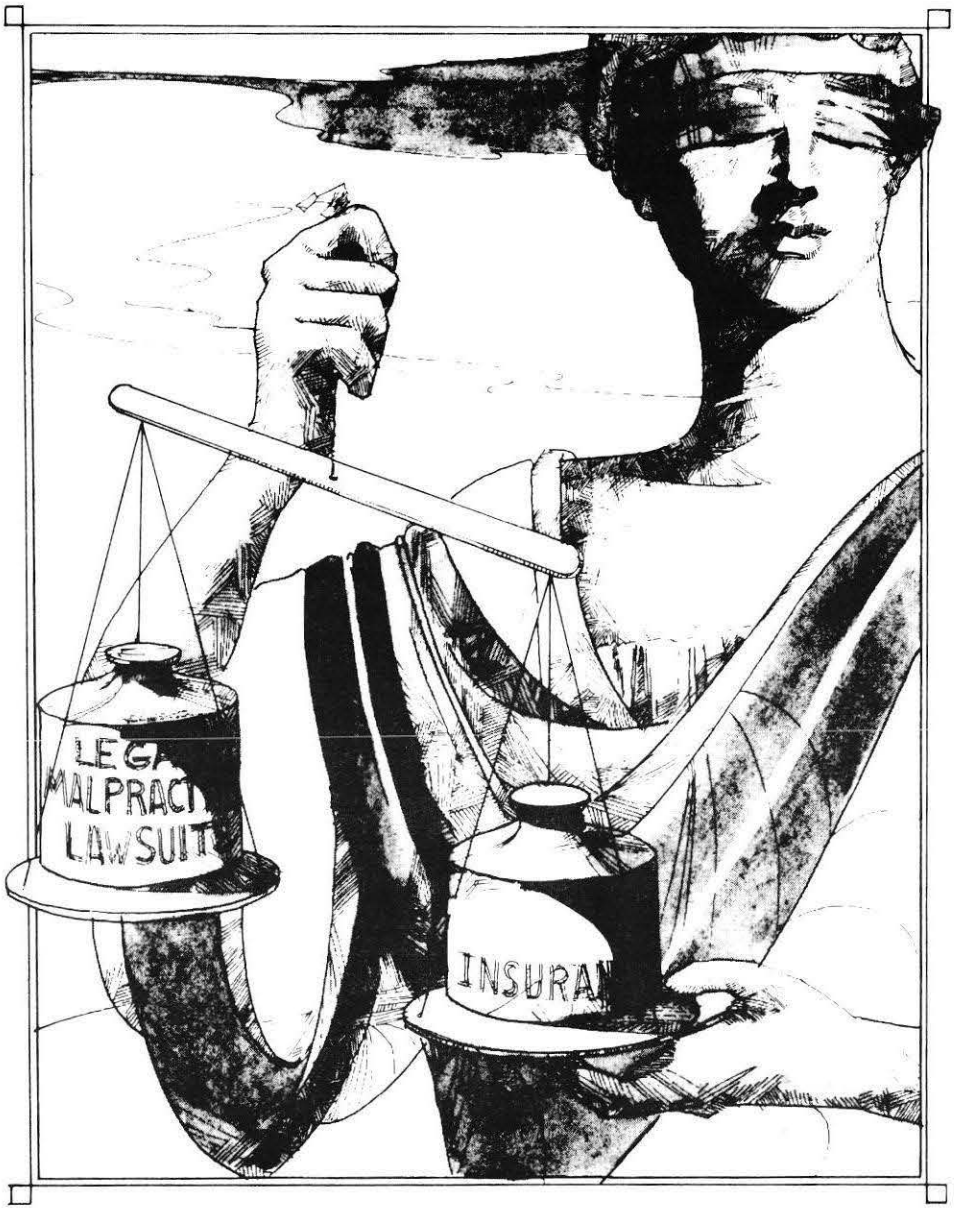
Reservations—Space has been reserved at the two Cavanaugh's hotels on the north side of the river, and at Convention Center Hotel, the Spokane Sheraton, just off the east end of the Spokane Center. A myriad of other options are within a half-mile downtown. Reservations are available ***only*** through Cindy Jacques at the State Bar (206) 448-0441 (extension 275) as long as space is available.

Ask for the WSBA's "second notice" brochure if you want to review prices and options.

Keep the Scales of Justice balanced-in your favor!

Washington State Administrators for the: National Union Fire Insurance Co. Attorneys Errors & Omissions Program

Call or ask your agent to contact us regarding Professional Liability Insurance.



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Professional Liability Insurance for Lawyers

AIDS Legal Issues

by **Robin L. Thompson**

Introduction

Providing legal advice to a person who has AIDS or is HIV-infected requires knowledge of specific AIDS- related laws and a general understanding of laws affecting discrimination, insurance, estate planning, credit and federal assistance programs.This article provides an overview of the legal topics involved.[1]

Discrimination

State Law

State law provides that no employer can discharge, refuse to hire, segregate or classify any person which in any way would deprive or tend to deprive that individual who is—or is perceived to be—HIV-positive of employment opportunities.[2] Furthermore, an employer cannot discriminate with respect to compensation, terms, conditions, or privileges of employment on the basis of the results of an HIV antibody test unless the absence of HIV infection is a bona fide occupational qualification of the job in question.[3] An "employer" under the discrimination statute is one who employs eight or more persons and does not include any religious or sectarian organization not organized for private profit.[4] Cities and counties may enact similar anti-discrimination statutes covering smaller employers.[5]

In the absence of gross negligence, employers are immune from civil actions for damages in the event another employee or a member of the general public is infected.[6]

While the 1988 Washington AIDS statute deals only with discrimination in employment, the Washington Human Rights Commission's guidelines provide protection in other areas to those who are HIV-infected. Persons with AIDS or who are HIV-positive and those who are perceived to have AIDS or to be HIV-positive are considered handicapped by the Commission under state law.[7] Thus, in the area of real estate, a landlord cannot ask a tenant if he or she has AIDS, nor can any statements be made concerning former tenants. The same applies to home sellers and buyers. As for credit transactions, persons applying for credit cannot be asked about their HIV status. A credit history cannot disclose anything concerning HIV status, nor can questions be asked regarding lifestyle, living arrangements or sexual orientation which lead to inferences regarding HIV status.

Further, the Human Rights Commission states that a person who has AIDS or who is HIV-positive is handicapped and is protected against public accommodation discrimination pursuant to RCW 49.60.215.[8] Public accommodation includes daycare centers, schools, beauty salons, retail businesses, restaurants, theaters, healthcare providers, funeral homes, cemeteries and other consulting and professional services.[9]

Federal Law

Congress is presently debating the passage of the Americans with Disability Act (S933, HR 2273), which would prohibit discrimination against individuals with a physical or mental impairment that substantially limits one or more "major life activities." If passed without change, the act would prohibit discrimination against a person who is HIV-infected.[10]

Presently, the Vocational Rehabilitation Act of 1973 has been applied to persons with AIDS because it forbids handicap discrimination by any program or activity receiving federal money.[11] Thus, if a hospital or school district receives federal funds (and most do) it cannot discriminate against handicapped persons or do so at the risk of losing federal support.[12] Following the United States Supreme Court's decision in *School Board of Nassau County, Florida v. Arline*, 480 U.S. 273 (1987) that a person with an infectious disease such as tuberculosis is entitled to protection from dis-crimination under the act, federal courts have held that children with AIDS are also protected against discrimination; this allows them to remain in school.[13]

Insurance It is discriminatory for an insurance company to identify a specific group for HIV antibody testing. Universal testing, however, was not outlawed by the Legislature. Further, if nondis-criminatory medical screening discloses diseases symptomatic of AIDS, an insurer may insist on the HIV antibody test.

If an insurer can demonstrate a statistical difference in insuring a person, it can limit coverage.[14] Thus, it is

proper to ask if a person is HIV-positive or has AIDS. If the response is affirmative, the insurer can limit or deny coverage for health or life insurance.

Prior to any testing to renew coverage under an insurance contract, healthcare service contract or health maintenance organization agreement, the individual must give his or her specific written consent and must receive written information explaining: (1) what an HIV test is, (2) behaviors that place a person at risk for infection, (3) that the purpose of HIV testing is to determine eligibility for coverage, (4) the potential risks of HIV testing and (5) where to obtain pre-test counseling.[15]

Positive or indeterminate HIV antibody test results may not be sent directly to the applicant. Instead, post-test counseling is required in these cases. The applicant may designate a doctor to whom positive test results are to be provided for the purpose of post-test counseling. If the applicant does not identify a healthcare provider, the insurance company is to provide a positive or indeterminate test result to the local health department for post-test counseling.

If health insurance is denied because of HIV infection or any other health problem, an individual can purchase insurance through the Washington Health Insurance Pool. Premiums are based on the individual's age and zip code of residence. Individuals pay for six months before preexisting conditions are covered, but new health problems are covered immediately.[16]

Testing
When Can an HIV Antibody Test Be Conducted?

Consent

An individual 14 years of age or older may give his consent to the HIV antibody test without the parent's knowledge or consent.[17] Before the test, the individual must (1) receive pre-test counseling, (2) give consent unless an exception exists by law and (3) receive post-test counseling if the test is positive or if "suggestive of HIV infection."[18] The subjects required to be discussed during pre- and post-test counseling are set forth in Board of Health regulations.[19]

Employment

As for employee testing, no person can be required to take the HIV antibody test unless the absence of HIV infection is a bona fide occupational qualification for the job in question.[20] This applies when (1) performance of a particular job can be shown to present a significant risk, as defined by the State Board of Health by rule, and (2) there exists no means of eliminating the risk by restructuring the job.[21] Board regulations state that a bona fide qualification exists only when a job requires person-to-person contact which is likely to result in direct introduction of blood into the eye, an open cut or wound, or

other interruption of the epidermis and no adequate barrier is practical.[22] The regulations state that this must be determined on a case-by-case basis.[23]

Involuntary Testing

The Legislature provided several instances when an individual can be compelled to take an HIV antibody test. A fire fighter, law enforcement officer, healthcare provider or the staff of a healthcare facility or a volunteer of the foregoing groups may compel an HIV antibody test on an individual where there has been a "substantial exposure" to that person's bodily fluids.[24]

"Substantial exposure" is contact resulting from (1) a physical assault involving blood or semen; (2) an intentional, unauthorized use of needles or sharp implements to inject or mutilate the exposed person or (3) an accidental parenteral or mucous membrane or nonintact skin exposure to blood, semen or vaginal fluids.[25] The local health officer must receive the request for testing within seven days of the alleged exposure.[26] A test must then be arranged within the next seven days. If the person refuses to be tested, a court order can be obtained.

An HIV antibody test can also be ordered if a person has been convicted of prostitution, a sexual offense, or a drug-related offense that involves the use of hypodermic needles.[27] The health department is notified of the results and has the power to attempt to control the person's behavior to protect other members of the public.

Another test exception exists for a health facility that procures, processes, distributes or uses: (1) a human body part, tissue, or blood from a deceased person with respect to medical information regarding that person; (2) semen for the purpose of artificial insemination; or (3) blood specimens.[28] Instead of being required to undergo pre-test counseling, the individual must give "informed, specific consent" prior to the HIV antibody test.[29] The health facility must explain that the reason for an HIV antibody test is to prevent contamination.[30] In addition, at the time of notification regarding a positive HIV antibody test, the person must be provided with at least one individual counseling session.

Jail administration personnel may request testing when an inmate has engaged in or threatened "behaviors presenting possible risk."[31] These behaviors are defined in the regulations and include throwing or smearing of blood or semen, physical assault and the sharing of injection equipment.[32]

The local health officer may also seek court-ordered testing of anyone who is believed to be HIV-positive and is engaging in "conduct endangering public health."[33] This includes anal or vaginal intercourse, donating or selling HIV-infected blood or blood products and sharing needles. If necessary, individuals can be placed in quarantine for up to 90 days if they refuse to modify their

behavior.[34]

Disclosure and Confidentiality

The AIDS statute makes it unlawful to disclose or be compelled to disclose the identity of any person upon whom an HIV antibody test is performed, or the results of such a test. The statute also prohibits disclosure of the results of a test for any other sexually transmitted disease if the test is positive.[35] Exceptions allow disclosure to the following persons:

(1) a guardian (no disclosure, however, is necessary to the parents of a child over 14 years old and otherwise competent);[36]

(2) a person who has a signed release from the test subject;

(3) health officers pursuant to reporting requirements;

(4) blood, tissue, semen or organ banks;

(5) a health officer conducting an investigation provided that such record was obtained by means of court-ordered HIV antibody testing;

(6) a person allowed access to the record by a court order granted after application showing good cause therefor;

(7) a law enforcement officer, fire fighter, healthcare provider or healthcare facility staff person who has requested a test of a person whose bodily fluids he or she has been substantially exposed to;

(8) health insurance claims management personnel where such disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims; or

(9) a department of social and health services worker, a child-placing agency worker, or a guardian ad litem who is responsible for making or reviewing placement or case-planning decisions or recommendations to the court regarding a child under 14 years old, has a sexually transmitted disease, and is in custody. The information may also be given to foster parents, if necessary, for providing care.[37]

(10) A patient's HIV status may be disclosed among healthcare workers "in order to provide healthcare services to the patient."[38]

Anyone violating the confidentiality provisions of the law is liable in the amount of $1,000 ($2,000 if the conduct was intentional or reckless) or actual damages, whichever is greater, plus attorney's fees and costs.[39] In addition, it is a gross misdemeanor to knowingly or maliciously disseminate any false information or report concerning the existence of any sexually transmitted disease.[40]

A healthcare provider, however, is only required to identify a person who tests HIV-positive to the local health department if the healthcare provider (1) provided pre-test counseling as required, and (2) he or she made efforts, but was unable, to meet face-to-face with the individual who tested positive to provide post-test counseling in order to assure partner notification.[41] If the HIV-positive person refuses or is unable to notify sex and injection equipment-sharing partners, then the healthcare provider is to identify any partners known (not the infected person) to the local health officer.[42] This reporting requirement does not apply to anonymous testing. No person contacted or reasonably believed to be HIV-infected who reveals the name of sexual contacts to a health officer can be held liable for such revelation, unless the revelation is made with a knowing or reckless disregard for the truth.[43]

Estate Planning

Persons who are HIV-positive may benefit from having a will, directive to physicians and durable power of attorney to provide for themselves and their loved ones. A person with AIDS may have few assets, yet such planning may serve to return control to the person over his or her affairs.

A directive to physicians provides for the withdrawal or refusal of life support measures where two physicians agree a terminal illness situation exists.[44] The statute provides a standard form but specifically provides that a Directive may include "other specific directions."[45] Other directions may include an authorization for the use of drugs that may be toxic, yet benefits the person by limiting his or her suffering. The directive may not in any way authorize or condone mercy killing or any deliberate act or omission to end someone's life.

A durable power of attorney allows an agent to manage the client's affairs and, if so written, make medical decisions even when the principal becomes incapacitated.[46] The agent can also be

nominated guardian if guardianship proceedings are necessary. A durable power of attorney has been used to assure an unmarried partner access and control over health decisions affecting the other partner in a situation where a family member is not willing to acknowledge the relationship.

Coping With Creditors

Persons with AIDS or the HIV infection are often unable to work, which causes financial hardship. If the individual expects to return to work, he or she may want to explain the situation to the creditor. It may be possible for the individual to make use of nonprofit credit counseling services which try to arrange a payment plan.

Another alternative for individuals is to file a "Chapter 7" or "Chapter 13" petition under the U.S. bankruptcy code. Once a petition is filed, creditors cannot continue to try to collect their debts unless permitted by the court.[47]

In a Chapter 7 bankruptcy, the debtor seeks liquidation of all his or her assets to pay creditors. The debtor, however, can exempt certain assets from liquidation. In Washington, a debtor can claim either federal bankruptcy exemptions or state exemptions.[48] Upon completion of the bankruptcy, the individual's debts are discharged, and most unsecured creditors are barred from seeking further payment from the debtor. Creditors holding a security interest in a home, car or other item are entitled to payment in the amount of their security. Other obligations, such as taxes, child support and maintenance and student loans cannot generally be discharged in bankruptcy.[49]

In a Chapter 13 bankruptcy, the debtor adopts a plan for repaying creditors over a three- to five-year period. The debtor pays a fixed amount monthly to a court trustee, who then disburses it to creditors.

Social Security and Related Benefits

A person with AIDS or who is HIV-positive with symptoms preventing employment may also qualify for financial assistance. If an individual is disabled, he or she may qualify for one of two federal programs: (1) Social Security Disability (SSA or SSDI) if the individual has a prior work history or (2) Supplemental Security Income (SSI) if the individual is financially needy. If someone qualifies for SSI but cannot wait for the first SSI check (five months), the person can apply for state public assistance, known as General Assistance - Unemployable.

If a person qualifies for one of the above federal programs, he or she may also qualify for Medicaid, a federal healthcare plan. To be eligible, however, the person must have few assets. A home continues to be exempt from consideration if the person or his or her spouse lives there. □

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[1] For an article on the legal issues of AIDS and family law, *see* "AIDS and Family Law," *Washington State Bar News*, Vol. 44, No. 3, March 1990, pp. 9-14.

[2] RCW 49.60.172(2). A person is HIV positive if he or she tests positive to the HIV antibody test.

[3] *Id.*

[4] RCW 49.60.040.

[5] *See, for example*: Seattle Municipal Code Chapter 14.04 "Fair Employment Practices Ordinance" which prohibits handicap discrimination by employers with four or more employees.

[6] RCW 49.60.172(5).

[7] The Staff Policy Guidelines of the Human Rights Commission, "AIDS and Real Estate Transactions" and "AIDS and Credit Transactions" (12/86) provide:

> Acquired immune deficiency syndrome (AIDS) is a medical condition which is considered a disability under the Washington State Law Against Discrimination, RCW 49.60. Therefore, all sections of that statute and the Washington Administrative Code (WAC) concerning discrimination based on handicap or disability apply to discrimination because of AIDS and related conditions.

See also RCW 49.60.174(1).

[8] Washington State Human Rights Commission, Staff Policy Guidelines, "AIDS and Public Accommodation" (12/86).

[9] Washington State Human Rights Commission, Staff Policy Guidelines, "AIDS and Public Accommodation."(12/86).

[10] *See* U.S. Senate Report No. 101-116, "The Americans with Disabilities Act of 1989," p.22.

[11] Vocational Rehabilitation Act of 1973, 29 U.S.C. Section 794. Complaints may be filed with the Office for Civil Rights of the U.S. Dept. of Health and Human Services, Region X,

M/S 510, 2901 Third Ave., Seattle, WA 98121.

[12]Courts have ruled that a hospital's receipt of Medicare and Medicaid funds subjects the hospital to this discrimination statute. *See United States v. Baylor University Medical Center*, 736 F.2d 1039 (5th Cir. 1984); *United States v. University Hospital of State University*, 575 F.Supp. 607 (E.D.N.Y. 1983).

[13] *See Thomas v. Atascadero Unified School Dist.*, 662 F.Supp. 376 (C.D. Cal. 1987); *Ray v. School Dist. of DeSoto County*, 666 F.Supp. 1524 (M.D. Fla. 1987); *District 27 Community School Bd. v. Board of Educ.*, 130 Misc.2d 398, 502 N.Y.S.2d 325 (Sup.St. 1986).

[14]RCW 49.60.174(2).

[15]RCW 70.24.325.

[16] To obtain information on the Health Insurance Pool, call (800) 562-6900 (Plan administered by Mutual of Omaha). For those who cannot afford insurance, contact Washington Basic Health Plan, 1220 Eastside St. S.E., P.O. Box 9014, Olympia, WA 98504, (800) 826-2444.

[17]RCW 70.24.110.

[18]WAC 248-100-207.

[19]WAC 248-100-209.

[20]RCW 49.60.172(1). Note, however, that applicants for military service are tested based on the belief that HIV-infected individuals may not be able to complete their service commitment, they may suffer adverse reactions to standard immunizations and they could not serve as a blood donor on a battlefield.

[21]RCW 49.60.172(3).

[22] WAC 248-100-206(11).

[23]Id.

[24]RCW 70.24.340(4).

[25]WAC 248-100-206(1)(f).

[26]WAC 248-100-206(10).

[27]RCW 70.24.340(1).

[28]RCW 70.24.105.

[29]WAC 248-100-207(2).

[30]WAC 248-100-207(2)(b).

[31]RCW 70.24.360, WAC 248-100-206(9).

[32]WAC 248-100-206(1)(b)

[33]WAC 248-100-206(6),(7).

[34]RCW 70.24.034; WAC 248-100-206(8).

[35]RCW 70.24.105(1).

[36]RCW 70.24.110 provides that a minor 14 years of age or older may give his or her consent to the furnishing of hospital, medical and surgical care related to the diagnosis or treatment of any sexually transmitted disease. The consent of the parent, parents or legal guardian is not necessary to authorize hospital, medical and surgical care related to such disease and such parent, parents, or legal guardian shall not be liable for payment for any care rendered.

[37]RCW 70.24.105(2).

[38]RCW 70.24.105(6).

[39]RCW 70.24.084(1)(a)-(d).

[40]RCW 70.24.022(5).

[41]WAC 248-100-072(3);WAC 248-100-209(1)(c)(iii).

[42]WAC 248-100-072(2).

[43]RCW 70.24.022(4).

[44]RCW 70.122.

[45]RCW 70.122.030(1).

[46]RCW 11.94.

[47] 11 USC 362.

[48] Federal exemptions: 11 USC 522; Washington state exemptions: RCW 6.13 (Homestead), RCW 6.15 (Personal Property).

[49] 11 USC 523.

***Robin L. Thompson** is a Seattle attorney and chair of the WSBA AIDS Task Force.*

August 1990

3 Basic Real Estate Law in Washington, Seattle. *Sponsored by*: National Business Institute, Inc. *For information*: (715) 835-7909.

10 Expert Testimony for Impairment of Earning Capacity, a vocational expert perspective involving workers' compensation, personal injury, social security and divorce, Seattle. *Sponsored by*: Meninger Return to Work Centers. *For information*: (800) 678-0633.

17-18 WSBA Board of Governors meeting, Vancouver, WA. *For information*: (206) 448-0441.

24 Habeas Corpus Seminar, Seattle. *Sponsored by*: Washington Association of Criminal Defense Lawyers. *For information*: (206) 623-1302.

September 1990

10 Registration deadline for Christian Legal Society breakfast; see September 14 entry below.

12-Oct. 4 WSBA Skills Training Course, Spokane. *For information*: Steve Rosen, (206) 448-0433 or Thomas Wolf, (509) 838-8341.

13-15 WSBA Annual Meeting and Convention, Spokane. *For information*: (206) 448-0441.

14 Christian Legal Society breakfast at the Bar Convention, Spokane. Location to be announced in convention program. As in past years, there will be a guest speaker. Make reservations by September 10, 1990. *For information*: Lyle Wilson, 910- 164th Street S.E., Mill Creek, WA 98012, (206) 742-9100.

24 The Goods and Services Tax: You and Your Practice, Vancouver, B.C. *Sponsored by*: CLE Society of B.C. *For information*: (604) 669-3544; fax (604) 669-9260.

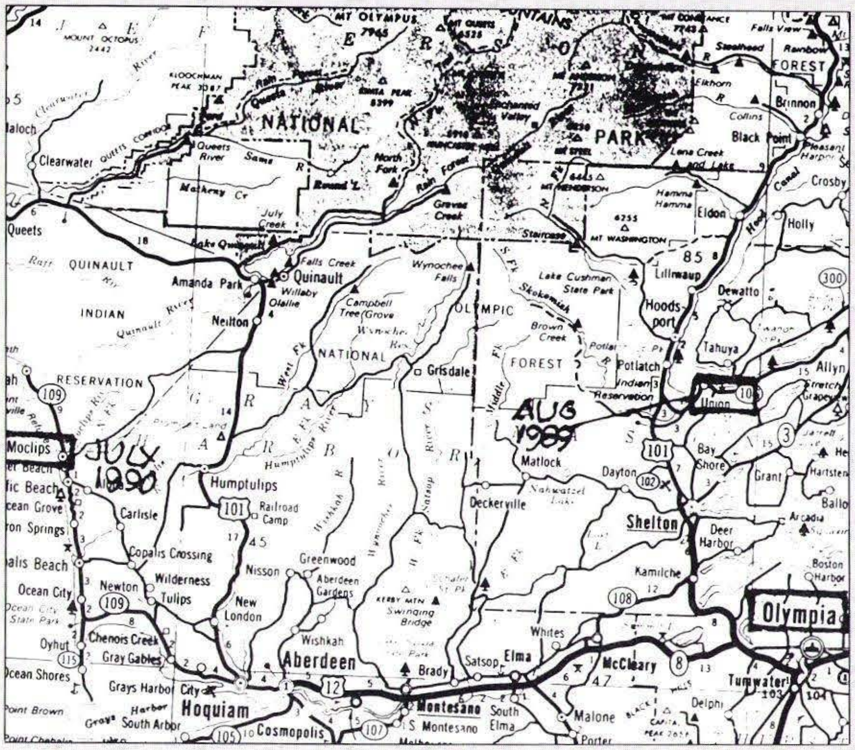
October 1990

18 Washington Women Lawyers Annual Dinner, Seattle. *For information*: Jean Kuharevicz, (206) 564-8400.

(*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.)

by **Lindsay Thompson** ***Editor, Bar News*** **Moclips, Washington, July 20-21, 1990**

First things first: Here (below, left) is where to find Moclips. And this (below, right), is the 56-pound salmon



President Vander Stoep didn't catch at the Grays Harbor County Bar Association Fishing Derby just before the Moclips meeting. He caught this one in Alaska (see, "The Board's Work," June 1990 at 24). Some of the Board fared less well at the Derby; use of the words "waves," "green," "throw" and "up" were not encouraged during the meeting.

Present: President Vander Stoep, President-elect Halverson, and the Board of Governors. Also present: Judge Gerry L. Alexander (Court of Appeals); C.C. Bridgewater (Prosecuting Attorneys' Assn.); Judge Harold Clarke (Superior Court Judges' Assn.); Harold Clarke (WSBA/YLD); Judith Eiler (SKCBA Trustees); Mary Fairhurst (Washington Women Lawyers); John Fattorini (WSBA Legislative Liaison, Saturday); Mike Larson (SKCBA/YLD); John J. Michalik (WSBA Executive Director); Judge Dan Phillips (District Court/Magistrates' Assn); Lindsay Thompson (*Bar News* Editor/Clark County Trustees); Morton Tytler (Government Lawyers); and Robert Welden (WSBA General Counsel, Friday).

The Governors kicked off the day in executive session. They write about it in varying degrees of detail in their newsletters. Check there.

The meeting got off to a boisterous start as Governor Lem Howell announced his independence as a member of the Board. Last month the Board considered an amendment to CR 26(b)(3) announced by the Supreme Court and attributed by them to the Board. "Not us," the Board replied; we think the rule is kind of goofy. Howell wrote to some of the court's members about the matter. He said he got a rejoinder from the president saying Howell shouldn't be giving the impression he was speaking for the Board, and if he was speaking for himself he shouldn't be using WSBA letterhead. There are bylaws about these things.

"I am an elected representative of the lawyers of the Seventh District," Howell told the Board. "I ran because I saw the Board was unresponsive to our members. I ran to speak up, not to be silent." He said he resented the president, or anyone else, trying to tell him what he could do, say or think as a Governor, and would have none of it.

"Lawyers have always disagreed about things," the president replied, and called on the executive director to give his report.

The Association looks certain to become the headquarters for the national MENTOR program, too, Michalik reported. MENTOR, which seeks to teach students about the legal system in collaboration with lawyers, had been run by its founder, a New York lawyer who is moving on to other things. Three-year grants from Mead Data Central, the Flom Foundation and one other corporation will cover all costs of the program.

Elections and Admissions: Executive director John Michalik told the Board Vancouver lawyer Steven Tubbs had been elected to the Board in a runoff election for Paul Stritmatter's Third District seat. He then said 874 people had signed up to take the summer Bar exam, banished to Spokane by the Goodwill Games.

Budget: The rest of Friday morning and a chunk of the afternoon was taken up by a review of the Association's 1990-1991 budget. The six-and-a-half-million dollar budget is a pretty steady-state affair, no great surprises, no new initiatives to speak of. Another $170,000 is to be put in reserves, joining an equivalent sum set aside this year.

Three new positions will be created: one in Public Affairs to help with publications; one in Bar Exam and Admissions to help cope with the explosive growth in the admission process; and another secretary in the Disciplinary Counsel's office to

help process the growing workload. A big postage increase will push up that item by $10,000. Most other operations show small increases. The *Bar News* is expected to post a $22,000 loss as a result of increased printing and mailing costs and a tight advertising market in which five major legal publications are competing for advertisers.

The only jostling over the budget was over a $5,300 appropriation for revision (read: shortening) of the WSBA Centennial Video presentation. Governor Jim Turner moved to delete the item. Discussion turned around whether it was really wonderful or a real sleeper, and if we spent $25,000 on it the first time, why drop another five into it now? The vote on Turner's motion was a tie: Curran, DeForest, Schultz, Turner and Tolman voted to delete; Bergsten, Gould, Howell, Slater and Stritmatter voted to leave it in. The president voted to keep the money in. At the end of the lengthy review of the 14 income and 42 expense items, the Board unanimously approved the budget.

The WSBA Task Force on Opportunities for Minorities in the Legal Profession stepped up next to provide its report. Chairman Mike Holland said the Task Force's research found that minorities in the law labor under obstacles which cannot be explained by random events. The Task Force recommended creation of a standing committee of the Association to study these problems further and recommend potential solutions, as well as carry on work regarding problems of older and disabled lawyers which the Task Force had either just been able to look at or hadn't gotten to because of the complexity of the task.

The Governors agreed and voted unanimously to receive the Task Force report, create a standing committee of 12 to 14 members and vote it an appropriation of four or five thousand dollars once it presents a budget.

The Domestic Relations Task Force, chaired by Monte Gray, gave an interim report. They're looking into how the poor can be served better in the family law field, which previous WSBA committees and task forces have found is not meeting needs. The committee is making good headway, Gray said, but will not be able to get a final report out until the first of the new year. Governor Paul Stritmatter pointedly criticized the Task Force for what he considered a slow pace. He thought they should have been well along in their work by now, and should have recommended a limited-practice rule for family law. He also criticized the WSBA Family Law Section, which was asked for some ideas on how to better serve the poor over a year ago.

Gray denied Task Force foot-dragging, and said, frankly, that the Task Force thinks the limited-practice rule idea a dog and they're looking into other options first.

Ethics: One of the low points of the day was reached when the Board considered whether to adopt an ethics opinion which would preclude attorneys revealing the names of clients paying them over $10,000 in cash. This flies in the face of IRS form 8300, and assistant U.S. attorney Bill Redkey appeared to urge the Board not to adopt the opinion.

RPC Committee member Ellen Dial thought the U.S. Attorney's concerns a bit like comparing apples and oranges, since they dealt with things like whether it's ethical to take a client who plans to pay you in cash; whether you have to withdraw when you find out they intend to, and whether federal tax law supersedes state ethics rules. There was some discussion of ethics v. compliance with the law, during which Redkey remarked, "If the law exists, whether it's ethical or not, you must obey it." The gist of the U.S. Attorney's office position was, if all else fails, we'll sic the Supremacy Clause on you.

Governor John Schultz thought the discussion much ado about nothing. "It's simple," he said. "You can't take the money without reporting it. All this fuss is pointless." Governor Curran moved to kick the opinion back to the RPC Committee for study of the broader issues; the motion passed 9-1, Schultz dissenting.

Annual Meeting: Two items came up Saturday relating to the Association's annual convention meeting. Pitches were made for a couple of big Maui hotels for 1995. On a split vote, the Board told John Michalik he could talk to the Hyatt Regency there, but to come back with a much better deal than their opening bid before they would approve going there.

A second issue was a resolution proposed by Seattle lawyer Howard Todd and others to move the 1991 Bar convention from San Diego to Seattle, Vancouver, B.C., Portland or Spokane on grounds that San Diego is too far away and will cost too much money. The question for the Board was whether the resolution could be presented to the annual meeting as being within the purposes of the Association. WSBA general counsel had produced an opinion that the resolution was improper since it called, in effect, on the Association to breach contracts entered into some four years ago. Breaching contracts is not a purpose of the Association, the opinion concluded.

Wrong, said Lem Howell; the only question is whether it's proper for the members to vote on where to have the convention, and it clearly is proper. Executive director John Michalik told the Board canceling out at this late date could leave the Association liable "into six figures" if the San Diego hotel and convention center couldn't fill WSBA's time slot with another group.

Governor Jeff Tolman wondered if letting this resolution go ahead would mean any contract of the Association could be breached by a member vote. Well, technically, yes, others replied. But Howell said it was proper that they have the chance to do so. He thought the Board was afraid of the members and didn't want such ideas to go before them. Paul Stritmatter thought this the only way members could question a convention siting decision. Other members wondered if time limits on challenging Association actions set out elsewhere in the bylaws precluded voiding a contract four years old. In the end, everyone decided no matter what happens there'll likely be a referendum and voted to approve the resolution for consideration by the Resolutions Committee 9-1, Tolman dissenting.

Then some more questions arose on how to handle convention planning and hotel liaison pending the annual meeting vote in September, particularly whether approving the resolution for consideration by the membership was an event tantamount to a cancellation requiring notification of the hotel. Some thought it was; others didn't in a somewhat unfocused discussion which culminated in a decision that it didn't, 7-2-1, Bergsten and Gould opposed and Tolman abstaining.

Turner then moved to reconsider; it passed 9-1, Howell dissenting. A discussion ensued whether the Board should look at the contracts in detail and decide, delegate it to the president and executive director to look at and come back with recommendations, or leave the matter to the executive director's discretion. The motion to let the president and executive director sort it out, coming to the Board via conference call if they thought it necessary, failed 3-7, Schultz, Howell and Turner voting aye. A motion by Governor Ron Gould to leave it to the executive director to sort out passed, 8-2, Schultz and Stritmatter opposed.

After lunch Saturday, the matter came up again, this time on a motion by Gould to reconsider the last reconsideration, this

time to get an opinion by outside counsel with respect to whether a resolution of this sort ran afoul of bylaw limitations on challenging Board action, and the validity of referenda to void contracts. But if we do that we won't be able to approve the resolution in time for publication in the *Bar News*, someone remarked, and then it will look like we're stifling debate.

Lem Howell thought it exceeding odd that ten lawyers couldn't figure out their own association's bylaws and needed outside counsel. Tolman thought there was nothing to lose getting a second opinion and approving the resolution next month if it passed muster. Stritmatter said it's a convention siting resolution and nothing else. If breach of contract is part of its fallout, we'll just have to deal with that. On a vote, the motion was defeated, 3-7, Curran, Gould and Tolman voting aye. So the resolution goes ahead, along with one submitted by Douglas Shaw Palmer and others to allow CLE credit for "home study": that is, reading or listening to tapes outside the present CLE session format.

Court Congestion and Delay: The Board also considered a report from the Court Congestion and Delay Committee, chaired by Wayne Blair. The Committee asked the Board to endorse several legislative proposals to address delay problems: endorsement of a set of standards for case processing, and amendment of the constitution to allow for more commissioners (now limited to three per county) and to allow pro tem judges to be used without the consent of parties litigant.

The case management standards sailed through unanimously. Lem Howell wondered if the other two offered sufficient benefit to warrant the effort required to get the state constitution amended, and Blair said there's big trouble coming in court congestion and we need to be ready for it with measures like these.

The Board then unanimously approved the proposal for more commissioners, but balked at the pro tem judge idea. How would they be chosen? What about retired judges, some of whom maybe should stay retired? Is this a departure from the constitutional guarantee of an elected judiciary and the creation of some sort of body of civil servant judges like the Continental systems have? These and more questions were tossed at Blair, who fought the good fight but must have seen the 3-7 no vote (Curran, Slater and Turner voting aye) on pro tem judges coming. Ron Gould then put the boot in with a motion to declare that the Board did not approve of forcing people to take pro tem judges.

Howell thought the motion redundant, since the constitution already guarantees that, and so, apparently did the Board, which defeated the motion 4-6, Gould, DeForest, Slater and Tolman voting aye.

In brief: All in all, there was enough material on the agenda to choke a horse, and in addition to all of the above, the Board dealt with another report from the Computerization of Law Committee and approved a plan for its planning retreat in August; approved a Trial Advocacy Project proposed by the Young Lawyers Division; appointed chairs to all the WSBA committees, approved the report of the Awards Committee for honors to be conferred on members at the annual meeting; authorized the creation of an Alternative Dispute Resolution Section; approved a revision of GR 7 to try and cut down on the proliferation of local county rules, and approved a slug of revisions to the Criminal Rules for Superior and District Court.

Next meeting: August 17-19, 1990 in Vancouver, Washington; then September 11-15 in Spokane at the convention.

Disciplinary Notices

Judicial Disciplinary Notices

Judicial Admonishment: By stipulation of the parties, the Commission on Judicial Conduct issued an order of admonishment to Whatcom County Superior Court Judge **Michael F. Moynihan** on June 1, 1990. the stipulation notes that Moynihan had an ex parte communication regarding his approval of a settlement with the guardian ad litem for a minor child in a case before him. The Commission found that Moynihan's conduct was in violation of Canons 2(A) and 3(A)(4) of the Code of Judicial Conduct, even though Moynihan thought he was acting in the best interests of the minor. The Commission cautioned Moynihan not to continue the conduct giving rise to the admonishment.

Public Notices

Public Comment Requested: when it reconvenes this fall, the WSBA Court Rules and Procedures Committee is scheduled to review the Rules of Evidence (ER) and the Justice Court Traffic Infraction Rules (JTIR). Members of the Bar are encouraged to submit comments and suggestions concerning these rules. Contact Steven Rosen, WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

New Association for Sex Offense Professionals: Washington Sex Offense Specialists Association (WSOSA) has recently been established as a professional association for therapists who treat either offenders or victims of sexual offenses. The purposes of WSOSA include: (1) creating a forum for exchange of information among therapists who employ a variety of treatment modalities; and (2) supporting or sponsoring specialized continuing education.

Founding members of WSOSA include licensed psychologists, psychiatrists and certified counselors. Other concerned professionals are eligible for membership, including attorneys, social workers, Child Protective Services (CPS) workers, Criminal Corrections Officers (CCO), prosecutors and private investigators. Dr. Eldon Jacobson, Professor Emeritus at Central Washington University and former president of Washington State Psychological Association, has been elected president of the new association. According to Jacobson, founding members were drawn together by mutual interest in creating a forum for professional interchange between therapists who treat victims and therapists who treat offenders.

WSOSA urges use of treatment modalities and technology that are supported by scientific findings, so long as these modalities can be shown to be both efficacious and ethical. Although only limited research findings on effectiveness exist, WSOSA intends to provide a forum for discussion and encouragement of therapists to make their selection of treatment modality based on evidence available. Jacobson anticipates that WSOSA will play a constructive role in development of local treatment norms.

WSOSA has an "open membership" policy, and psychologists, medical doctors, psychiatrists, counselors, social workers, CPS and corrections personnel, and any other interested parties are encouraged to join. Annual dues are $30 for clinical members and $20 for affiliates. To obtain a membership application and bylaws, write: WSOSA, 13510-A Aurora Avenue North, Suite 135, Seattle, WA 98133.

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 July 1990 is 8.01%. The maximum allowable interest permissible for **August 1990** is therefore **12.01%**. Compilations of the average coupon equivalent yields from auctions of 26-week treasury bills appear in the *Bar News* on the following pages: 1982-1987 in October 1987, page 39; 1984-1989 in June 1989, page 37; and 1985-1990 in June 1990, page 51.

FORMAL OPINION 186

The Proper Handling of Advance Fee Deposits and Retainers

Issue: What is the proper way for a lawyer to handle advance fee deposits and retainers paid by clients?

Discussion: The distinction between "advance fee deposits" and "retainers"

has been explained by the California Supreme Court in *Baranowski v. State Bar*, 154 Cal. Rptr. 752, 593 P.2d 613 (1979). "Advance fee deposits" are funds given to a lawyer for providing future services. Those funds are to be earned in the future as the lawyer performs services for the client. Those funds belong to the client until they have been earned by the lawyer.

"Retainers" are funds paid by a client to secure a lawyer's availability over a given period of time. The funds are considered earned at the time of payment. Provided that the client agrees to such an arrangement, the funds are not refundable and the lawyer is entitled to the funds regardless of whether any services are actually performed for the client. 593 P.2d at 618, fn. 4.

Rule 1.14(a) of the Rules of Professional Conduct provides in pertinent part:

> All funds of clients paid to a lawyer or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable interest-bearing trust accounts maintained as set forth in section (c), and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
> * * *
> (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

The general rule is that *all* funds of clients must be put into a trust account. A lawyer's funds may not be put into the trust account, except that a lawyer's funds must be deposited into the trust account when those funds belong in part to the client and in part either presently or potentially to the lawyer. An example of funds belonging in part to a client and in part to the lawyer would be a recovery in a personal injury lawsuit when the lawyer is to be paid a contingent fee. Even though a percentage of the recovery belongs to the lawyer, the entire recovery must be deposited in the trust account and the lawyer's fee then withdrawn.

Therefore, advance fee deposits, which are funds which presently belong to a client but potentially belong to the lawyer, shall be deposited into the trust account. As the services are performed and fees are earned, unless the right of the lawyer to receive the fees is disputed by the client, the lawyer shall withdraw the earned fees from the trust account and provide a proper accounting to the client. On the other hand, if the lawyer and client agree that funds paid to the lawyer are a retainer earned by the lawyer when paid, which the lawyer will

not refund and which is a charge for merely hiring the lawyer to handle the client's case, the retainer shall not be deposited into the trust account since it consists entirely of the lawyer's funds.

The distinction between retainers and advance fee deposits is clear and is the appropriate method by which client funds are to be characterized in determining whether they shall or shall not be deposited into lawyer trust accounts. As long as the lawyer's client knows and agrees with what the lawyer intends to do with a fee payment, the appropriate method for handling the funds can be determined. The recommended practice would be to have a written fee agreement in all cases[1] which could be easily referred to in case a question were later raised regarding the agreement of the parties as to the disposition of the fee paid.

Any fee paid to a lawyer that the client has agreed is not refundable and is earned upon receipt for handling the client's case shall not be deposited in the lawyer's trust account. Such a fee is a true retainer. But if the client pays a fee to the lawyer with the understanding that the client may receive any unearned fee back, and that the lawyer will draw against the funds as earned, such a fee must be deposited into the lawyer's trust account. The requirement that unearned fees be placed in the lawyer's trust account insures the integrity of clients' funds separate from a lawyer's personal funds.

The benefits to clients of being assured of the separate integrity of their funds have been repeatedly emphasized by the Washington State Supreme Court. See, *e.g., In re Deschane,* 84 Wn.2d 514, 527 P.2d 683 (1974).

Benefits to the profession are also present when lawyers are required to put advance fee deposits in a trust account. First, a lawyer will be able to comply with the requirement of RPC 1.15 (d) which provides that when withdrawing from representation of a client a lawyer has a duty of "refunding any advance payment of fee that has not been earned."

Second, a clear indication that advance fee deposits will be treated as client funds until they are earned permits lawyers to take advantage of Tax Court rulings that advance fee deposits are not income when they are placed in the lawyer's trust account, but become income when the lawyer earns an undisputed amount.

In conclusion, "retainers" as defined above, *must not* be deposited in a lawyer's trust account; "advance fee deposits," as defined above, *must* be deposited in a trust account until the fee is earned. Obviously, there must be an agreement between the lawyer and the client as to the purpose for which funds are paid. The better practice would be to have a written fee agreement.

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[1]RPC 1.5(c) requires that contingent fee agreements be in writing.

NOTES FROM THE ACADEMY

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

Evidence. *(Case 1.)* In shoplifting case, in which state was required to prove fair market value of stolen items, security guard was properly allowed to testify as to value after he had run items through store's checkstand scanner, to determine retail price of each. Court rejected defense arguments that security guard lacked personal knowledge of fair market value and that testimony was hearsay. Court said state laid proper foundation by guard's testimony that he was familiar with store's pricing procedures. ***State v. Farrer,*** 57 Wn.App. 207, 787 P.2d 935 (Div. 3, 2/1/90).

(Case 2.) In prosecution for burglary, trial court erred in allowing Officer A to testify that Dispatcher B had said that Witness C had reported a suspect with a blue jacket. Appellate court rejected state's argument that statement was unobjectionable as hearsay because it explained A's state of mind. Court said A's state of mind was irrelevant to issues at trial and that only purpose for offering testimony was to connect defendant with burglary. Testimony also violated defendant's sixth-amendment right to confrontation. ***State v. Aaron,*** 57 Wn.App.277, 787 P.2d 949 (Div. 1, 3/19/90.)

—K. B. Tegland

Planning and zoning. *(Case 1.)* In this major decision, State Supreme Court tries once again to clarify interrelated questions whether a land-use regulation constitutes a "taking" or denies substantive due process. King County's wetlands ordinance applied to part of plaintiff's land, upon which plaintiff wanted to build church and parking lot. There was dispute as to how much of plaintiff's land would have been too wet to be buildable even if unregulated, how much land ordinance prevented building on, and whether ordinance would prevent plaintiff from building desired improvements. Plaintiff had not applied for building permit. To outline a long, and in places confusing, decision, court covers following subjects: (A) Threshold inquiry is whether a regulation is a "taking" or denies due process. (b) It is not a "taking" unless it goes beyond protecting public from harm and "enhances a publicly owned right in property" and "destroys one or more of the fundamental attributes of ownership." (*Note*: It is unclear whether court means "and" or "or." The difference could be great. - W.B.S.) (c) If regulation is not a "taking," then it may deny substantive due process if it serves no legitimate public purpose or if, balancing public's need for protection against impact on regulated owner, regulation "unduly oppresses" owner. (d) If a regulation affects only part of a single parcel of land, we must consider the overall effect on the entire parcel, not just the effect on the affected portion; *i.e.*, no "piecemealing." ***Allingham v. City of Seattle,*** 109 Wn.2d 947, 749 P.2d 160 (1988), overruled on the "piecemealing" issue. (e) If a "taking" has occurred, remedy is temporary compensation. (f) If there is no "taking" but is denial of due process, remedy is invalidation. (g) In present case, no "facial taking"; therefore, question is whether ordinance is "taking" as applied to owner's particular situation. On present record court cannot tell if it is "taking" as applied. Action is premature because owner has not applied for permit, *i.e.*, has not exhausted administrative remedies, and has not shown exhaustion would be futile. Therefore, on present record, trial court properly dismissed complaint. (*Comment.* In discussing both "taking" and due process theories, decision contains some very confusing statements. Test for "taking" and denial of due process appear to be stated inconsistently as they are each stated and restated during course of opinion. - W.B.S.) ***Presbytery of Seattle v. King County***, 114 Wn.2d 320, 787 P.2d 907 (3/15/90).

Case (2.) Under City of Seattle's Landmarks Preservation Ordinance, church building designated landmark. Effect was to prevent changes to facade of building without permission of Landmarks Preservation Board. Ordinance provided that permission should be granted if they were necessitated by "changes in liturgy" of church. *Held*, as applied to church ordinance is void because it violates church's first-amendment right to free exercise of religion. "Substantial infringement" of such right can be justified only by "a compelling governmental interest." Landmark ordinance did not protect public health or safety, but only less-compelling interest in "aesthetic and cultural features of a community." Balancing these public's interests against church's right of free exercise, public's interests were not compelling. As for exception for changes in liturgy, they did not give church sufficient protection because they were unworkable. (*Comment.* Some interesting contrasts between this case and *Presbytery of Seattle* case reported above. What if the free-exercise argument had been discussed in that decision? If one looks at only the results in recent Washington cases involving constitutional challenges to land-use regulations, they certainly present a checkered pattern. Win a few, lose a few!) - W.B.S.) ***First Covenant Church of Seattle v. City of Seattle,*** 114 Wn.2d 392, 787 P.2d 1352 (3/22/90).

—W.B. Stoebuck

Real property. Real estate brokers are liable for negligent misrepresentations to buyers only if they pass on false information given them by sellers and have failed to take reasonable steps to verify this information. In present case, trial court did not err in finding that broker could not reasonably discover that insulation in house contained harmful formaldehyde. ***Brock v. Tarrant***, 57 Wn.App. 562, 789 P.2d 112 (Div. 3, 4/17/90).

—W.B. Stoebuck

Tel Law: Improving on a Good Idea

by: **George W. Scott**
WSBA Director of Public Affairs

The idea of brief tapes with commonly needed information free to those calling in was begun by the San Bernardino County California Bar in 1975. The Oregon State Bar's Tel Law system became operational in July 1978 for the metropolitan and tri-county population of Multnomah, Washington and Clackamas counties with an estimated population of 1.1 million. It was equally underwritten by the three county bars who were matched by the Oregon State Bar. By 1987, the ABA's "activities inventory" showed 9 state and 32 local bars offered this public service.

In the mid-'80s, the Spokane, Tacoma-Pierce and Seattle-King county bars each had the machines necessary to play tapes. The difficulty was that each caller's request had to be inserted in the machine. SKCBA decided in 1988 that the $18,250-a-year expense was too much. This left a malfunctioning machine in Spokane and a "statewide line" going into the Tacoma-Pierce County Bar's operation, which was receiving only 350 calls a year and costing the WSBA a secretary's salary.

The Board of Governors reviewed staff research on Tel Law at its April 1989 meeting and found there were new options that would reduce the cost and raise the volume of clients. The WSBA could either purchase an "automated attendant" (a modified PC with hard disk) into which scripts could be placed, or we could become part of *The Seattle Times'* InfoLine and buy two hours of time at a cost of $500 a month, plus installation and minor line charges. InfoLine is advertised in the *Times* statewide at no extra cost on a space-available basis. The newspaper's Sunday edition is read by 450,000 people. The Board agreed to a contract, and the WSBA Public Relations Committee appointed four members—Vicki Hogan, Cory Nelson, Karen Sayre, and Phil Hubbard—as a Standing Committee on Tel Law. They wrote and enlisted two dozen colleagues to write 30 new scripts of three and a half minutes. Writing a script that is accurate and inclusive is one thing; making it listenable and compressing it into three and a half minutes is another.

The subjects were chosen based on responses to both previous Tel Law call-ins and the popularity of brochures in the WSBA's Citizen Rights Series pamphlets, which are being read by over 100,000 people in 1990:

- Divorce in Washington State
- Community Property
- Parenting Plans
- Adoption
- Small Claims
- Reasons for Having a Will
- Prepaid Legal Services
- Malpractice
- Child Support
- Marriage
- Domestic Violence
- Bankruptcy
- Probate
- What is a Trust?
- Lawyer-Client Relations
- Public Assistance
- Employment Rights
- What is a Subpoena?
- AIDS
- Real Estate
- Power of Attorney
- Lockouts, Shutouts and other Illegal Actions
- Your Rights and Responsibilities When Applying for Credit or Loans
- What You Should Know About Being a Witness
- What to Do if You Are Sued
- How to Choose a Lawyer (in Spanish)
- Signing Documents in Washington
- Federal Tax Benefits for Persons 65 and Older
- Addresses and Phone Numbers of the Attorney General's Office
- The Rights of Juveniles Who Are Arrested

The scripts were completed in early March 1990 and sent to Brite Systems of Omaha for voicing, and "Legal Information Lines" began April 1. The tapes drew over 800 callers in each of the first two months. Since the characteristic pattern is that the number of calls grows incrementally during the first six months before plateauing, a conservative estimate is that there will be 10,000 calls this year, an increase of 25 times over the calls to the statewide line last year. The cost will be less: about $9,600 in 1990-1991.

Callers can select up to 10 different topics on their touch-tone phones. The trailer at the end of each tape reminds them, "...brought to you by the lawyers of Washington."

The advantages of InfoLine include:

- o Free space-available advertising, at no extra cost;
- o Operation on a statewide basis with optimum efficiency, rather than high cost and low volume;
- o The system is on 24 hours a day, instead of seven, and monthly reports are available as to both volume and distribution of inquiries.

At the same time that Legal Information Lines went on the air through InfoLine, the Tacoma-Pierce County Bar made a major investment in purchasing an automated attendant for $20,000. The two systems are complementary. Both hinge on considerable effort by the volunteer lawyers on and assisting the Standing Committee on Tel Law of the Public Relations Committee, and their counterparts in the Pierce County Bar.

Tel Law is an example of the Bar's policy of pursuing and expanding programs of proven attractiveness, while maintaining a balanced portfolio in public affairs designed to use every viable avenue that will increase the Bar's positive exposure. Tel Law supplements projects like the Citizen Rights pamphlet series, which will rise to 20 publications in 1991; the Speakers Bureau's 400 volunteers; the "Questions of Law" columns now running in 44 newspapers statewide to an audience of over a million a week; the Mock Trials, held in Olympia every spring to orient young people to the legal system; and a new *Media Law and Justice Handbook* to encourage journalists to turn to the Bar first for facts and interpretation.

Tel Law's "Legal Information Lines" will leave over 10,000 positive impressions on Washingtonians this year, and it will serve to raise the Bar's profile as the citizen's partner in learning about the law.

1990 WSBA Convention CLE Seminar Schedule

Thursday, September 13

9:00 a.m. - Noon — General Practice Section — 1 (a.m.)

Highlights of What the General Practitioner Needs to Know – Part I

Section Chair:
Stephen R. Crossland, Cashmere
Seminar Chair:
Gregory Tripp, Spokane
Topics/Speakers:
"Criminal Law Issues"
John Henry Browne, Seattle
"Family Law Issues"
Stephen K. Eugster, Spokane
"Creditor-Debtor Issues"
Eric K. Nayes, Spokane
"Probate and Estate Planning Issues"
William E. Davis, Pasco

3.00 CLE Credits

2:00 p.m. - 5:00 p.m. — General Practice Section; Law Office Economics and Management Section; and the Young Lawyers Division — 1 (p.m.)

How to Reduce Stress and Raise Professional Enjoyment; Office Practice Tips; Highlights of What the General Practitioner Needs to Know – Part II

General Practice Section Chair:
Stephen R. Crossland, Cashmere
Law Office Economics and Management Section Chair:
Dale E. Sherrow, Seattle
Washington Young Lawyers Division President:
Harold D. Clarke, III, Spokane
Seminar Chairs:
General Practice Section:
Gregory Tripp, Spokane
Law Office Economics and Management Section:
Larry B. McNerthney, Tacoma
Washington Young Lawyers Division:
Gregory S. Morrison, Spokane
Topics/Speakers:
"How to Reduce Stress and Raise Professional Enjoyment by Getting and Keeping the Clients and Cases You Want"
Jay G. Foonberg, Los Angeles
"Office Practice Tips"
Michael J. Beyer, Spokane
Larry B. McNerthney, Tacoma
James M. Stewart, Montesano
"Cutting Edge Litigation Issues"
Hon. Philip J. Thompson, Spokane

3.00 CLE Credits

9:00 a.m. - Noon — Consumer Protection, Antitrust and Unfair Business Practices Section — 2

The Consumer Protection Act After 20 Years of Private Litigation – Underused or Overbilled? A Practicum for the 90s

Section Chair:
Richard J. Wallis, Seattle
Seminar Chairs:
Michael J. Casey, Spokane and
Philip E. Cutler, Seattle
Topics/Speakers:
"An Informative, Educational and Entertaining Free-Wheeling Exchange of Ideas and Practical Tips by Lawyers in Private Practice, Enforcement Officials, Legislators, Academics, and Judges Based on Hypotheticals Which Explore a Broad Range of Issues, Including:
Everyday Consumer Client Problems (e.g. "Lemon Law," Bait and Switch);
Sophisticated and "Everyday" Business Problems (e.g. Unfair Competition, Enforcement of Covenants Not to Compete);
Creative Use of the Consumer Protection Act in Non-Traditional Settings (e.g. Paired with a Product Liability Claim);
Regulated Industries; Insurance Coverage Issues (Business, Professional and Individual);
Attorney Fees as an Incentive—Boon or Bane?;
Case Framing; Discovery Strategies; The Appellate Process"
Hon. Robert F. Brachtenbach, Olympia (Commentator)
Betsy Ross Hollingsworth, Tacoma (Moderator)
Hon. Charles S. Burdell, Jr., Seattle
Owen F. Clarke, Jr., Spokane
Professor William Clarke, Spokane
Rep. Dennis A. Dellwo, Spokane
Mary C. Eklund, Seattle
Diane G. Fitz-Gerald, Seattle
John E. Heath, Jr., Spokane
Richard R. Johnson, Yakima
Hon. Jerry M. Moberg, Ephrata
D. Roger Reed, Spokane
Diehl R. Rettig, Kennewick
Lynn L. Sarko, Seattle
Sen. Philip A. Talmadge, Seattle

3.00 CLE Credits

9:00 a.m. - Noon — Environmental and Land Use Law Section — 3

Nuts and Bolts of Growth Management Regulations

Section Chair:
G. Richard Hill, Seattle
Seminar Chairs:
M. Laurie F. Connelly, Spokane and
Craig S. Trueblood, Spokane
Topics/Speakers:
"Wetlands, Shorelands and SEPA: How do they Affect Land Development?"
Allen T. Miller, Jr., Olympia

"Question and Answer Period"
"Urban Growth Boundaries and the Planning Process Growth Management Initiative 547"
Jeffrey M. Eustis, Seattle
"Question and Answer Period"
"Growth Impact Fees: Are They Worth It?"
The Panel
"Impact of Restrictions on Utilities, Services, and Ground Water On Development"
Frederick Joseph Dullanty, Jr., Spokane
"Question and Answer Period"
"Recent Developments with Regulatory Takings: *Presbytery of Seattle v. King County*"
Ann Schindler, Seattle
"Question and Answer Period"
"Regulatory Takings: What Are They? How to Spot Them And How to Handle Them"
The Panel — 3.00 CLE Credits

2:00 p.m. - 5:00 p.m. Creditor-Debtor Section — 4

Bankruptcy: Issues for the 90s

Section Chair:
Irvin W. Sandman, Seattle
Seminar Chair:
Frank L. Kurtz, Yakima
Topics/Speakers:
"Guidance from the Bench"
Hon. John A. Rossmeissl, Yakima
"The Effect of Bankruptcy Upon State Court Litigation"
Patricia C. Williams, Spokane
"Exemptions: Current Issues"
Frederick P. Corbit, Seattle
"Do's and Don'ts for Creditors and Debtors"
Shaun M. Cross, Spokane
Frank L. Kurtz, Yakima — 3.00 CLE Credits

2:00 p.m. - 5:00 p.m. Administrative Law Section — 5

Administrative Law for the 90s

Section Chair:
Mary M. Tennyson, Olympia
Seminar Chair:
Richard A. Finnigan, Tacoma
Topics/Speakers:
"Case Law Update"
Dean James M. Vache, Spokane
"Adjudication Under the New Administrative Procedure Act"
C. Robert Wallis, Olympia
"Recent Changes in Medicaid Law"
Lawrence A. Weiser, Spokane
"Ethical Considerations for the Administrative Lawyer"
Peter R. Jarvis, Portland — 3.00 CLE Credits

2:00 p.m. - 5:00 p.m. Public Procurement and Private Construction Law Section — 6

Recent Developments in Construction Law and Public Procurement

Section Chair:
Herman S. Siquelend, Bellevue
Seminar Chair:
Herman S. Siquelend, Bellevue
Topics/Speakers:
"Mandatory Drug Testing in Construction"
Alan R. Merkle, Seattle
"Shifting the Builder's Risk: A New Deal?"
"Owner's Perspective"
Robert L. Gunter, Seattle
"The Contractor's Perspective"
David C. Groff, Seattle
"The Status of Women and Minority Business Enterprises: Keeping up with the Kroesins"
Geoffrey P. Chism, Seattle
"Construction Law Issues for the 1990s"
Larry H. Vance, Jr., Spokane
Carl E. Hueber, Spokane
John Black, Spokane
Lynden O. Rasmussen, Spokane
Joel C. McCormick III, Spokane — 3.00 CLE Credits

Friday, September 14

2:00 p.m. - 5:00 p.m. Intellectual and Industrial Property Section — 7

State Law Protection of Intellectual Property

Section Chair:
David P. Roberts, Spokane
Seminar Chair:
David P. Roberts, Spokane
Topics/Speakers:
"Federal Preemption of State Grants of Intellectual Property Rights"
Mark S. Matkin, Spokane
"Washington State Trade Secrets Act and Trademark Act"
Margaret McKeown, Seattle
"Unfair Competition and Misappropriation"
James P. Donohue, Seattle
"Privacy, Publicity, and the Price of Morality"
R. Corbin Houchins, Seattle — 3.00 CLE Credits

2:00 p.m. - 5:00 p.m. Litigation Section — 8

The Practical Side of Voir Dire

Section Chair:
Jonathan B. Noll, Seattle

Seminar Chair:
David L. Broom, Spokane
Topics/Speakers:
"Voir Dire Around the Country—An Overview On Differences"
Richard "Racehorse" Haynes, Houston, Texas
"Judge's Perspective on Voir Dire—Civil-Oriented"
Hon. John A. Schultheis, Spokane
"Civil Case Voir Dire: Plaintiff's Attorney Perspective"
Paul N. Luvera, Mount Vernon
"Civil Case Voir Dire: Defendant's Attorney Perspective"
Wm. Fremming Nielsen, Spokane
"Voir Dire Demonstration (And Commentary)—Civil"
Paul N. Luvera
Wm. Fremming Nielsen
Jurors
"Judge's Perspective on Voir Dire—Criminal Case"
Hon. John A. Schultheis
"Criminal Case Voir Dire: Defense Attorney's Perspective"
Richard "Racehorse" Haynes
"Criminal Case Voir Dire: Prosecutor's Perspective"
Rebecca J. Roe, Seattle
"Voir Dire Demonstration (And Commentary)—Criminal"
Richard "Racehorse" Haynes
Rebecca J. Roe
Jurors
"Questions for the Faculty" 3.00 CLE Credits

2:00 p.m. - 5:00 p.m. Real Property, Probate & Trust Section 9

Legal Opinions in Real Estate Transactions, A Focus on the New Guardianship Act, and Report on Activities of the Probate Law Task Force

Section Chair:
David W. Thorne, Seattle
Seminar Chair:
Scott B. Osborne, Seattle
Topics/Speakers:
"Opinion Letters"
Catharine E. Killien, Seattle and
Scott B. Osborne, Seattle
"Probate Update—Review of Guardianship Act Amendments"
Gerald B. Treacy, Jr., Bellevue
"Report on Probate Law Task Force"
Douglas C. Lawrence, Seattle 3.00 CLE Credits

2:00 p.m. - 5:00 p.m. International Law Section 10

Suing Foreign Governments and Their Former Leaders – A Dramatization and Commentary

Section Chair:
John T. Sessions, Seattle
Seminar Co-Chairs:
Robert H. Huneke, Spokane and
Richard M. Rawson, Seattle

Topics/Speakers:
"Suing Foreign Governments and Their Former Leaders—A Dramatization and Commentary"
This dramatization and related discussion will address some of the issues raised in international lawsuits involving foreign governments and their agents or former leaders. Some of the issues intended for treatment include:
Jurisdictional Issues Relating to the Manner of Arresting Individuals Overseas;
Issues Relating to Seizure of Evidence Overseas;
"Head of State Immunity" Defense;
Extraterritorial Application of U.S. Laws;
Prisoner of War Status Under Geneva Convention and How it Affects Treatment of Accused;
Standing and Jurisdictional Issues Relating to Civil Actions Under the Alien Tort Claims Act for Human Rights Violations;
Legal Basis for Proving Human Rights Violations and "Act of State" Defense.
Following the dramatizations, Frank A. Rubino—who serves as lead attorney for Manuel Noriega—will discuss and comment upon his experiences in representing Mr. Noriega in the U.S. Federal Court system.
Presiding:
Hon. Justin L. Quackenbush, Spokane
For the United States:
Peter K. Mair, Seattle and
Bruce E.H. Johnson, Seattle
For Individual Plaintiffs:
Nancy Gibbs, Seattle and
Professor Michael C. McClintock, Spokane
For the Defense:
Professor Michael Newcity, Tacoma and
Katrina Pflaumer, Seattle
Witnesses:
Stanley P. Wagner, Jr., Tacoma and
Other "Surprise" Witnesses
Commentary:
Frank A. Rubino, Coconut Grove, Florida
Other Faculty Members:
Professor Daniel Bodansky, Seattle 3.00 CLE Credits

Saturday, September 15

9:00 a.m. - Noon Young Lawyers Division 11

Trial by Jury

Division President:
Harold D. Clarke, III, Spokane
Seminar Chair:
Donald J. Verfurth, Seattle
Topics/Speakers:
"Introduction"
Donald J. Verfurth, Seattle
"Introduction of the Jury"
Hon. Michael E. Donohue, Spokane

"General Impressions"
The Panel
"Opening Statements"
The Panel
"Trial"
The Panel
"Final Argument"
The Panel
"Deliberations"
The Panel
The Panel:
Hon. Michael E. Donohue, Spokane
Patrick A. Sullivan, Spokane
W. George Bassett, Seattle
Jurors 3.00 CLE Credits

9:00 a.m. - Noon Taxation Section 12

Current Tax Law Developments

Section Chair:
Susan G. Duffy, Seattle
Seminar Chair:
Devitt D. Barnett, Seattle
Topics/Speakers:
"Choice of Entities with a Focus on Recent Changes"
Professor Gary C. Randall, Spokane
"Current State Tax Law Topics; B&O Tax Status; Intellectual Property Taxation"
Garry G. Fujita, Seattle
"Significant Topics from the State Department of Revenue Perspective; What You Can Expect in the Way of New Legislation"
Sandi Swarthout, Olympia
"Foreign Taxation—IRC Sections 827 and 3086 (FIRPTA Rules)"
Donald W. Kurth, Seattle
"Advantages of Operating Foreign Sales Through a Foreign Sales Corporation"
John J. O'Donnell, Seattle 3.00 CLE Credits

9:00 a.m. - Noon World Peace Through Law Section 13

Resolution of International Disputes in the 1990s

Section Chair:
Louise H. McAllister, Seattle
Seminar Chair:
Stephen A. Bernheim, Seattle
Topics/Speakers:
"Litigation Against Foreign Heads of State"
Elizabeth Schott, Seattle
"Problems of Compensating Victims of the Iranian Airline Tragedy"
Professor Harold G. Maier, Nashville, Tennessee
"Conservation and Management of the Living Resources of the North Pacific"
David L. Allison, Juneau, Alaska
"Hong Kong-China Relations: Some Practical Aspects as it Has Affected Canadian Immigration Trends"
Jeffrey S. Lowe, Vancouver, B.C. 3.00 CLE Credits

9:00 a.m. - Noon Indian Law Section 14

Practice Before Tribal Agencies and Tribal Courts

Section Chair:
Richard A. Du Bey, Seattle
Seminar Chair:
Richard A. Du Bey, Seattle
Topics/Speakers:
"Interaction Between Tribal and State Courts"—Report of the National Center Tribal and State Court Consensus Project"
Hon. Vernon R. Pearson, Supreme Court of the State of Washington (Ret.), Olympia
"Practice Before Tribal Courts"
Hon. Anita Dupris, Chief Justice, Colville Tribal Courts, Nespelem
"Judicial Review of Tribal Court Decisions"
Jack W. Fiander, Reservation Attorney, Yakima Indian Nation, Toppenish
"Administrative Practice—The Washington Experience"
Hon. William A. Harrison, Administrative Law Judge, Washington Environmental Hearings Office, Lacey
"Fundamentals of Tribal Administrative Practice"
Richard A. Du Bey, Seattle 3.00 CLE Credits

2:00 p.m. - 5:00 p.m. Business Law Section 15

Update on the Law – The New Washington Business Corporation Act

Section Chair:
Charles J. Katz, Jr., Seattle
Seminar Chair:
Steven R. Brinn, Bellingham
Topics/Speakers:
"Conflicts of Interest at Incorporation"
Steven R. Brinn, Bellingham
"Planning Considerations Under Washington's New Business Corporation Act"
Morris G. Kremen, Seattle
Daniel B. DeRuyter, Spokane 3.00 CLE Credits

2:00 p.m. - 5:00 p.m. Health Law Section 16

Solving Corporate and Operating Issues for Hospitals and Health Care Providers

Section Chair:
K. Thomas Connolly, Spokane
Seminar Chair:
R. Bruce Johnston, Seattle
Topics/Speakers:
"Meet the New Department of Health"
William L. Williams, Olympia

"Physician and Supplier Exposure Under Medicare/ Medicaid; Fraud and Abuse Laws"
Leonard C. Homer, Baltimore, Maryland
"Tips and Traps in Dealing With Non-Profit Health Care Organizations"
Terry L. Kukuk, Seattle
"Recent Developments in Health Law"
Mitchell J. Olejko, Seattle 3.00 CLE Credits

2:00 p.m. - 5:00 p.m. Criminal Law Section 17

Jury Selection from A to Z

Section Chair:
Stephen W. Hayne, Seattle
Seminar Co-Chairs:
Professor John A. Strait, Seattle and
Mark E. Vovos, Spokane
Topics/Speakers:
"Judge's Perspective"
Hon. Marsha J. Pechman, Seattle
"Prosecutor's Perspective"
Jeffrey B. Baird, Seattle
"Defense Counsel Perspective"
Mary E. Schultz, Spokane and
Nicholas C. Holt, Seattle
"Demonstration of the 'Phil Donohue' Method of Voir Dire Plus Commentary (Topic Areas of Voir Dire Will Include: Race; Prior Convictions; Sexual Preference; Pretrial Publicity; Child Witnesses; Substance Abuse; Questions of Law; Burden of Proof; Ability to Judge)"
The Panel
"Audience Participation and Panel Discussion" 3.00 CLE Credits

2:00 p.m. - 5:00 p.m. Family Law Section 18

Family Law Update – Impact of Developments

Section Chair:
Helen T. Donigan, Spokane
Seminar Chair:
Ronald K. McAdams, Walla Walla
Topics/Speakers:
"Psychological Testing in Family Law Cases—Uses and Abuses"
Bruce Duthie, Ph.D., Richland
"Administrative Support Matters—Enforcement and Collection"
Sharon Brown, Kennewick
"Property Values in Dissolution—Adjustment of Values for Reasons of Taxation, Sales Costs and Other Adjustment Factors"
Tom Scribner, Walla Walla
"Business Valuations in Dissolutions—New Approaches and Developments"
Patricia J. Chvatal, Richland 3.00 CLE Credits

Depression...Facts and Fiction

Fact: ***Depression is prevalent among lawyers.***

A survey of Washington lawyers taken in 1987 revealed that 19 percent of WSBA lawyers appear to be clinically depressed. According to worldwide epidemiological data, only three to nine percent of individuals in industrial nations suffer from similarly elevated levels of depression.

Fact: ***Depression can affect the lawyer's number one concern, the client.***

Because lawyers so strongly influence public and private decision-making, ones who are distressed should seek assistance as soon as possible. Data from several states show that 50 to 75 percent of the disciplined lawyers commit ethical infractions because of some underlying impairment.

Fact: ***Everyone feels down sometimes.***

Depression is the "common cold" of emotions, affecting as many as one in five people of all ages. When a person experiences disappointments, there is a feeling of loss, followed by a few days of sadness, withdrawal, sleep disturbance and anxiety. Soon the normal mood is reestablished; the person regroups and continues with life; but if the depressed mood persists, it may be more than just "the blues."

Fiction: ***Depression is harmless.***

When the depressed mood continues, isolation from others increases, and the individual loses a sense of pleasure and meaning in life. A loss of appetite, marked interruptions in the regular sleep cycle and a marked decrease in the ordinary level of activity may also occur. Many or all of these signal the onset of a "clinical depression."

People often don't recognize that they are suffering from a clinical disorder. This is dangerous because untreated depression can become chronic and seriously damaging. Victims may lose jobs, friends, spouses. About 60 percent of those who commit suicide are victims of depression.

Fiction: ***Normal ups and downs cannot be distinguished from true depression by the average person.***

You can recognize the signs of serious depression before the behavior results in poor performance and harm to clients, or personal harm or suicide.

The depressed mood is accompanied by at least five of the following symptoms:

- o Sadness, hopelessness
- o Insomnia, early awakening, difficulty getting up
- o Thoughts of suicide and death
- o Restlessness, irritability
- o Low self-esteem or guilt
- o Eating disturbances—usually loss of appetite and weight or weight gain
- o Fatigue, weakness, decreased energy
- o Diminished ability to think or concentrate
- o Loss of interest and pleasure in typical activities such as sexual contact
- o Chronic pains that fail to respond to treatment

Fiction: ***Depression will go away by itself.***

If sadness, loneliness or discouragement last more than a few weeks, you can care for yourself or someone else and speed recovery by reaching out for assistance.

Fact: ***The WSBA Lawyers' Assistance Program can serve your needs.***

Most of LAP's clients seek assistance from LAP before the depression has become so debilitating. Recovery from an early-stage depression usually occurs more rapidly and subsequent relapse after recovery becomes less likely, than for late-stage depression.

For free, professional advice, call us. All calls are treated in strict confidence. Many lawyers who have relied on LAP can vouch for the accuracy of this promise.

LAP works!

Resolutions

To be Presented at the 1990 Annual Meeting

Resolution to Allow CLE Credit for Individual Viewing/ Listening to Video/Audio Tapes

IT IS RESOLVED that:

1. Members of the Washington State Bar should be allowed to obtain CLE credit for individually viewing video tapes and listening to audio tapes which have been approved by the Washington State Board of Continuing Legal Education, and which members report in their annual CLE affidavits. The Board should facilitate the use of such tapes by maintaining a central lending library for the circulation of tapes to members by mail.

2. For the foregoing purpose, Regulation 101, Definitions, of the Regulations of the Washington State Board of Continuing Legal Education should be amended by adding a new subparagraph (k) as follows:

> (k) "Attending" an approved continuing legal education activity shall include and encompass (1) presence in an audience of two or more persons being addressed by participants in an approved Continuing Legal Education activity, and (2) viewing or listening individually to video or audio tapes approved by the Board.;

and Regulation 104, Standards of Approval, should be amended by deleting subparagraph (f) which currently denies approval of video or audio tapes for individual viewing or listening.

3. The Board of Governors shall ask the Washington State Board of Continuing Legal Education to approve the foregoing resolution and to amend its regulations accordingly, and the Board of Governors shall ask the Supreme Court of the State of Washington to adopt such amendments to the CLE regulations.

Report Explaining the Resolution

Although we lawyers in Washington state are required to spend 15 hours a year of our mandatory CLE in Bar-approved activities, a CLE regulation denies us credit for using video and audio tapes individually in our offices or homes or, in the case of audio tapes, in our cars. CLE credit is now allowed for viewing or listening to tapes only "provided a teacher is in attendance at each presentation to comment thereon and answer questions." CLE Reg. 104(f). Usually the "teacher" is only a baby sitter; the audience can't ask questions during a tape show; and afterward they all skedaddle.

It is time for Washington CLE to allow us to get credit, at our option, by individually viewing or listening to approved video and audio tapes, as reported in our annual affidavits, as is being done in Colorado, Florida, Missouri, Montana, Oregon and Texas. This solo tape credit should be allowed for the following reasons:

1. Audio and especially video tapes can be highly effective educational tools. Often they surpass lectures in clarity and dramatic impact. See, for example, Harvard's video tape on the trial of the Westmoreland libel suit against *The New York Times*.

2. Video/audio tapes played privately offer wider and cheaper access to CLE material than lectures or films that require an audience in a rented hall, with speakers arranged long in advance, many of them paid, and with expensive and hard-to-come-by viewing/broadcasting equipment.

3. Video/audio tapes serve lawyers at their own convenience in their offices, homes and cars. They do not require lawyers to set aside a block of time, leave their offices, and go somewhere else to join an audience.

4. Video/audio tapes used individually offer a unique learning advantage: the viewer-listener can replay them, to master a particular segment. This is not feasible in the CLE program where a group views or listens to a tape.

5. The Washington State Bar Association has a library of approved video films, but unfortunately they won't work on the VCR players that are found in homes everywhere. The Bar's current tapes require special equipment for showing. By reproducing those films on VHS tapes for VCR machines, the Bar Association could make them and other tapes available by mail to individual lawyers, as is done in Montana.

The foregoing Resolution and Report are *presented* by the following active members: Douglas Shaw Palmer, Gene B. Brandzel, Benjamin S. Asia, Frederic P. Holbrook, Eleanor H. Edwards, Stephen Carl Anderson, P.J. Sferra, Benjamin P. Shuey, Alvin J. Ziontz, Brian L. Comstock, Lish Whitson, Albert M. Franco, Russell F. Tousley, William W. Wesselhoeft, Susan Cathryn Stearns, Stewart P. Riley, Arthur R. Hauver and Kerry A. Richards.

The Convention Site Resolution

BE IT RESOLVED:

The site of the 1991 State Bar Convention shall be changed from San Diego, California to one of the following: Seattle, Washington; Spokane, Washington; Portland, Oregon; or Vancouver, British Columbia.

Statement in Support of Resolution

The Board of Governors of the Washington State Bar Association has lost control of the Association's annual convention. In the past decade, convention expenses have exceeded convention revenues by more than $500,000. The deficit has been paid out of the Association's general revenues—which is to say, out of the dues payments required of lawyers in order to practice law in Washington. This has been an inappropriate use of the Association's general revenues, since only a fraction of the state's lawyers attend the convention, and since the convention itself has become an event characterized by extravagance and unnecessary spending. Yet, the Board of Governors has scheduled the 1991 Washington State Bar Convention in San Diego, California, a decision which perpetuates the mistaken policies of the past. San Diego is so far from Washington that attendance is certain to be low, while the cost of staging the convention is certain to be high. The convention site should be changed.

The annual convention has not always operated at a loss. See chart below, "WSBA Conventions: 1970-1989, Expenses and Revenues." As recently as 1978, the WSBA treasury showed a modest surplus from the Association's conventions. The policies which this surplus represented came to an end about ten years ago, when the State Bar Convention was held in Honolulu. It was the first time the Association had held its convention at a site far away from Washington state. It was also the first time convention expenditures were allowed to exceed convention revenues by tens of thousands of dollars.

Where has the money gone? If expenditures at the last Honolulu convention are any indication, much of it has gone to pay for the travel, lodging and entertainment expenses of Bar Association leaders and their friends. Consider the following examples: At the

1986 convention in Honolulu, the outgoing WSBA president stayed at the Sheraton Hotel in a room which cost $600 per night. He and his family stayed nine nights. The incoming WSBA president was provided a room which cost $400 per night. He and his wife stayed seven nights. The then current members of the Board of Governors attended the convention at Bar expense, and so, too, did the three Governors whose terms had expired more than a month earlier ($230 per night; 6-9 nights for each Governor or former Governor and his or her family). American Bar Association president Eugene Thomas attended the Washington State Bar Convention, and the WSBA picked up his hotel bill. The presidents of other state bar associations attended the Washington State Bar Convention also, and they, too, had their lodging paid by the WSBA. Several members of the Washington State Supreme Court accepted travel and hotel accommodations from the WSBA. More than 30 speakers were invited to the convention by the Board of Governors and each of them was provided round-trip air fare from Seattle to Honolulu. The list goes on. It is as if the decision to hold the annual convention at a distant site has given the Board of Governors an excuse to disregard its financial responsibilities to the dues-paying membership.

The annual convention of the Washington State Bar Association should be scheduled at a time and place that affords all Washington lawyers a convenient opportunity to enhance their skills and renew professional relationships. The San Diego Convention will not do that. It will be poorly attended; it will offer continuing legal education from which only a few can benefit; and it will require a large subsidy. If the Board of Governors is to carry out its financial responsibilities to the WSBA membership, it must acknowledge San Diego's shortcomings as a convention site and schedule the 1991 Washington State Bar Convention at a location more conveniently accessible to Washington lawyers.

The foregoing Resolution and Report are *presented* by the following active members: Howard K. Todd, Edward V. Hiskes, Edward W. Huneke, Douglas Shaw Palmer, John Panesko, Jr., David S. Compton, Kern Cleven, Stacy Ekrom Kern, Eric Lindell, Tim McGarry, Terry L. Mulligan, Dawn W. Todd and George Yeannakis.

WSBA Conventions: 1970-1989
Expenses and Revenues

Year: Site	Expenses	Revenues	Gain/Loss
1989: Whistler, B.C.	163,817	118,194	(45,623)
1988: Vancouver	232,916	125,424	(107,492)
1987: Vancouver	217,441		
		286,012[1]	(134,990)[1]
1986: Honolulu	202,660		
1985: Seattle	234,433	184,073	(50,360)
1984: Vancouver	230,967	186,326	(44,641)
1983: Spokane	177,633	183,530	5,897
1982: Vancouver	226,161	175,955	(50,206)
1981: Vancouver			
	291,094[2]	175,476[2]	(115,618)[2]
1980: Honolulu			
1979: Vancouver	125,744	111,040	(14,740)
1978: Spokane	100,815	104,580	3,765
1977: Vancouver	131,604	131,604	----
1976: Spokane	50,491	50,080	(411)
1975: Vancouver	47,137	44,890	(2,247)
1974: Vancouver	43,364	44,292	928
1973: Vancouver	----[3]	----[3]	----[3]
1972: Spokane	21,414	21,793	379
1971: Portland	15,046	16,281	1,235
1970: Vancouver	15,406	16,442	1,036

[1] The 1986 and 1987 conventions were reported during the same fiscal year. WSBA Financial Statements for that year did not distinguish between them. The expenses of each convention have been disclosed in response to membership inquiry. No such inquiry has been presented concerning revenue.

[2] The 1980 and 1981 conventions were reported during the same fiscal year. WSBA Financial Statements for that year did not distinguish between them.

[3] The *Washington State Bar News* did not publish the WSBA Financial Statements for fiscal year 1973.

A School for Judges

by **Douglas Buell,**
Editor, OAC Reports/
Judicial Clippings

Continuing education for judges may have been envisioned as "a refresher course on law" by its founder, Judge Frederick "Footnote" Hamley, but his efforts launched a legacy of judicial education nationwide.

Hamley, a Washington Supreme Court Chief Justice in 1955 who later became a U.S. 9th Circuit Court of Appeals judge, probably had no idea his original vision of a "school for judges" would have such an impact on the future of continuing education for judges in the United States.

"I suspect most judges don't know of the impression he really had," said Washington Supreme Court Justice James M. Dolliver. He worked as a law clerk for Hamley in 1952.

Judge Joseph Sneed, in a telephone interview from his office in the U.S. 9th Circuit Court in San Francisco, said, "It is true it was an idea thats time was right, and he kicked it off."

"Judge Hamley had been one of the first to fly the banner, and he rightly deserves recognition," said Sneed, who was appointed to fill Hamley's spot on the circuit court in 1975, a year before Hamley died.

A letter two years ago from retired Chief Justice Warren Burger to Sneed acknowledged Hamley's role as creator and faculty member of the appellate judges' seminar. Burger helped arrange financing for the first seminar while he was a District of Columbia Circuit judge, Sneed said.

A display commemorating Hamley's contribution to the judiciary is being shown in the foyer of the Temple of Justice in Olympia, where he served six years as a Supreme Court Justice. Diaries, magazine articles and weathered photographs document his pioneering efforts.

Judging by the number of visitors who have signed the guest book at the exhibit so far, many more are expected to drop by and see the display during its summer stay.

Hamley was born in Seattle in 1903 and, following a distinguished legal career in private practice, government departments, and the National Association and Utilities Commissioners, became a judge. He is credited with originating the idea of continuing education for judges, a concept lawyers had already embraced in their profession after World War II.

He described his idea in an address before the Judicial Administration Section of the American Bar Association in 1935. According to journal entries, Hamley was convinced that judges would recognize the value of bringing themselves up to date on developments in the law, and of learning techniques specific to the judicial process.

In August 1955, in an address as chairman of the Section of Judicial Administration of the American Bar Association, Hamley spoke of the need "for a ceaseless program of education for judges."

> "At least three things can and should be done to bring this about. First, a special effort should be made to enroll as a member of this section, each new appellate judge who mounts the bench. Second, a way should be found to supply each appellate judge with a loose-leaf desk book, or hand book, containing basic papers, reports, and other materials pertaining to the subject of improving judicial administration. Third, an opportunity should be afforded the appellate judges to go back to school for brief, intensive seminars or workshops on procedure, opinion writing, recent trends in substantive law and litigation, and an introduction to legal history, comparative law, and philosophy of law."

New York University School of Law was the site of the inaugural Appellate Court Judges' seminar in July 1956. Before the seminar, Hamley had been appointed to the 9th Circuit Court of Appeals by President Dwight Eisenhower.

Sneed said judges at all levels in the United States and Canada have spoken highly of the seminars and symposiums they've attended.

"The New York University program has been highly successful, and many appeals judges have attended and a

number from the federal system, all of whom have spoken quite highly of it," Sneed said.

Dolliver said he has attended the seminars twice, and he views their purposes as helping judges keep up with the profession by examining new cases and sorting out the increasing complexities and ever-changing interpretations in law.

"Intellectually, it keeps us from getting lazy," Dolliver said. "You need to have a nodding acquaintance with the problems before you."

Dolliver is one of only two state supreme court justices who had not been a trial court judge before his appointment. The other is Robert F. Brachtenbach.

In his diary, Hamley wrote about the first appellate judges' seminar, and some of the social events and post-seminar activities he attended in New York with his wife, Marjorie, and assorted friends from the bench. In all, 19 judges attended, including justices Robert Finley and Matthew Hill of the Washington Supreme Court. The event also drew 19 faculty members—judges, court administrators and law teachers. Topics included "Appellate Control Over the Judge-Jury Relationship," "Improvement in Judicial Administration," and "Principles and Techniques of Statutory Interpretation." The seminars left time for Hamley, his wife, and others to shop and eat in the Big Apple.

In one journal entry, Hamley tells how he and long-time companion Matthew Hill, a former Washington Supreme Court Justice, took the D subway train and found themselves at Yankee Stadium. They bought box seats and watched the Yankees defeat Detroit 4-0.

Writers for *The New Yorker* magazine's "Talk of the Town" column twice attended the judges' cocktail parties. They wrote: "The lofty beings with whom we had the honor to consort had come here from all over the country to attend a kind of refresher course in appellate judgemanship, for two weeks."

The next year, *The New Yorker* was invited back and wrote the article in which the origin of the nickname "Footnote Hamley" is revealed:

> "Footnote Hamley, we call him," said Puerto Rico Supreme Court Chief Justice A.C. Snyder, because for the first time in his career, one of his decisions had been cited in a footnote to an opinion issued by U.S. Supreme Court Justice Douglas (Chessman v. Teets, Warden), albeit a dissenting opinion.
>
> Hamley replied, "Well, in some ways it's better than getting into the body of the opinion—especially if you find yourself being referred to there as "the learned judge."

The last day of the seminar—favorable reception, he took a bus uptown and bought necklaces at Sach's Fifth Ave. and hankies and bowties for gifts, went to the theater to see Noel Coward's "Fallen Angels." Ate broiled lobster, and had a chocolate soda at Howard Johnsons before taking the subway "home."

Judge Hamley participated as a faculty member in the first 10 of 12 seminars, and he was always in high demand, wrote Robert Leflar, a professor at the University of Arkansas School of Law and director of the seminar for many years.

The attention to detail and accuracy Hamley displayed in his diaries was equally noticeable in his legal research and opinion-writing.

"He was a meticulous writer and researcher," Dolliver said. "He was quiet, not flamboyant; he gave the appearance of being scholarly."

Sneed said he knew Hamley for about a year; he described him as a "very nice, able man."

"(Hamley) was conscientious; he worked hard and what he did was well-researched," he said.

Dolliver and Sneed agreed he was a master of opinion-writing, mostly because of his dilligent research and judgment about court matters.

Most of the time he researched and wrote his own opinions, and he relied less on law clerks than is the case today. Dolliver recalls that in the pre-computer era of justice in which they worked, things "had to be done right the first time."

Sneed also remembered Hamley as somewhat of a punster and prankster with a quixotic sense of humor.

Thirty-two years after the inaugural program in 1956, the appellate judges' seminars are still conducted each summer in New York by the Institute of Judicial Administration. The result of excellent planning and organization, many of the programs have been established for state and federal judges of all levels. Some of the current national programs are the American Academy of Judicial Education, the Federal Judicial Center, the National Judicial College, and the National College of Juvenile Justice of the National Council of Juvenile and Family Court Judges.

The ABA Judicial Administrative Division plans to sponsor a half-dozen appellate judges' conferences this year, Sneed said.

"They've done a lot of good work," he said.

INSURANCE LAW

Marsh & McLennan Group Associates Adopts a New Name

As the result of a corporate name change, the Marsh & McLennan Group Associates offices at Seattle are now part of Seabury & Smith, Inc. James D. Conant, vice president and manager of the Pacific Northwest branch, said that the change was effective May 1, with the renaming of Marsh & McLennan Group Associates as Seabury & Smith.

Seabury & Smith, a subsidiary of Marsh & McLennan Companies, is the leading specialist in the provision of insurance program management services for a broad range of businesses, groups and individuals. According to Frank Tasco, chair, Marsh & McLennan Companies, "Marsh & McLennan Group Associates pioneered the business of insurance program management–including the design, distribution and administration of products and services for individuals, businesses and their employees, and organizations and their members. The new name helps provide a single, clearly defined identity to distinguish Seabury & Smith's specialty role within our overall organization, Marsh & McLennan Companies."

Conant said the name was chosen to honor Charles W. Seabury and Hermon D. Smith, former chief executive officers of the Marsh & McLennan organization. "They made invaluable contributions to the substance and values of Marsh & McLennan, and our new identity draws from and emphasizes that heritage."

Seabury & Smith traces its beginnings back 50 years to the development of firms concentrating on offering special lines of coverage to individuals and groups. In 1982, Marsh & McLennan Groups Associates was formed to unite those specialists within Marsh & McLennan Companies. Strong internal growth and further acquisitions have expanded the firm to approximately three times its original size.

Seabury & Smith ranks among the top 10 insurance brokers in the United States. It has 1,500 employees in more than 50 offices in the United States, Canada and the United Kingdom. In Washington, Seabury & Smith claims more than 3,000 small companies as clients. Worldwide, trained specialists using proprietary technical systems provide service for nearly three million customers in some 17 million transactions per year.

Conant said that Seabury & Smith continues as a key part of Marsh & McLennan Companies, Inc., a professional service firm with insurance and reinsurance broking, consulting and investment management business.

ADR

Mediation Program a Proven Success in First Full Year

Settlement Now, a program begun two years ago as an experiment in settling civil lawsuits out of court, has posted excellent results for 1989, according to Kenneth L. LeMaster, Settlement Now chair.

"Almost 71 percent of the cases submitted to us were settled out of court," said LeMaster. "More than $11 million changed hands, resulting in an average settlement of $43,683.88."

Settlement Now, an outgrowth of 1988's "Settlement Month" program, is intended to help relieve court congestion by encouraging litigants, insurance companies and plaintiff and defense attorneys to negotiate out-of-court settlement of civil lawsuits. The plan was put together by an advisory board of attorneys and insurance experts, chaired by LeMaster, associate general counsel for SAFECO Insurance Companies. The board now includes judges, and the program is endorsed by legal and insurance professionals. Funding is provided by the insurance industry in Washington state.

Nearly 400 attorneys, each with at least 10 years' experience, participate in Settlement Now as volunteer mediators. All have attended special, intensive, day-long training seminars to prepare for the process. Insurance company representatives undergo similar training.

Attorneys and insurance companies submit cases they believe would benefit from mediation; they are then assigned to a mediator, who works with both sides to reach a solution.

*L: **Malcolm Edwards** presents a check to **Herman McKinney** of the Memorial Committee. R: Justice **Robert Utter.***

All parties enter into mediation voluntarily. Attorneys and insurance companies identify cases that should benefit from the process. Litigants are contacted concerning their willingness to participate, and mediation dates are scheduled.

"There is a backlog of 75,000 civil cases in King County with a 30-month wait to get to trial," said LeMaster. "While Settlement Now's numbers are still relatively small, we think the program has a real impact by showing that there's a viable alternative to delays and drawn-out lawsuits."

Negotiated settlements are a preferred alternative to trial, added LeMaster. "Mediation is nonbinding in nature, and all parties to it are there because they seek a resolution." While mediation is not a substitute for trial by jury, it is an effective means of settling cases before trial.

Similar programs in other cities have met with less success, probably owing to the fact that they lacked the full endorsement of the entire legal community, said LeMaster. Settlement Now has received endorsements by every major legal association in the area: the King County Superior Court Judges; WSBA, the WSBA Litigation Section and the Alternate Dispute Resolution Committee; Seattle-King County Bar Association; South King County Bar Association; East King County Bar Association; Pierce County Superior Court Judges; Snohomish County Superior Court Judges; King County Council; King County Executive, Tim Hill; Washington State Trial Lawyers Association; Washington Defense Trial Lawyers; and the Seattle Claims Managers' Council, representing 39 insurance companies doing business in Washington state.

Settlement Now operates in King, Pierce, Snohomish and Kitsap counties but has also accepted cases from Island, Mason and Lewis counties.

MARTIN LUTHER KING, JR. MEMORIAL PARK

Part of an Honorable Tradition

"Appellate Advocacy in the Nineties," the seminar sponsored by Edwards, Sieh, Wiggins & Hathaway, earned $5,019 towards the construction of the Martin Luther King, Jr. Memorial Park on Martin Luther King, Jr. Way South in Seattle. Malcolm Edwards presented the contribution to Herman McKinney of the Memorial Committee. Over 100 lawyers and law students attended the seminar, which was presented in Seattle and Olympia, to learn about appeals from three of the firm's lawyers—Edwards, Charles Wiggins and Catherine Wright Smith—and from two Washington Supreme Court justices, Charles Z. Smith and Robert Utter.

Smith shared his perspective as a relatively new judge on the Court. He urged counsel to write careful, precise and brief briefs, and to organize and practice their oral arguments. Utter explained the Court's role as an instrument of social justice, pointing out that the public must feel that decisions of the Court are morally right, and as society changes, the Court's interpretation of the law gradually shifts to incorporate social values. He illustrated this process through the deliberations of the Court in three different cases and concluded that the Court becomes an effective instrument of social justice when the Court takes seriously the problems of those people in our society who are excluded from particular activities or benefits:

> Fulfilling our oaths of office will make us effective instruments of social justice. Compared to Dr. Martin Luther King, we are hardly

social activists. But those who seek to advance causes of social justice through the courts are part of an honorable tradition. And we do well when we are activists enough to listen closely to the new problems brought before us and respond effectively, within the proper confines of our authority.

Edwards told the seminar audience that it was especially appropriate for lawyers to honor King's commitment to peaceful resolution of disputes. The legal system is our society's method of resolving disputes in a civilized and peaceful manner, and the appellate courts are an important part of that process.

All of the speakers donated their time to the seminar. Plymouth Congregational Church donated the meeting room in Seattle; Rosenzweig Graphic Design donated design services; Emerald Productions contributed videotape editing services; RAM Television gave technical video assistance; and Brusseau's of Edmonds made a contribution of pastries. The King Memorial welcomes donations, which are tax-deductible. Contributions may be made by mail to Martin Luther King, Jr. Memorial Committee, 1820 East Union Street, Seattle, WA 98122, or by phone at (206) 325-9430.

ETHICS/PROFESSIONALISM

Report Recommends Strict Limits on Lawyer Involvement in Nonlegal Services to Clients

A rapidly growing number of lawyers and law firms across the nation are now offering nontraditional services to their clients in addition to legal representation, creating potential ethical problems and conflicts of interest and threatening professional standards, according to a report from the American Bar Association Section of Litigation.

The organized bar should be concerned about this development and should seek imposition of restrictions, according to the report, which urges that such services be limited solely to law firm clients in direct connection with the provision of legal services.

The recommendations will be submitted for consideration by the ABA House of Delegates at its August annual meeting in Chicago. If the recommendations are adopted, they may then be incorporated into governing codes for lawyers at the discretion of individual states.

At issue are a wide variety of services not traditionally associated with the practice of law--referred to as "ancillary business activities"--including lobbying, investment banking, economic consulting, real estate brokering and public relations, among others. In some cases, law firms have created or acquired subsidiary businesses to provide nonlegal services to clients, while in others, such services are performed by employees working within the law firms themselves.

The trend toward diversification by law firms originated only a decade ago and is growing rapidly, according to the Litigation Section's report, which was prepared by its Task Force on Lawyers' Ancillary Business Activities.

"Proponents of diversified law firms maintain that providing ancillary services within a law firm can be highly profitable, and benefits clients by providing both legal and nonlegal services in a convenient and cost-effective manner," the report notes.

Others, however, see the practice as controversial, the report adds. "Numerous legal scholars and commentators have detailed the ethical and professional problems inherent in diversified law practices."

Potential problems commonly cited are that the simultaneous provision of legal and nonlegal services may compromise the independent professional judgment of lawyers; create conflicts of interest between lawyers and their clients; deter lawyers from fulfilling their obligations to clients, their profession and public service, and raise the risk of financial failure or scandal within the ancillary businesses.

After a year of analysis of the issue, including lengthy debates between those favoring or opposing law firm diversification into ancillary businesses, the task force proposed a compromise

policy. It calls for adoption of ethical rules that would:

o prohibit law firms or groups of individual attorneys from operating or owning a controlling interest in subsidiary businesses that provide ancillary services;

o permit law firms to provide ancillary services to their own clients solely in connection with and concurrent to the provision of legal services to those clients, but only by employees of the law firm itself rather than a subsidiary or affiliate, and if appropriate disclosures are made in writing to clients;

o permit lawyers in solo practice to provide ancillary services, subject to the same disclosure requirements; and,

o bar nonlawyers from obtaining equity interests in law firms or sharing in legal fees generated by lawyers.

The report and recommendations have received the approval of the Council of the ABA Litigation Section, which comprises over 60,000 trial lawyers and judges nationwide. The section will sponsor the report when it is introduced to the ABA House of Delegates and will advocate that the recommendations be incorporated into the ABA Model Code of Professional Responsibility and the ABA Model Rules of Professional Conduct.

State legislatures and state supreme courts, which oversee the practice of law within the states, implement their own rules, often based upon the model promulgated by the ABA.

COMPUTERIZATION

Martindale-Hubbell Law Directory Now on CD-ROM

Martindale-Hubbell, which has provided the legal profession with information on lawyers and law firms for more than a century, has just released the Martindale-Hubbell Law Directory on CD-ROM.

The directory is accessible through a personal computer and a compact disc drive. The CD-ROM format enables users to find, in a matter of seconds, detailed information on over 700,000 lawyers, law firms, banks and services and suppliers to the legal community. It offers easy-to-use menus and pop-up screens, and it requires no special training.

Over 19 variables of simplified search criteria can zero in on precisely the information required. Search categories include state, city, last name/firm, year born, college, law school, fields of law, firm size, etc. One could easily locate, for example, a lawyer who practices in the District of Columbia, is with a firm of at least 10 lawyers and concentrates on criminal law.

"CD-ROM represents a dramatic technological breakthrough for Martindale-Hubbell," says Ira Siegel, company president and chief operating officer.

"The CD-ROM Directory is completely in line with our corporate commitment to providing the legal profession with the most up-to-date, most accurate and quickly accessible information available in the marketplace today."

STATE BAR ADMISSIONS

New Directory Tells How to Get In Elsewhere

The "Comprehensive Guide to Bar Admission Requirements" for 1990 adds information on reciprocal licensing among the states and on admission based on multistate bar examinations taken in other jurisdictions.

The guide updates state-by-state data already published on procedural and educational requirements to take the bar examination, the type of examination administered, requirements for admission of foreign-educated lawyers, admission procedures and fees, mandatory

continuing legal education and federal bar admission requirements. The guide first was published in 1984 and has been updated every year since 1988.

The guide is jointly published by the ABA Section of Legal Education and Admissions to the Bar and the National Conference of Bar Examiners. While it is intended for use by anyone involved in the admission process among the states, it can be particularly helpful to law students or persons contemplating entering law school.

Single copies of the guide are available at no charge. Additional copies are available for $2 each, plus $2.95 postage and handling per order. To obtain copies, write to ABA Order Fulfillment, 750 N. Lake Shore Drive, Chicago, IL 60611.

M&A

The Big Get Bigger

Merger mania continues among Northwest law firms. After a lengthy courtship, Lane Powell Moss & Miller of Seattle and Spears, Lubersky, Bledsoe, Anderson, Young & Hilliard of Portland have taken the plunge to become Lane Powell Spears Lubersky.

With 238 attorneys and offices in Alaska, London, Tokyo, Olympia and Vancouver, the firm is now the second-largest in the Northwest, running nearly 100 lawyers behind Perkins Coie, the biggest of them all.

The increasing number of Portland-Seattle mergers points up an increasing integration of trade between the two cities, rivals since the 1850s. In a May article, *The New York Times* noted the emergence of a new "growth corridor on Washington state's I-5 stretching from Vancouver to the Canadian border.

Boundaries? What Boundaries?

Just when you thought every firm in Seattle had merged with another (or one in Portland, San Francisco, Washington, D.C. or any of dozens of other cities), here's news from the merger front: international is the name of the game.

Graham & James, a California-based firm with offices from here to there, has announced "a formal business association" with Deacons, a 90-member Hong Kong solicitors firm founded in 1850.

Under the association, the firms will combine offices in Hong Kong and Beijing and post partners in each others' headquarters offices, where they will become partners in the host firm. Graham & James have been involved with Japanese business for over 50 years, a partner said, and Deacons have a century and a half of experience with China. "In working with Deacons we can provide clients with full local service in Asia on projects of any nature or size," a Graham & James attorney said.

AUTO INSURANCE

Scouting Around Can Save You Cash

Washington drivers can save significant amounts on their auto insurance if they shop around, State Insurance Commissioner Dick Marquardt says in a new survey of rates. The survey, done twice a year, shows what six typical drivers would pay in six different Washington cities.

Twenty-eight companies -- selling 80 percent of the state's auto insurance policies--took part in the survey. Only American States Insurance Company declined to participate, Marquardt said.

The survey shows some surprising variations in quotes. A 28-year-old Seattle man with an excellent driving record could pay anywhere from $285 to $587 each six months for similar policies with different companies.

Even drivers with DWI convictions can save, the survey shows. A 35-year-old Bellevue man with a DWI on his record can pay as little as $1,338 or as much as $2,148 a year to insure his vehicle.

The survey also lists companies which will insure high- and low-risk drivers as well as those who've never been insured. For copies of the study, write: Auto Insurance Study, Insurance Com-

missioner's Office, Insurance Building AQ-21, Olympia, WA 98504. Enclose a self-addressed, stamped envelope.

Filing Deadline for Resolutions to be Presented at the Annual Meeting

Any ten (10) active members of the Washington State Bar Association may present a written resolution to the Board of Governors for possible consideration at the Annual Business Meeting. Such resolutions must be presented and filed with the Board of Governors at least twenty (20) days before the Annual Meeting. Any resolution must be accompanied by a written report explaining the resolution. The resolution and explanatory report together shall not exceed a total of one thousand (1,000) words. Resolutions are to be filed with the Board of Governors, Washington State Bar Association, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599. The deadline for filing such resolutions and explanatory reports will be 5 p.m. on August 27, 1990 (the first business day following the twentieth day prior to the Annual Meeting).

The Annual Business Meeting of the Washington State Bar Association shall be held on the morning of Friday, September 14, 1990 beginning at 8:30 a.m. at the Sheraton Hotel, Spokane, Washington.

Referral to Resolutions Committee

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

Notice of Public Hearing on Resolutions

As announced in the June *Washington State Bar News*, the Resolutions Committee will hold a public hearing prior to the Annual Meeting. The hearing is scheduled for 9 a.m. on September 7, at the offices of the Washington State Bar Association at the above address. Upon completion of business that day, or at the Chairperson's discretion, the hearing will be adjourned to reconvene on September 13, 1990 at 9 a.m. at the Sheraton Hotel, Spokane, Washington. The advance public hearing session on September 7 has been scheduled in an effort to allow more time to those presenting views and in an effort to give the members of the Committee more time to consider the resolutions and to request any additional information which might be helpful to the Committee in making its recommendations on the resolutions to the membership. Proponents and opponents of resolutions are urged to attend the September 7 hearing if at all possible, and if not, to present their views prior to that time in concise written form for consideration by the Committee at that hearing. Presence at or absence from the September 7 hearing will not affect any right under the Bylaws to present views when the public hearing reconvenes on September 13. At the reconvened hearing, preference in presenting views will be given to those with viewpoints which were not expressed at the September 7 hearing. Proponents and opponents will be given a reasonable opportunity to be heard at the advance session and at the reconvened hearing.

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

Resolution Committee Members -- Ted D. Zylstra, Chairperson, James H. Allendoerfer, Hugh K. Birgenheier, Philip H. Brandt, Scott A. Collier, Paul C. Gibbs, Harry H. Goldman, Gary L. Hemingway, Michael J. Hemovich, James T. Johnson, Frederick W. Lieb, Eugene C. Routh, Janice E. Shave, Edward F. Shea.

The Remarkable Ms. Mawer

by **Steve Bryant**

Getting started in law has never been easy; in 1935 it was nearly impossible. Many firms struggling with the Great Depression could offer law school graduates only desk space in exchange for a percentage of their fees. Fresh out of law school, Muriel Mawer (pronounced "more") and Maryhelen Wigle opened their one-room, two-lawyer practice, the first women's law partnership in Seattle—and one of the first in the nation—in the Dexter Horton Building on September 3, 1935. Both had excelled in law school, graduating second and third in their UW class of 80.

At an interview, Mawer told a *Seattle Times* reporter, "Women attorneys are receiving more attention and respect before the bar than ever before. We are confident that we will have the same consideration from judges and juries that competent men attorneys receive. We believe that ability is the criterion today."

Neither partner shrank from full participation in bar activities. Mawer vividly recalled their first bar meetings for *The Seattle Times* in 1969.

> The King County Bar Association used to have weekly luncheons at the Arctic Club. My partner and I didn't see why we shouldn't attend them. At our first four we sat by ourselves, ignored by the men. At the fifth luncheon, a couple of men sat at our table, and that broke the ice.

The two-woman practice faced an uphill battle, but persistence and friends carried them through. Collection work—ample during the Depression—was an early mainstay, as it remains for so many young attorneys. Most of that work came from J.C. Campbell, a West Coast group of dentists. The local manager's daughter had been the partners' law school classmate. Although these assignments helped secure the fledgling firm, they were sometimes depressing and often required visits to troubled neighborhoods.

"I was rather naive at the time," recalls Mawer, "but I suspect that a number of the places where I collected must have been houses of prostitution."

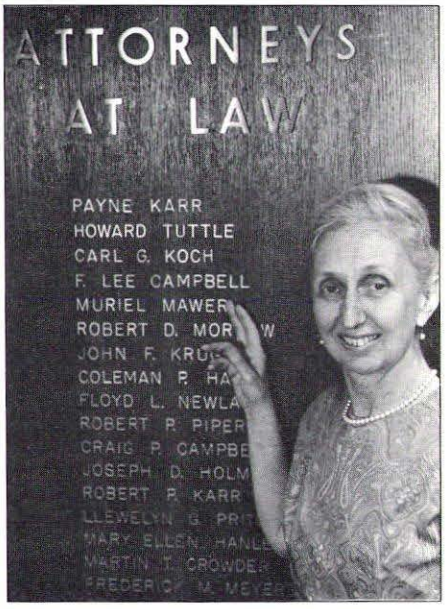
Other legal work came from her father's commercial laundry, employees, alongside whom she had worked to pay school expenses. But what really put the firm on a solid footing was a divorce case she secured. The wife of a prominent citizen had sought her counsel on what promised to be a highly public dissolution. As usual, Wigle left the one-room office during the initial client conference, to discover on her return that Mawer had quoted a price of $1,000. The going rate for an uncontested divorce was then $35. Mawer intoned confidently, "We'll earn it." When the case was won in the state Supreme Court, Wigle had to agree.

Mawer recalls her good fortune in having the case heard by Justice Walter Beals, whose wife also happened to be an attorney. Mawer subsequently became long-time friends with the couple.

Mawer and Wigle sustained their successful joint practice until 1942, when Mawer went into federal service as a district price attorney, one of the few women in the country to serve in this capacity. She was also appointed to the five-person Seattle Housing Authority board in 1942 and chaired the body from 1945 to 1952. The agency's priority was wartime housing for shipyard and aircraft workers, and then housing for veterans.

Seattle was among the first areas in the country to have a local housing authority, and Mawer was the first woman to chair any such board. The agency also became the first in the nation to achieve complete racial integration in its housing. Mawer recalls with pride one national meeting of housing development officials where she helped present results of a local housing integration survey which found that white residents of the housing projects most often cited a black neighbor as the "person they would go to for help in an emergency." The results shocked other officials, but not Mawer.

Jesse Epstein, then executive director of the Seattle Housing Authority, once recalled, "Muriel was a strong supporter of community services for the families we housed and of cooperative programs with other city developments so our communities wouldn't be isolated."



Mawer became a partner with Karr, Tuttle, Koch, Campbell, Mawer & Morrow in 1962.

After the war, Mawer reentered private practice until she was invited to become regional counsel for the Office of Price Stabilization during the Korean War. She says this important position built her confidence and put her in touch with business leaders who later became clients or friends. When that office closed in 1953, former law schoolmate Howard Tuttle recruited her to join Karr Tuttle Campbell, where she focused on estate and tax planning; she eventually became a fellow in the American College of Probate Counsel, a member of the Estate Planning Council of Seattle-King County, and a partner in the firm.

Mawer has been a devoted bar member throughout her career. After many years on the state Board of Bar Examiners, she became its chair in the 1950s--again, a first for American women lawyers. As a member of the National Association of Bar Examiners, she played an important role in developing national standards for law school admission, and

Feminine Barristers To Open Office

—P.-I. Photo.
Miss Maryhelen Wigle

Women Law Grads Go To Court, Not To Kitchen

Woman's place may be in the home, but two coed law graduates from the University have decided that their place is in their joint law office which they are opening Sept. 3 in the Dexter Horton building.

The two feminine barristers, Mrs. Maryhelen Wigle and Miss Muriel Mawer, will conduct a general practice but are especially interested in admirality law.

Dismissing the prejudice against women lawyers, Mrs. Wigle said, "The law depends not on the sex of the person interpreting it, but upon the industry applied."

Both of the partners are members of Phi Beta Kappa, and Order of the Coif, and are pledges of Phi Delta Delta. Both were graduated magna cum laude from liberal arts and were members of the editorial board of the Washington Law Review.

Miss Mawer was second in her class of 80 and Mrs. Wigle was third. Both worked their way through the University.

They will be the only women law partners in Seattle and, it is believed, in the United States.

The Seattle Times, 1935

P.-I. Photo.
Miss Muriel Mawer

was subsequently accorded the WSBA Award of Merit in 1972. Retirement has barely slowed down the tireless Ms. Mawer, who still sees a number of long-time clients.

"I like what I do, and I like my clients," she says. "So I come into the office every day. And I *work*," she adds, underscoring her obvious enthusiasm for the law.

"I have had the good fortune of never having to look for a job," she says, "and I have experienced great client loyalty. Really, I've lived a charmed life."

Born in 1912, Mawer was raised in Vancouver, B.C., until moving with her family to Seattle. An extraordinarily small-framed woman, she has been called "Mighty Mite" by friends and associates. Her resolve has been expressed in many ways. In her younger days, she was an accomplished horsewoman.

As an exceptional high school science student, Mawer told a visiting university counselor that she intended to train as a physicist.

"That's not a field for a woman."

"Then I'll be a lawyer," she innocently replied. She says she never regretted her change of course, but during World War II, she thought the counselor had made a big mistake.

"I would have made a great physicist, and at that time, we needed them. Madame Curie was certainly an inspiration."

While acknowledging the barriers that still face women, Mawer hesitates to call herself a feminist, despite her long list of credits as "first woman" this or that.

"I recognized that opportunities were somewhat limited for women," she admits, and adds, "At the same time, I felt that if I wanted to do something I was going to do it. That's just my tremendous ego."

Mawer's dedication to public service was perhaps most evident in her involvement with Altrusa, a civic organization for women in business. Capping decades of service in the 18,000-member service organization, she was elected the group's international president in 1973. As a theme for her two-year term, she challenged the somewhat conservative club to be "A Channel for Change." At the time, she explained her intent to *The Seattle Times* women's editor:

> Too many people are afraid of change...[Yet] all change is what we make it. People need to be more aware of what is happening in the way of change and work towards channeling it in the direction they think it should go.

Women and children have always been central to Mawer's civic work, exemplified in her support of CARE, an active commitment to women's legal issues, and hands-on involvement with children's theater.

Mawer saw in the Seattle World's Fair an outstanding opportunity to promote children's drama and activities. More than 20 years later, the impact of her work was honored with the Legion of Honor award from the city of Seattle.

As early as the 1950s, Mawer was leading lay seminars on legal topics of concern to women. In 1954, she published a handbook on the subject. The issue gained enormous popularity in the 1960s. She recalls sitting on one especially popular panel discussion of women's law and estate planning. Crowds at the downtown location were so enormous that radio announcers warned people to avoid the resulting traffic jam. In the intervening years, women have gone beyond lectures and on to law school. And Mawer has been joined at Karr Tuttle Campbell by 17 other women attorneys.

History will record this remarkable progress, but Mawer still is somewhat uncomfortable with discussions of "women" attorneys. After practicing law for more than 54 years, her refrain is steadfast. She told this reporter, as she told the first in 1935, "Ability is the criterion today."

***Steve Bryant** is Publications Director for Evans/Kraft Bean Public Relations in Seattle and a friend of the* Bar News.

LATE-BREAKING ANNOUNCEMENT:

Lawyer Representatives, Ninth Circuit Judicial Conference Request for Applications

(Deadline September 1, 1990)

Two vacancies exist for lawyer representatives to be appointed to represent the Bar of this district at the annual meetings of the Ninth Circuit Judicial Conference. The appointments are for three-year terms. The next conference will be in Maui, Hawaii, in August 1991. Some travel and per diem assistance is provided from the nonappropriated fund of this district.

The Judicial Conferences are attended by all circuit, district and bankruptcy judges of this circuit as well as the full-time United States magistrates. Lawyer representatives are appointed based upon the number of federal district court judges in each district, plus one at-large representative. The purpose of the conference is to consider the business of the federal courts and advise upon means of improving the administration of justice in the federal courts. CLE-type programs are included, and CLE credits are awarded.

This court will receive, until September 1, 1990, applications from interested members of the Bar of this court for appointment as lawyer representative to the Ninth Circuit Judicial Conference. Applications should be forwarded to the undersigned. Applicants should set forth their specific reasons for seeking appointment and the general nature and extent of their federal practice. Inquiries may be addressed to the undersigned or to Les Weatherhead or Cynthia Imbrognio, whose terms as lawyer representative have not expired, or to J. Adam Moore of Yakima, whose term is expiring.

Justin L. Quackenbush
Chief United States District Judge
P.O. Box 1432
Spokane, WA 99210

THE JUDICIARY

Governor Gardner has appointed Seattle lawyer **Robert Alsdorf** to a newly created position on the King County Superior Court bench.

Alsdorf is a graduate of Yale who worked for the U.S. Department of Justice before embarking on his 15-year career in private practice in Seattle. Forty-four years old, Alsdorf began hearing cases July 1. He will stand for election to the post in November.

Moses Lake lawyer **Luke McKean** has announced for the Grant County District Court seat now held by Judge **Carl Warring.**

EAST KING COUNTY REPORT

by **RANDOLPH I. GORDON**

George, read my lips: no more lawyer jokes.

No, pardon me, not you, Mr. President. (But wait! Didn't you repeatedly distinguish yourself during your campaign by stating: "I'm not a lawyer like Mr. Dukakis"?) I meant you, **George Scott**, heading up the State Bar's smallest department, public affairs. I have thought about what you said at EKCBA's last membership meeting. Remember the good news you reported about that all-too-rare beast, a pro-lawyer editorial, which suggested funding a public program established by the Bar with fines from lawyer jokes? Good job. But I want more of where that came from.

I understand that the roots of lawyer jokes run deep. They tap into the Western anti-intellectual tradition, populism, and the emotional response to the complexity of modern life for which lawyers appear to be the beneficiaries, if not the cause. What's more, it is socially awkward for a lawyer to greet the jibe with anything but good humor. But what if we didn't? Suppose we recognized that this was not a joke, but an insult, and met it with stony silence. (If you're not sure it is an insult, try substituting a racial, religious or gender term, and see if it's funny.) Suppose we entered gatherings and were not greeted by a chorus of: "Better watch out, the lawyer's here." I propose we take a page out of the anti-sexism movement and recognize that such remarks are not benign, but help shape negative attitudes with adverse effects on everything from the confidence reposed in the profession to the substance of legislation.

George, I don't want only to react. I want to be pro-active. I believe we need a statewide campaign complete with "I ❤ my lawyer" and "I hiss at lawyer jokes" bumper stickers. I can see it now: a commercial alternating scenes of a lawyer working late for a client, with a party scene where some loudmouth starts in with lawyer putdowns, concluding with his getting involved in an accident and turning, sheepishly to his wife: "I think we need a lawyer." Such a campaign will not only affect public perceptions, but our view of ourselves.

Good works are apparently not enough. There are huge numbers of lawyers doing work for the public and making a contribution of their time as I again realized when I spent an afternoon last week at the Kirkland Senior Citizen Center and saw the many other volunteers on the list. I challenge any other group to match the commitment to public service to that of the legal community. Lawyers deserve better than they receive.

Take, for instance, Issaquah resident **Sheryl Garland** of the Bellevue firm of Revelle, Ries & Hawkins, P.S., who has just been elected vice president of the board of trustees of Youth Eastside Services (YES). YES provides information and referral, counseling, advocacy, employment, education, substance abuse treatment and prevention, and other social services for youth and families. Sheryl Garland has had a long-term commitment to working with youth. In fact, your reporter first met her some years ago when we both served as discussion leaders following the presentation of the educational musical/play "Whadda 'Bout My Legal Rights" at an Eastside high school. Lawyer's child: "When I grow up, I want to be a client."

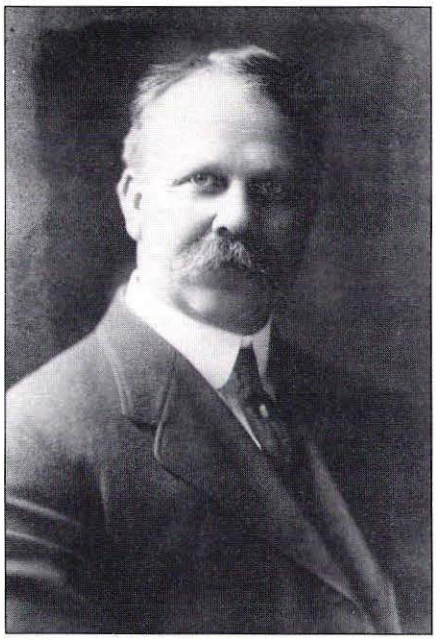
Geoff Revelle's history of involvement in the Bar, recently culminating in his appointment as second vice president of SKCBA, is one more lawyer making a difference. Have you hugged your lawyer today?

Present EKCBA president, **Ken Davidson,** who spearheaded the formation of the Eastside Legal Assistance Program, has discussed with SKCBA president, Stu Cogan,

NEWS FROM HOME

It's been a long haul for the Wells family of Anacortes, who celebrated one hundred years in the practice of law in Washington May 26, 1990.

The record began May 26, 1890, when **William V. Wells, Sr.** was admitted to the Washington Bar. Settling in Anacortes, Wells practiced until 1897, when he traveled to the Klondike and sought his fortune in placer mining. He practiced awhile in the Northwest Territories, then returned to Anacortes in 1902. In 1909 he was elected mayor of Anacortes, became a state representative in 1911, and served in the state senate from 1913 to 1921. Wells practiced in Anacortes until failing health forced his retirement in the 1940s and died in 1951.



William V. Wells, Sr.

William V. Wells, Jr.

Wells' son, **William V. Wells, Jr.**, graduated from the University of Washington School of Law in 1940 and practiced with his father until joining the Army in 1942. He returned to Anacortes in 1946, when he became city attorney. He held that post until 1972, and is still at it in private practice.

The younger Wells has been married to **Barbara Wells** since 1943. In June 1950 she came down to the office to "help out" on a temporary basis. Forty years later, on June 15, 1990, she was made a permanent employee.

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formation of a coalition of local bar associations and nonlawyer groups to spearhead support for state funding of legal services for the poor. In January, EKCBA adopted a resolution urging the support of House Bill 1237, which would have raised filing fees by $22 to pay for legal services for the poor, or other state funding for civil legal services. The bill was subsequently endorsed by the WSBA and eight local bar associations. The bill failed to pass the Senate.

George, you have your work cut out for you.

By the way, it's 10 p.m.; do you know where your lawyer is?

KITSAP COUNTY REPORT

by **KATHLEEN M.S. WRIGHT**

Appointments: Olympia officials finally heard our plea and appointed a sixth superior court judge, **William J. Kamps,** partner in the Port Orchard firm of Shiers, Kamps, Chrey & Hauge. The details still are sketchy about he location of the courtroom for him. There is talk of a temporary office in the county jail, but isn't this taking customer service a little too far? As for the much-needed seventh judge, perhaps we could consider a drive-up window.

Additions: **Jack D. Kindred II** has joined the Bremerton firm of Buskirk & Anderson.

Career changes: Deputy prosecutor **Kathy Collings** recently resigned her position to become a uniformed Kitsap County Sheriff's deputy. There has to be a pilot for a new TV series here somewhere. "PA's on Patrol?"

Cynthia Ford, general practitioner on Bainbridge Island, leaves July 1 to become the new professor of civil procedure and remedies at University of Montana School of Law, located in Missoula. It must be something in the drinking water on Madison Avenue, because **J. Fred Simpson**, who formerly leased the same space, also left for Montana about three years ago. **Kathryn E. Cashin**, a former partner at what is now Davis Wright Tremaine, takes over the office lease and a selected caseload from Cynthia and is opening her own general practice on Bainbridge. We trust that Kate has her ticket to Montana on reserve order, just in case the urge strikes. Cynthia's departure leaves vacant the Suquamish Tribal Judge position.

Moves: Criminal attorneys **Roger Hunko** and **Scott Bougher** opened a new office in Port Orchard, while maintaining their Silverdale location with **David Wecker** and **Steve Holman.** In a service industry, cutting the client's commute time appears to be an important factor.

Constance Bartholomew and **Gregg Johnsen** of Bartholomew & Johnsen are merging with sole practitioner **Gary Sexton,** and moving to Gary's office space in Bremerton effective July 1. B & J associate **Marc Gianneschi** also will make the move. The combined firm will practice in the areas of commercial law, civil litigation, criminal defense and family law.

Kelly Reinhart is leaving the Bremerton City Attorney's office to practice family law with the firm of Sanchez, Mitchell, Paulsen & Laurie.

Moving to the Kitsap County Prosecutor's office is **Eric Bosley**, formerly of the aforementioned Shiers, Kamps firm. If you have to change letterhead, it is cost-effective to do it all at one time.

Future Lawyers of America - Class of 2015: **Marilyn Paja** delivered twin boys in June. There is no truth to the rumor that she named them Res and Ipsa.

Some people will do anything to forego taking the Bar exam. Recent UPS graduate and Kitsap County resident **Barbara West** gave birth almost two months early, shortly after beginning the Bar Review course and before finishing her Lamaze class. It's hard to determine which one scared her into labor. Mom and baby are fine, although the Bar will probably have to wait until February.

Greg Memovich is a new father as of June 22. No details as of the deadline date.

Keith Buckholz of Tracy, McDaniel & Buckholz, and **Robin Zukoski,** staff attorney for Evergreen Legal Services, Seattle, are the proud parents of **Adam Lane,** born in early June.

Rumors: There are hints that prosecutor **C. Danny Clem** will be facing opposition in the upcoming election. More to follow next month.

MICRONESIA REPORT
by **STEPHEN A. COHEN**

The Washington legal community in the North Mariana Islands has experienced some significant changes in the past several months.

The latest arrival is King county attorney **Jeffrey Cohen,** who has become a member of the public defender's office. He joins the other Cohen on Saipan, special assistant attorney general **Stephen A. Cohen.** Is a 48-square-mile island in the far western Pacific big enough for two Washington lawyers named Cohen, both of whose wives are librarians? Stay tuned.

There have been a number of departures from the attorney general's office. **Pamela Brown** has become legal counsel to the Commonwealth Senate, and **Steve Nutting** has gone into private practice with the Saipan firm of White, Novo-Gradac and Manglona.

Gail Geiger has moved to Guam, where she will be the U.S. Bankruptcy Trustee for Guam and the North Mariana Islands; **David Webber** has departed for Hawaii to join the Honolulu firm of Moon, O'Connor, Tam and Yuen; and **Jon Hunt** has changed venue to Kansas City to become a federal administrative law judge.

Lastly, chief prosecutor **Craig Platt** and his wife, private practitioner **Mimi Buescher**, have decided to return to Seattle. Craig will be succeeded by **Ron Hammett**, who has transferred from the public defender's office to take the position.

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

Larry Couture has somehow managed to field a "Young Lawyers" slow pitch team for the 1990 season. This team has been in existence in one form or another for almost 20 years, and some of the original team members still play, so the term "young lawyers" is somewhat deceptive. It's really called Puget Sound National Bank, which is also strange, since no one on the team works for the bank. Since the bank's trust department really provides the sponsorship, and a baseball team named "trust department" seems awkward, we have a situation where a lot of old lawyers play on a young lawyers' baseball team sponsored by a bank for whom none of the players work.

In order to provide some youth, Coach Couture has announced the acquisition of rookies **Joseph Loran** and **Mike Ritchie** and the reacquisition of **Everett Holum**, who retired some years ago, feeling he was too old to play. Now that senility is setting in, he's forgotten he's too old. As of mid-season, the team has yet to win a game but has high hopes for the second half of the season, having been demoted by the park department to a lower league.

Dave Tuell plays in the infield but has been absent lately. He has been reportedly seen on ESPN on the finals of the Masters' Pro Bowler Tournament from somewhere in Tennessee, where he placed fourth and won $3,000. At some point in the program he managed a nationwide plug for his law firm, thus opening new avenues of employment for athletically gifted lawyers who can provide free advertising in post-game interviews.

Suzanne Carmichael used to practice law with **Monte Hester** but quit the active practice to write travel books full-time. Her latest effort is the Travelers' Guide to American Crafts published by E.P. Dutton. She states that being a travel writer is much more fun than being a lawyer, which these days is hardly a revelation.

A person coming into the practice is **Paul Sidoran**, who has retired as a state administrative law judge and is now office-sharing with Blado and Stratton in the Olympic Savings Bank Building on Union Street.

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

Of Note: At the annual Seattle-King County Bar Association dinner, the following were honored and recognized: **Matt Sayre** assumed the presidency after the capable administration of the retiring **Stew Cogan**; **Betty B. Fletcher** was honored as Judge of the Year; the Outstanding Nonlawyer Award went to the **Japanese American Citizens League**; the Young Lawyers' award was presented to **Rosemary Daszkiewicz**; the pro bono award went to **Kevin Freeman, Sally Pasette** and the law firm of **Warren, Kellogg, Barber, Dean & Fontes**; the President's Special Awards were given to **Robert Schuck, Jimmy Wu, Bruce Weiland, Mary Alice Theiler** and **Larry Ransom**. King County Superior Court Judge **Nancy Ann Holman** was honored on the 20th anniversary of her appointment as the first woman on the superior court bench in the state of Washington.

George S. Holzapfel has been appointed to a two-year term as chair of the board of governors of Griffin College. **Jerome Hillis** has been elected chair of the Whitman College board of trustees. **Irwin H. Schwartz** has been elected a Fellow in the American Board of Criminal Lawyers. **William Wesselhoeft** of Ferguson & Burdell went on of counsel status effective January 1 of this year. Managing partner **James E. Hurt** reports Wesselhoeft has not retired from the practice of law; he is apparently working harder since the change of status to of counsel than previously.

It is not often that matrimonial news is reported in this column. However, we have been advised that, apparently, love conquers all when it comes to intrastate law school competitiveness: **Kathleen T. Dignam**, a 1983 graduate of UPS law school, was married to **Roderick S. Simmons**, a 1973 graduate of the University of Washington School of Law.

Office Moves: **Bruce J. Borrus, Michele G. Gangnes, Thomas C. McKinnon**, and **Frank C. Woodruff** have become partners at Riddell, Williams, Bullitt & Walkinshaw. New associates at Riddell, Williams are: **Kitri C. Euler, Gregory T. Costello, Lucy Lee Helm, Bruce D. Holloway, Ellen T. Kremer, Warner J. Miller, W. Ward Morrison, Jr., James E. Rogers** and **Brenda C. Turner. Pamela A. Okano** and **Barbara J. Britt** have become shareholders at Reed McClure Moceri Thonn & Moriarty.

T. David Copley and **Stephen J. Henderson** are now associated with Keller Rohrback. **Ronald A. Shellan** has joined Weiss, DesCamp & Botteri as a shareholder; **John B. DesCamp, Jr.** has left the firm to form a development company focusing on the residential housing market. **Timothy H. Butler** has joined Heller, Ehrman, White & McAuliffe as special counsel; **Louisa A. Barash, Marcia Newlands** and **Tad H. Shimazu** are new associates there. New associates at Preston Thorgrimson Shidler Gates & Ellis are: **Kathleen B. Barrett, Alison Kean Campbell, Shawn Carter, Scott David, Thomas F. Haensly, Aaron Keyt, Joanne K. Lipson, Jonathan McPhee** and **Jinlong Wang**.

No Runs, No Hits, My Error: You Owe Me One, Paul. At the recent open house of the Washington State Trial Lawyers Association, it was this correspondent's misfortune to pass along two Seattle Mariner tickets to Hoquiam's "Mr. Baseball" **Paul Lester Stritmatter**. These tickets had been turned down by Stritmatter's partner, **Keith Kessler**, and were openly sought by **Lem Howell**, even after their conveyance to Stritmatter had been perfected. To the delight of Strittmatter, and the chagrin of this correspondent who was unable to attend, it was the night of **Randy Johnson**'s no hitter, the first in Seattle Mariner history. At least Stritmatter had the courtesy to call two days later and express his appreciation for the gift.

Personality Profile. The appointment of Terry Sebring to the Pierce County Superior Court Bench by Governor **Booth Gardner** opened the door for **Thomas J.** "Nothing But Net" **Felnagle** to serve as the Governor's legal counsel. Felnagle, who was chief criminal deputy prosecuting attorney in Pierce County for approximately five years, starred in the mid-'70s along with **Jeff Hale, Fred Weedon** and, it is modestly submitted, this correspondent, on the best basketball team in the Puyallup Recreational League. Given the tradition of legal counsel to the Governor donning judicial robes (see: Court of Appeals Judge Kenneth Grosse; Pierce County Superior Court Judge Sebring, et al.), we should see Felnagle on the Pierce County Superior Court Bench within a few years.

IN MEMORIAM

Mont Clair Spear, 85, died April 15, 1990 in Olympia. A 1926 graduate and 1929 law graduate of the University of Kansas, Spear practiced law in Kansas City, Missouri for a while before joining the FBI. He served as a supervisor in the Bureau's Washington, D.C. headquarters, and was posted to the Northwest in 1939 to work on the kidnapping of a Tacoma doctor's son. Spear and his wife fell in love with the Northwest and resolved to return; they moved to Seattle in 1947, and Spear joined the WSBA. He practiced in the Jones Building in Seattle until 1980.

Spear was active in a variety of community groups, including the Boy Scouts, the Masons, the Seattle Geneaology Society and the Kiwanis Clubs, with which he had a 30-year record of perfect attendance. Survivors include his wife, two children and two grandchildren.

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