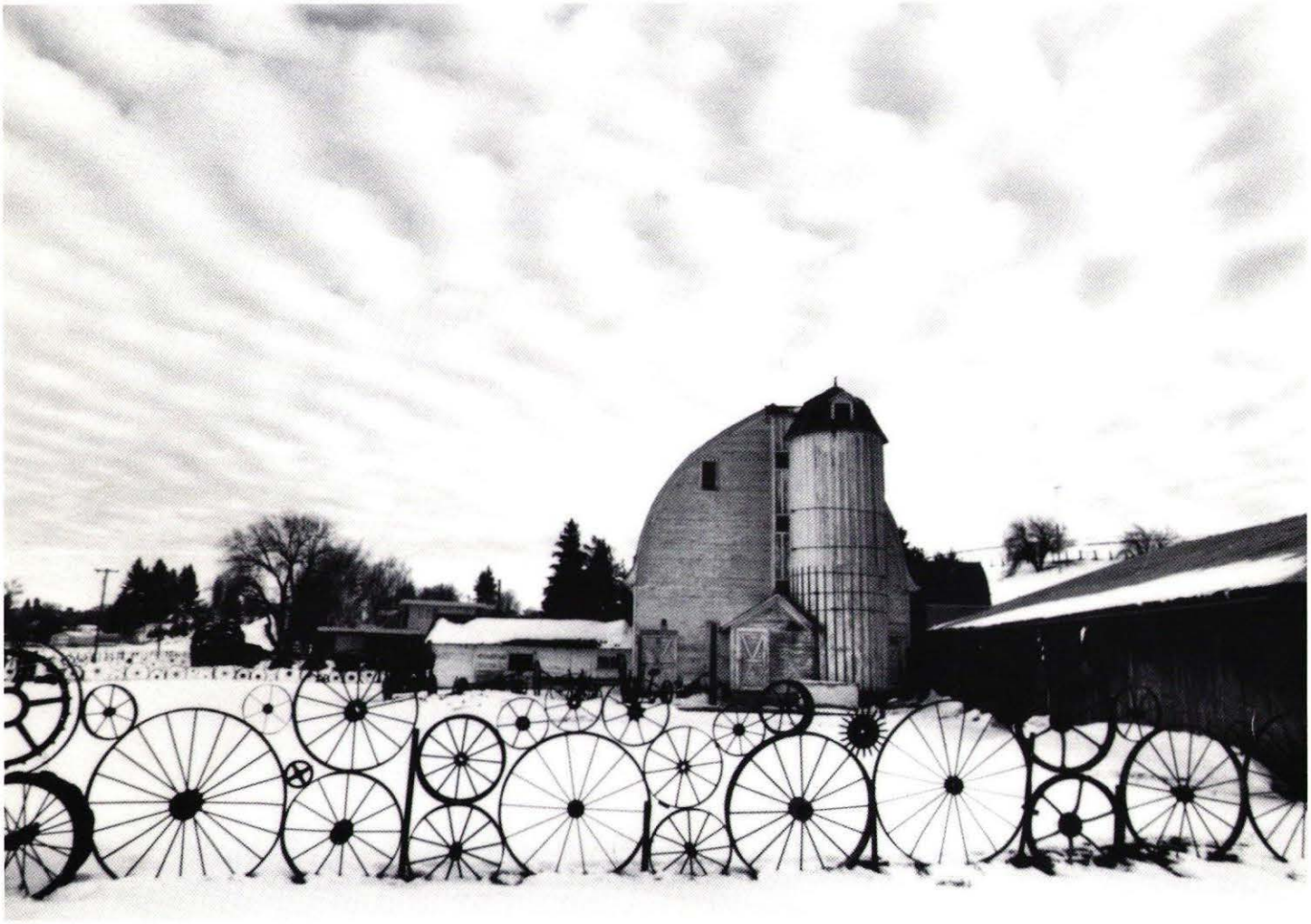
Washington State Bar News
Vol. 45, No. 1, January 1991



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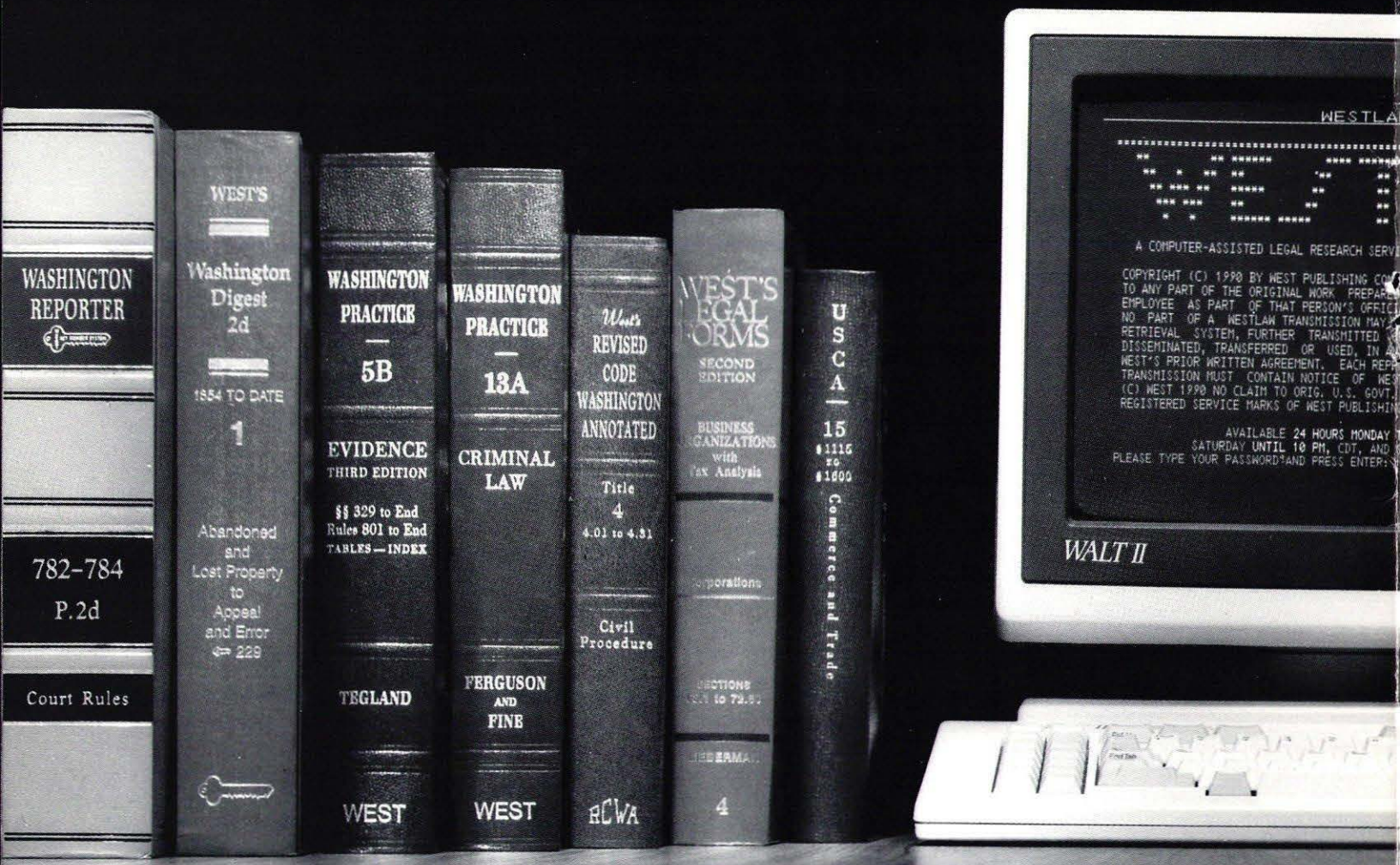

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Washington State Bar News

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FEATURES

DEPARTMENTS

ART CREDITS

Snow covers the pasture behind an inventive fence in Union. Photo by WSBA staff member **Jeff Barreca.**

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

Changes Afoot

Editor:

The May 1990 issue of the *Bar News* contained my article, "Benefits of Former Spouses of Military Personnel" on page 11. It stated that it was current as of December 1989 because Congress was considering legislation that would expand the rights of so-called "20/20/15" former spouses. Congress did not pass that legislation, although it did pass amendments to the Uniformed Services Former Spouses' Protection Act. The President signed the bill on November 5, 1990.

Interested readers may request a copy of the November/December issue of my "Military Divorce Newsletter" that contains a discussion of the changes and a "redlined" version of 10 U.S.C. §1408. Please enclose five dollars, and address your request to: 2773 South Parker Road, #230, Aurora, CO 80014.

EDWIN SCHILLING III
Aurora, Colorado

More Computer Research News

Editor:

The "Guide to Specialized Resources and The Methods for Conducting Legal Research in Washington State" (October 1990) will be a very useful resource to legal researchers. However, the Guide failed to list one important research tool available to lawyers statewide. The Young Lawyers Division of the Seattle-King County Bar Association provides an Electronic Law Library Service at the King County Law Library. Experienced legal researchers are available in person or by phone to conduct computer-assisted legal research on the Westlaw database. Information concerning current rates and procedures can be obtained by phone at (206) 296-0947. Solo practitioners and firms that do not have on-line researching capabilities will find this service most helpful.

E. RUSSELL TARLETON
Co-Chair
Electronic Law Library Service
Kirkland

The Awful Truth

Editor:

Here's a priceless gem you might be able to use as a filler for an issue of the *Bar News*.

Judicial Honesty

Mr. Smith: If it please the court, I'm the person who drew the findings, and there are a couple of what basically become minor changes I think that have occurred or that I put in the pleadings, and I'd like an opportunity to explain those to the court. They're slightly at variance with the decision, but I think they're based upon some common sense and also some circumstances that have changed, since the court gave its oral decision.

The Court: It has happened that judicial decisions are at variance with common sense.

GLORIA HANSON
Official Court Reporter
Whatcom County Superior Court
Bellingham

Mentor Needed

Editor:

The Washington State Bar has a work-study program (Rule 6, Law Clerk) through which a candidate may qualify for admission to the Bar. The program is designed to afford an opportunity to candidates who might not be financially capable of attending law school. I would like to become a candidate for this program and would appreciate any help from your readership in finding an attorney or judge who would be willing to act as my "tutor." Under the rules of the program, a tutor must have been practicing at least ten years, be willing to employ the candidate for a minimum of 30 hours a week, spend a few hours a week reviewing the candidate's progress through assigned course work, and administer a monthly test.

For my part, I feel I would contribute immediately to any tutor's practice through the knowledge and skills I have developed over the past 16 years working as a legal assistant and litigation support specialist in three states: California, Oregon and Washington. Along with this background, I bring extensive training and experience in science and engineering, and I am an experienced mediator.

My current search for a tutor has been frustrated by the lack of awareness of the program by many attorneys in the state. I hope that my letter will not only bring me a few responses but also make others aware of the program so that other worthy candidates who currently lack the financial resources to attend law school might be afforded a chance to become attorneys.

TED W. GILLIS
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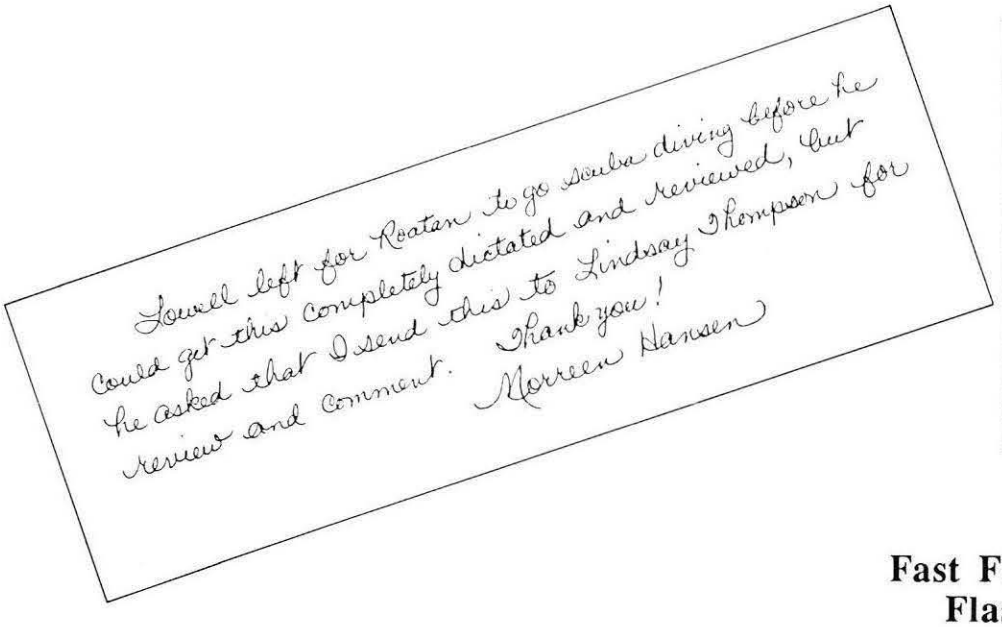

Fast Forward to Flashback —a Tale for our Time

My year of service as your Bar president in 1990-1991 was a time of remarkable personal growth and opportunity for me. The immense support offered by Bar staff was matched only by the tremendous volunteer efforts of the many lawyers who stepped forward to help promote openness, professionalism, and justice this past year. Our new Bar president, who took over at the San Diego Bar Convention this last month, will undoubtedly experience the same high level of cooperation I have come to expect from each of you.

It is traditional for the president to highlight the various programs which came to fruition during his/her year, and my "summing up" is marked by a great deal of pride for the significant accomplishments made by many of you during 1990-1991.

I am proud to report to you that my goal of introducing Alternative Dispute Resolution programs into every corner of this state has been met. Every citizen of every county in Washington has some form of assured access to an ADR program. A Wahkiakum couple, for example, had their landlord/tenant dispute resolved in 30 minutes at the Cathlamet YMCA That bar program was funded in a unique partnership, consisting of 30 percent from the local Wahkiakum bar, 60 percent through local county commissions, and 10 percent "seed money" from the Legal Foundation of Washington.

Some impetus for the adoption of a statewide ADR undoubtedly arose from the spring 1991 crisis in court congestion in King County. On April 22, all civil cases in that county's 48 courtrooms were struck from the calendar in order to handle the 4,000 pending drug/sex abuse cases that had to be prosecuted within 90 days or be dismissed.

The State Legislature met in special session and provided $50,000 to the Settlement Now program which went statewide. It was adopted as a mediation model by all three divisions of the Court of Appeals. By August 1991, 87 percent of all cases mediated through that program were brought to final settlement. The largest case involved $1.2 million; the smallest $46. Overall, during fiscal year 1991, $26 million changed hands through the various ADR programs, including Settlement Now. Private dispute resolution programs such as J.A.M.S. (Judicial Arbitration and Mediation Service) and AAA (American Arbitration Association) reported a similar increase in business. Divorce mediations cut in half the number of contested custody trials in Spokane. The Bar's ADR Section reported a 300 percent increase in its own membership as more lawyers sought an alternative to their litigation practices.

The rash of judicial resignations that started in King County in winter 1990 continued throughout the rest of the state well into the last half of my term. All told, twelve superior court judges and one supreme court judge quit over lack of money. Prominent jurist Charlie Burdell (renowned for setting the record for settlements in that county in 1990) told the press he had to return to private practice to meet his children's college tuition expenses.

Four single-judge counties were especially hard-hit by resignations. The Legislature met in special session to accept Chief Justice Dore's task force recommendation to increase judicial salaries by 30 percent retroactive to January 1, 1991. This resulted in Washington's judicial salaries moving from fifth lowest in the nation to the top of the bottom half of judicial salaries nationally.

On a happier note, we have finally developed a captive liability malpractice insurance carrier. Initial figures suggest the resulting competition will drive down all carriers' premiums by 30 percent in 1992. The captive liability carrier program involved creation of a special peer review committee and required every lawyer to attend a

preventive legal malpractice seminar. Malpractice rates for those who joined the captive carrier are expected to drop by 40 percent in the second year. Also noteworthy were the resignations of 66 lawyers who turned in their license in lieu of complying with the stringent peer review requirements. Coincidentally, a Bar investigation turned up the interesting fact that these same 66 lawyers had, cumulatively, $4 million of the $6 million dollars of claims known to be pending around the state as of September 1991.

The new ADR Section set up a committee to mediate grievances between lawyers (e.g., partnership breakups, discipline, ethics, complaints) resulted in a reduction of the number of referrals to the Disciplinary Board from that source by 66 percent.

I'm especially proud to report that president Jack Dean's 1987 goal of 100 percent participation in pro bono activities of all county bar associations statewide has finally been met. Every bar association now has voluntary legal services programs, funded in part by modest grants from the Legal Foundation of Washington. Seventy percent of all lawyers in the state have participated in the program through their local bars.

Most of the immediate solutions proposed in the 1988 Report on the Legal Services to the Poor were implemented. The Legislature simplified the Parenting Act and the Support Act, simultaneously ordering divorce forms that were simple, uniform and easy to fill out. A special rule was adopted by the Supreme Court providing licensing of legal-assistant technicians working under the direct supervision of lawyers to help in the development of parenting plans and support schedules. These assistants were trained by a special panel of family law attorneys. The panel has an ongoing 60-hour program for interested applicants and is supported in its endeavors by the Washington Legal Secretaries' Association, the Washington Legal Assistants' Association, and the Washington Court Reporters' Association. These organizations are owed special thanks for coming forward to help meet the needs of the many "self-helpers" who felt frustrated by the intricacies of the legal process.

The membership survey conducted in summer 1991 revealed that over 85 percent of all lawyers practicing in the state of Washington have given at least 30 pro bono hours per year. The definition of pro bono was expanded to include rendering legal services in areas not directly connected with bar associations or courts. The record was set by a Walla Walla lawyer who had donated over 1,400 hours in a prison law appellate project. A former member of our Board of Governors, Pete Dewell of Everett, wrote an article in the May 1991 *Bar News* detailing the very interesting pro bono cases he handled during his six-month sabbatical from his law firm.

The Bar's first annual Media Awards were shared by the *Spokesman Review*, *The Seattle Times* and the *Tacoma News Tribune* for their Pulitzer Prize-winning joint serialization of a new book by John Rupp, entitled *The History of Pro Bono Lawyering in Washington State*.

We successfully negotiated with U.S. West for major cellular phone discounts. All Bar members are now able to purchase a hand-held cellular phone for under $300 and pay a monthly subscription fee of not more than $15 per month. (User fees are half of the

currently published public tariff). Negotiations are pending for discount fax machines, computers and software.

For the first time in its history, the Evergreen Legal Services program received full funding for its program. The Legislature voted to increase the filing fees for superior court actions to $100, earmarking the $22 increase entirely for poverty law programs. The WSBA was joined in its efforts by WSTLA and the state clerks' association in successfully lobbying for the filing-fee increase. This marks the first time they have jointly lobbied on behalf of a bill.

Following Spokane's lead, 46 large law firms in Tacoma, Everett, Bellevue and Seattle volunteered ten percent of their lawyers to serve as special prosecutors in the drug and sex abuse cases which have been clogging the courts for the past six months (see *Bar News*, April 1991, "King County Courts Come to Complete Six-Month Stand Still"). Jim Tune, managing partner of the Bogle firm reported an 87 percent conviction rate obtained by his firm's 32 special-prosecutor volunteers during the first five months of the program.

On the administrative side, we obtained a network license for satellite telecommunications of all CLEs throughout the state. Instead of traveling to five or six CLE sites, Bar members may now enjoy CLE programs in designated law offices in each town and city every other Saturday morning throughout the year. Participating law firms have one volunteer lawyer who serves as moderator and group discussion leader. As a result, the cost of CLEs has been reduced to $5 per hour. Incidentally, the Young Lawyers Division made $20,000 on its video "What's New in the Law," done in L.A. Law format and licensed for five credits' home viewing.

The Bar also implemented a new computerized program called "Legal Net." This supplements the national ABA program and includes data banks available to all lawyers throughout the state on UCC filings, corporate records, summary of new bills passed, caselaw since 1958, the RCWs, all bankruptcy records, and a credit reporting service. The cost is $15 per hour of connect time.

Our Retired Pro Bono Lawyers Program reports over 2,000 hours of service through September 1991. Although the program has only been in place four months, it has already spun off a new public-interest project in smaller communities called "Tuesday Night Lawyer," where local citizens can consult for 15 minutes free on personal consumer issues. That program, while still experimental, promises to receive high demand once its availability is made known to the communities.

A showcase of my presidential year has been the adoption of a statewide mentor and professionalism program called "Lawyer to Lawyer." Back in late 1990 it became apparent that the new admittees (over 1,000 in 1990), while competent in the substantive areas of law, lacked the experience to deal with the many "Rambos" we see surfacing in our practices. Twelve hundred lawyers were contacted and unanimously agreed to mentor the new admittees over the course of the next year. The Bar provided an extensive manual on professionalism (which won the ABA's outstanding award at the summer convention in 1991).

All in all, it's been a tremendous year for change within the Bar and...

(finish this later)

Enforcing Taking

Over $8.7 billion dollars (U.S.) worth of trade flowed between Washington and Canada in 1989, making our neighbor to the north our second-largest trading partner. This has more than doubled in the last four years. The United States-Canadian Free Trade Agreement, which went into effect on January 1, 1989, will stimulate even more trade by reducing tariff barriers.

This increased trade will inevitably generate commercial conflicts and litigation. Washington's courts have recognized some Canadian judgments under Washington's Uniform Foreign Money Judgments Recognition Act. RCW 6.40.010-.915 (1990). Until recently, however, enforcement of Washington judgments against debtors with assets in Canada could often involve the expense of relitigating the case in Canada.

Negotiating Recognition of Foreign Judgments in Canada

The Washington State Attorney General's Office has worked through its counterpart Attorneys General in the Canadian provinces (including the territories) to change that. At this writing, the provinces of British Columbia and Alberta have agreed to recognize Washington judgments in their courts and other provinces are considering doing the same.

The Canadian provinces, like American states, have statutes providing for enforcement of judgments from other jurisdictions (usually other Canadian provinces). See e.g. Court Order En-

Washington Judgments in Canadian Courts: the Dams out of the Stream of Commerce

by **Kenneth O. Eikenberry**, *Washington State Attorney General*
James M. Johnson, *Senior Assistant Attorney General*
David M. Driesen, *Assistant Attorney General*

forcement Act, B.C. Rev. Stat., ch. 75 {{ 30-41 (1979). These statutes usually provide for enforcement of judgments obtained in a "reciprocating state." We have asked each of the Canadian provinces (and territories) to designate Washington as a "reciprocating state" under these acts.

The Executive Council of the Province of British Columbia passed such an Order in Council, under its Act, declaring Washington the first American reciprocating state on July 5, 1989. Alberta's Executive Council issued a similar regulation on July 5, 1990.

Some provinces have informed us that their Acts do not presently authorize the executive branch of government to designate an American state as a reciprocating state. In these provinces, legislative action will be necessary. We hope that all of the Canadian provinces will recognize that it is better to devote our companies' resources to economic trade than to dual litigation.

Requirements for Recognition of Washington Judgments

The law of the province in which recognition of judgments is sought determines the procedural and substantive requirements governing recognition of American judgments. In British Columbia, the first province to recognize Washington judgments, the judgment creditor must apply to the British Columbia Supreme Court, a trial court, for registration within six years of the date of the judgment.

A recent law review article on this subject spells out the registration requirements. See Eikenberry, Johnson, and Wulf, Enforcing Washington Judgments in British Columbia: "Reciprocating State" Status for Washington Will Make Enforcement Easier, 13 U.P.S.L.Rev. 491, 498-509 (1990); B.C. Sup. Ct. R. 54 (2).

Canadian provinces generally have limitations on the recognition of judgments from other states which resemble similar limitations in United States' courts. British Columbia, for example, will not register judgments in which either subject matter or personal jurisdiction are lacking. Nor will it recognize fraudulently obtained judgments, non-final judgments, or judgments violative of its public policy. Neither the Washington nor the Canadian acts apply to judgments for alimony or child support.

Potential Enforcement Problems

Of course, differences in the law governing recognition of judgments will continue to complicate the enforcement of some judgments. British Columbian courts do not generally recognize judgments against debtors who neither carried on business nor ordinarily resided in the state rendering the judgment, unless the party voluntarily submitted to the foreign court's jurisdiction.

An exception to this requirement, called the "jurisdictional reciprocity" principle, allows a Canadian court to recognize a judgment of a reciprocating province against an absent defendant, if the court's personal jurisdiction rested on legal principles which would be valid in British Columbia. In a recent case, a British Columbian court relied on this principle and recognized a default judgment obtained in Alberta when the British Columbian defendant failed to respond to personal service in British Columbia. Although the question has not been litigated, we hope this principle will apply to American states recognized under the reciprocity statute. While the British Columbian courts may recognize some default judgments, they will not recognize Washington default judgments in which personal jurisdiction is based on principles not valid under British Columbian law.

Companies contracting with firms having their substantial assets in Canada should negotiate a choice-of-forum clause to minimize problems in obtaining personal jurisdiction and recognition of judgments. A defendant can submit to jurisdiction of a court by contract in Canada.

British Columbia will also refuse to register a foreign judgment if the judgment debtor has a good defense to an action brought on the judgment. A recent case defines a good defense as one that could not have been raised in the original action, but could have been raised had the original action been litigated in British Columbia.

Conclusion

We anticipate that the agreements we negotiate with the provinces of Canada will simplify trade and thereby spur economic development on both sides of the border. We are pleased that so many Canadian provinces are on the verge of reciprocating Washington's long-standing recognition of Canadian judgments. We anticipate that our contacts with Canadian Attorneys General will enable us to remove other legal impediments to free trade in the future. □

OFFICE PRACTICE TIPS

SPONSORED BY THE LAW OFFICE ECONOMICS AND MANAGEMENT SECTION

Personalizing Your Answering Service

by **Gregory S. Morrison**

If you use an answering machine or answering service, you might evaluate the effectiveness of your messages: Your potential client's first impression of your firm could be made by someone other than your well-trained receptionist.

Due to the low cost of electronic answering machines, both firms and sole practitioners are opting to provide message service for their clients 24 hours a day, seven days a week. Prior to answering machines, the only way lawyers could affordably take their clients' messages around the clock was through an answering service. Now, most small firms have installed answering machines.

There are several good ideas for getting the most out of your answering machine that you won't read in the owner's manual. Paying heed to these suggestions will take only a few minutes of your time, but the extra effort will pay off handsomely with favorable client response. These comments may also be applied to "voice-mail" systems, which are enjoying tremendous popularity.

Where should you record the message? Try to avoid using the answering machine itself. Its microphone is probably of poor quality, which will be reflected in the quality of your message. A professional recording studio is the best medium, but even your hand-held dictation machine, will produce a much higher quality recording.

What "voice" do you intend to use for your message? You may wish to use the voice of the senior partner or lead receptionist. Even on a mere recording, a familiar voice is always comfortable and reassuring. You might wish to engage the services of a professional radio personality; the small amount of time involved is usually affordable.

Take the time to write out the text for the message. Make sure the text reads smoothly and conveys the message that you want to convey. Your "delivery" should be done in a way that makes both you and your clients feel comfortable. Avoid using slang or sounding too casual.

Many answering machines for office use allow the user to provide for "announce only." In other words, you can leave a message for anyone who calls, but the machine will not record any incoming messages. This hangs up on the client. If a potential client is merely advised that your office is closed, but another lawyer's answering service invites him or her to leave a message and advises that the messages are checked regularly, you might lose the client.

Before recording, read the text over several times. Notice that if you change the timing or emphasis, the overall quality can change dramatically. Rehearse the message as many times as it takes for you to feel comfortable speaking it into the recorder. There is also merit to the idea that your message should be changed from time to time in order to maintain variety and interest.

I never thought an answering machine could be that good a sales tool until our firm began to receive compliments on the message! Although it may not sound like Walter Cronkite, it does sound good. Here is the text, which I invite you to use as a guide:

> Thank you for calling the law offices of Morrison and Baechler. Our office hours are 8:30 a.m. to 12 noon and 1 p.m. to 5 p.m, Monday through Friday. If you would like to leave a message, please feel free to do so after the tone, otherwise, we invite you to call back during regular business hours. Thank you.

If you would like to hear how that message is delivered, just call (509) 325-1000 during the off-hours. And if you do, just be sure to say hi!

This column is a clearinghouse for better ways to run the law office. Contributions are solicited from all members of the Bar and should be sent to: Gregory S. Morrison, Tips Editor, The Flour Mill Penthouse, W. 621 Mallon, Spokane, WA 99201.

The Registration of Foreign Legal Consultants in B.C.

by **D.F. Ursel**

Canada's western-most province, British Columbia, has recently implemented a foreign-consultant rule whereby lawyers qualified under the jurisdiction of other countries may practice within B.C. in areas pertaining to that foreign jurisdiction's law.

Under B.C. legislation, (the Legal Professions Act SBC 1987, Chapter 25), the Province's bar association (the Law Society of British Columbia): ... may permit a person who holds professional legal qualifications obtained in a country other than Canada to give legal advice respecting the laws of that country, subject to any conditions, including the payment of a fee...

The executive (or "Benchers") of the Law Society passed Rule 405 for purposes of the registration of foreign legal consultants within B.C. The rule provides that a "foreign legal consultant" is one holding professional legal qualifications in a foreign jurisdiction who provides legal advice within B.C. only on the laws of that foreign jurisdiction.

Under Rule 405, a foreign legal consultant need not reside in the province. However, to be registered under the rule, an applicant must provide (1) evidence of membership and good standing in the legal profession in the foreign jurisdiction's bar association, (2) character references from colleagues in the profession, (3) an acknowledgement of jurisdiction of the B.C. Law Society over the applicant and activities carried out within B.C. under the rule, (4) proof of professional liability insurance or other form of security acceptable to the Law Society, and (5) membership in or contribution to a professional practice fidelity bond program similar to that of the B.C. Law Society's Special Compensation Fund (used as a source for reimbursement to clients who suffer a loss because of misappropriation or wrongful conversion by legal counsel).

If an applicant meets the requirements under the rule for permission to act as a foreign legal consultant, a permit is issued on an annual basis. The permit may be issued subject to certain conditions, including those relating specifically to the applicant's legal training or qualifications. The permit can be suspended immediately if the foreign legal consultant fails to meet the standards or to comply with any of the requirements under Rule 405, is convicted of an indictable offense or is suspended as a result of Law Society disciplinary proceedings.

Currently, fees for a permit application are C$500, with an annual renewal fee of C$100.

Under the rule, a foreign legal consultant is restricted to the provision of legal advice relating to the laws of the jurisdiction(s) in which the consultant is qualified as a lawyer. Provision of legal services of any kind relating to the laws of British Columbia, including revision or drafting of documents, claim negotiation or appearing as counsel in an administrative or court proceeding, is not permitted. Section 1 of the Legal Professions Act defines the "practice of law," and a foreign legal consultant is not permitted to carry on the "practice of law" except as it may relate specifically and solely to the law of the jurisdiction in which the foreign legal consultant is a bar member.

A foreign lawyer is not required to be registered under Rule 405 if that foreign lawyer is retained by a lawyer admitted to the British Columbia bar and the foreign lawyer provides expertise and services to the B.C. counsel and not directly to the client.

A foreign legal consultant registered under the rule is subject to the Law Society's professional conduct rules generally and, in particular, to the rules relating to advertising and marketing of professional services. A foreign lawyer registered under Rule 405 may be listed as a "foreign legal consultant" on letterhead of a B.C. law firm, if associated or employed by that firm.

The rule serves as an acknowledgement of the growth of transnational practice and, no doubt, has resulted in large part from the provincial bar's recognition that B.C. and its major port city, Vancouver, will play a significant role in international business trade with the U.S. Pacific coast states and Pacific Rim jurisdictions.

As of October 1, 1990, two permits under the rule have been issued, both to lawyers from U.S. jurisdictions. A third application is in the final stages of processing.

As the above is a brief summary of the registration requirements, inquiries relating to Rule 405 and procedures for registration as a foreign legal consultant in British Columbia should be addressed to the Law Society of British Columbia, Suite 300, 1148 Hornby Street, Vancouver, British Columbia, V6Z 2C4, Canada; telephone: (604) 669-2533; fax (604) 669-5232. □

***D.F. Ursel** is an Oregon and California bar member who practices with Swinton & Comany in Vancouver, B.C.*

NOTES FROM THE ACADEMY

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

Community property. *(Case 1.)* Husband borrowed money to purchase ski boat, signing note and security agreement and taking title in his own name. Boat was used several times for family outings. Husband conceded his separate liability, and court held that community was liable. Issue on appeal is whether wife is liable in her separate capacity. *Held*, wife is not separately liable. Though she was aware of purchase and used boat, she did not authorize or ratify purchase. Further, boat was not family "necessary" under RCW 26.16.205. ***Smith v. Dalton***, 58 Wn.App. 876, 795 P.2d 706 (Div. 1, 8/8/90).

(Case 2.) Before marriage, husband and wife executed antenuptial agreement, agreeing to keep their separate property separate after marriage; agreeing that community property would be divided equally upon divorce; and agreeing that neither would have any claim against the other for support, property, fees or anything else. However, following marriage both wife and husband deposited substantial amounts of their separate funds into community joint bank account. Funds from account were spent on improvements to wife's separate-property home and on community living expenses. Upon dissolution, husband attempted to enforce antenuptial agreement, and wife resisted it. Following test laid down in ***In re* Marriage of Matson**, 107 Wn.2d 479, 730 P.2d 668 (1986), court of appeals in present case stated that, since agreement was fair to party who did not seek to enforce it (wife), agreement would be valid and enforceable. But court held that, by commingling funds and failing to observe agreement after marriage, parties showed intent to abandon it, constituting rescission and abrogation and making agreement no longer enforceable. ***In re Marriage of Fox***, 58 Wn.App. 935, 795 P.2d 1170 (Div. 3, 8/23/90).

—T.R. Andrews

Trusts--Wills and Estates. Husband transferred all his separate property into revocable inter vivos trust. Upon his death, $100,000 of trust funds were to remain in trust for benefit of his incompetent son, and upon son's death remainder was to go to Red Cross. If wife survived, she was to get income from funds over $100,000 for her life, with remainder in her share to Red Cross upon her death. Husband died with will, survived by wife, but there was apparently no probate of his estate. Wife petitioned for $25,000 award in lieu of homestead, to be paid from trust funds. *Held*, award in lieu may not be paid out of trust funds. Probate court has no jurisdiction over trust, because it is not "property of the estate." Husband's estate had no interest in trust upon his death, even though he retained power of revocation until his death. ***In re Estate of Overmire***, 58 Wn.App. 531, 794 P.2d 518 (Div. 2, 7/19/90).

—T.R. Andrews

To Be or Not to Be: The Dual Citizen's Dilemma

by **Terry T. Preshaw**
and **Roberta K. Shapiro**

The New U.S. Nationality Policy

Increasing ties between the U.S. and Canada are creating not only new trade opportunities but also challenges for lawyers on both sides of the border. According to 1986 Canadian census data, there were over 280,000 U.S.-born residents in Canada and over 52,000 U.S.-born residents in British Columbia. Many of these individuals believe that they have irrevocably lost their U.S. citizenship by becoming Canadian citizens. Others believe that they will if they do.

Both beliefs are now wrong, thanks to a remarkable shift in U.S. nationality policy which focuses on a change in evidentiary standards.

The New Evidentiary Standard

The change is a complete about-face: instead of presuming that U.S. citizens who become foreign nationals have the intent to relinquish their U.S. citizenship, the new premise is that U.S. citizens intend to keep it.

"Loss of Nationality" proceedings are initiated by the Department of State (usually through the local U.S. Embassy or Consulate) when the Department learns that a U.S. citizen may have committed an expatriating act such as acquiring the citizenship of another country.

> ...The Department processes approximately 4,500 Loss of Nationality cases each year under the mandate of Section 358 I.N.A. [the U.S. Immigration and Nationality Act of 1952, as amended]. My office, the Office of Citizen Consular Services, approves approximately 800 Certificates of Loss of Nationality (C.L.N.) each year. About 25% of those cases are the express renunciation before a U.S. consul...[1]

Loss of Citizenship (Expatriation)

When the Department of State seeks to prove loss of citizenship it must demonstrate by a preponderance of the evidence that:

1. A potentially expatriating act must have been performed by a U.S. citizen;
2. On a voluntary basis;
3. With the intent to relinquish U.S. citizenship.

The first two factors are usually easy to ascertain. For example, a U.S. citizen decides that (s)he must become a Canadian citizen in order to practice law (pre-*Andrews*).[2] (S)he voluntarily becomes a Canadian citizen in order to practice law in British Columbia. Did (s)he have the intent to give up U.S. citizenship when (s)he became a Canadian citizen? This individual had to go through a "Loss of Nationality" proceeding at the U.S. Consulate in order to get the answer. Before, (s)he had to show that (s)he had continued to honor the obligations of U.S. citizenship, such as voting in U.S. federal elections by absentee ballot, filing U.S. federal income tax returns, registering Canadian-born children as U.S. citizens born abroad, keeping a current U.S. passport, and, most importantly, demonstrating that contemporaneously with the expatriating act that (s)he had no intent of relinquishing U.S. citizenship.

This new policy will greatly simplify this procedure and will remove a tremendous burden from U.S. citizen landed immigrants who wish to become Canadian citizens. As long as these landed immigrants do not fall within one of the five exceptions discussed below, they should not have to worry about being stripped of their U.S. citizenship as a consequence of choosing to become Canadian.

Five Exceptions to the New Policy

The new presumption regarding intent not to relinquish U.S. nationality would be considered to have been rebutted in only five situations.[3]

1. When an individual has formally renounced U.S. nationality before a U.S. consular officer as described in I.N.A. Sec. 349, 8 USC Sec. 1481;
2. Where an individual has taken a policy level position in a foreign state;
3. Where an individual has committed treason;
4. Where an individual has performed an act potentially expatriating by statute and where the proven conduct is so inconsistent with allegiance to the United States to compel the conclusion that the individual intended to relinquish citizenship; and
5. When an individual has performed an expatriating act, potentially expatriating by statute, and informs the

Department under oath and in writing before a U.S. consul that it was his intent to relinquish U.S. nationality.

Benefits of Dual Citizenship

There are quite a few U.S. citizen landed immigrants who would like to have the benefit of Canadian citizenship so that they can work whenever they want in Canada but can live in the U. S. Many of these individuals are self-employed and do not qualify for an appropriate temporary or permanent work visa under these circumstances. Thus they feel trapped in Canada. Now many will be able to become dual citizens and enjoy the best of both countries.

Retroactive Effect of the New Policy

Many former U.S. citizens will want to know if this new policy can help them regain their U.S. citizenship. Surprisingly, the answer is, *yes!* There is a provision in the U.S. Department of State Foreign Affairs Manual (7 FAM 1231) which allows *any* loss of nationality case to be reconsidered. If the facts of an individual's case support a finding of non-loss under the new policy, then the original certificate of loss of nationality will be vacated. The effect is retroactive. The individual is considered to have been a U.S. citizen from the original date of loss onward. This could be good news in terms of transmitting U.S. citizenship to foreign-born children, but it could also be bad news in terms of U.S. federal income taxes (see discussion below).

Transmission of U.S. citizenship will be a primary concern of these "restored" U.S. citizens. They will want to know if their children are also U.S. citizens. Many of these parents perceive a unique broadening of opportunity for a U.S./Canadian child. For example, a U.S./Canadian dual citizen may attend university or work in either country at will without the necessity of obtaining a student or work visa.

The answer to the question of transmission is "maybe." The analysis required in making a determination on this issue is based upon several sets of complicated retention requirements which are beyond the scope of this article. However, even if the child is

not a U.S. citizen, the U.S. citizen parent may be able to sponsor the child for permanent residency in the U.S. ("green card" status).

U.S. Federal Income Tax Effects of the New U.S. Nationality Policy

For U.S. citizens resident in Canada who now wish to use the new U.S. nationality policy to become Canadian citizens while retaining U.S. citizenship, the following U.S. federal income tax effects of U.S. citizenship should be considered.

Requirement to File Annual U.S. Federal Income Tax Returns

Historically and currently the U.S. Internal Revenue Code[4] subjects U.S. citizens, *including those resident outside the U.S.*, to annual U.S. federal income tax on their worldwide income.[5] Income tax legislation in most other jurisdictions, including Canada, imposes tax on worldwide income only if the taxpayer is resident within the jurisdiction. However, for U.S. citizens resident outside the U.S., the Internal Revenue Code imposes U.S. federal income tax on the basis of U.S. citizenship.[6] Therefore, U.S. citizens resident in Canada are required, by virtue of their U.S. citizenship, to file annual U.S. federal income tax returns. This is an ongoing legal obligation as long as U.S. citizenship is retained. In addition, U.S. citizens who are resident in Canada for Canadian income tax purposes are required to file annual Canadian income tax returns.

U.S. citizens resident in Canada who have consistently filed annual U.S. federal income tax returns since relocating to Canada should consider it a routine matter to continue to file these U.S. returns after they become dual citizens. As well, U.S. citizens who have complied with U.S. tax return requirements while resident in Canada should not have any difficulty in completing the U.S. tax return question included in the questionnaire required by the U.S. Department of State when seeking a determination on the question of dual citizenship.

Delinquency in Filing Annual U.S. Federal Income Tax Returns

Many U.S. citizens resident in Canada express surprise (and dismay) when informed of their legal obligation to file annual U.S. federal income tax returns. Delinquency in filing these returns is a common problem. The Internal Revenue Code contains no amnesty provisions for U.S. citizens who have failed to file the required U.S. income tax returns. Furthermore, the U.S. Treasury Department and the Internal Revenue Service are not likely to establish an amnesty program for U.S. citizens resident outside the U.S. who become dual citizens under the new U.S. nationality policy. Voluntarily filing delinquent U.S. federal income tax returns is preferable to disclosing the delinquency in the U.S. Department of State Questionnaire for dual citizenship and awaiting demands from the Internal Revenue Service for the delinquent returns. Therefore, U.S. citizens resident in Canada who are delinquent in filing U.S. income tax returns should be

informed of the following legal requirements and referred for further assistance to an accountant knowledgeable in the preparation of U.S. federal income tax returns:

1. A U.S. federal income tax return is required to be filed with the Internal Revenue Service for each tax year the U.S. citizen failed to file a U.S. tax return.[7]

2. No limitation period applies when a U.S. citizen fails to file a U.S. federal income tax return for a particular tax year.[8]

3. A minimum penalty of (U.S.) $100 applies for each tax year the U.S. citizen failed to file a timely U.S. income tax return.[9]

4. If U.S. federal income tax is payable for a particular tax year and the U.S. citizen cannot show that the failure to file a timely U.S. income tax return was due to "reasonable cause" and not "willful neglect," a penalty of up to 25% of the amount of tax payable applies.[10] Additional penalties may also be imposed by the Internal Revenue Service.[11]

5. If U.S. federal income tax is payable for a particular tax year, interest compounded daily at various quarterly adjusted rates is charged from the due date of the delinquent tax return to the date the tax is paid.[12]

6. Penalties and interest paid with respect to delinquent U.S. federal income taxes are generally not deductible for U.S. federal income tax purposes and cannot be claimed as deductions or credits for Canadian income tax purposes.[13]

7. Delinquent U.S. federal income taxes paid by a U.S. citizen resident in Canada should be reviewed by the preparer of the U.S. citizen's Canadian tax returns for possible foreign tax credit treatment. In this case, revisions may be required to certain Canadian income tax returns filed by the U.S. citizen.

The U.S. Internal Revenue Service has an office and a small staff of Internal Revenue Service representatives at the U.S. Embassy in Ottawa. From time to time, this Ottawa office of the Internal Revenue Service recommends, as a matter of administrative expediency and not law, certain procedures to alleviate the necessity of U.S. citizens resident in Canada filing delinquent U.S. income tax returns for ten or more tax years, for example. The current administrative practice of the Ottawa office is described below. However, it should be noted that this practice is currently being reviewed by senior officials of the U.S. Treasury Department and the Internal Revenue Service in Washington, D.C. Changes to this practice may subsequently be announced. In the interim, U.S. citizens who are delinquent in filing U.S. federal income tax returns should discuss the following administrative practice procedures with the accountant preparing their U.S. tax returns:

1. Returns for the immediately preceding three tax years should be prepared and filed with the Internal Revenue Service Center, Philadelphia,

Pennsylvania. These returns should be accompanied by a letter setting forth the history of the taxpayer's income and business or employment for all tax years for which U.S. federal income tax returns have not been filed. Based on the information provided in the accompanying letter, the Internal Revenue Service may require and is legally entitled to demand the taxpayer to file additional delinquent U.S. income tax returns.

2. If the taxpayer owes U.S. federal income tax for any tax year for which a delinquent tax return has not been filed, a U.S. income tax return for that year should also be prepared and filed voluntarily with the Internal Revenue Service Center in Philadelphia.

Exposure to U.S. Federal Income Tax Liability

Due to numerous differences between the U.S. federal income tax system and that of Canada, such as tax rates, deductions, exclusions, exemptions and tax credits, it is not possible to generalize about the U.S. federal income tax liability of a U.S. citizen resident in Canada. However, several factors which have a bearing on this issue are worth noting.

1. U.S. Foreign Earned Income Exclusion: Effective for the tax year 1987 and to date, Section 911(a) of the Internal Revenue Code generally permits a U.S. citizen who is a bona fide resident of a foreign country to elect to exclude each year from U.S. gross income up to (U.S.) $70,000 of income earned outside the U.S. when that income consists of wages, salaries, professional fees or other amounts received as compensation for personal services actually rendered. (For the tax years 1983 to 1986, inclusive, the amount of the U.S. foreign earned income exclusion was (U.S.) $80,000.) If a U.S. citizen resident in Canada qualifies for and elects the foreign earned income exclusion, the amount excluded from U.S. gross income is exempt from U.S. federal income tax. Due to this tax exempt treatment, no deductions, exclusions or tax credits attributable to the excluded amount can be claimed for U.S. federal income tax purposes. For example, no foreign tax credit can be claimed on a U.S. income tax return for Canadian income taxes paid on the excluded amount.

2. Canadian Capital Gains Deductions: In filing Canadian income tax returns, a U.S. citizen resident in Canada may claim all or a portion of the capital gains deductions authorized by subsections 110.6(2), (2.1) and (3) of the *Income Tax Act*, Canada (the "Act"). Claiming any of these deductions has the effect of decreasing the amount of Canadian income tax payable by a U.S. citizen. However, claiming any of these deductions for a particular year may also have the effect of increasing the amount of U.S. federal income tax payable by the U.S. citizen for that year. In this case, the capital gain would be subject to U.S. federal income tax. If no Canadian income tax was paid with

respect to the capital gain, no foreign tax credit would be available to mitigate the U.S. federal income tax.

3. Sale of a Principal Residence: If a U.S. citizen resident in Canada sells a principal residence at a gain and the principal residence has not been used as rental property, paragraph 40(2)(b) of the Act exempts the gain from Canadian income tax. However, subject to certain exceptions,[14] the gain on the sale of a principal residence by a U.S. citizen resident in Canada is subject to U.S. federal income tax.

Ownership of Private Canadian Corporations by U.S. Citizens

U.S. citizens resident in Canada who own majority interests in private Canadian corporations may be subject to the U.S. federal income tax rules applicable to foreign personal holding companies.[15] As well, such U.S. citizens should be cognizant of the fact that the corporate reorganization rules of the U.S. Internal Revenue Code generally do not apply to corporations incorporated outside the U.S.

Retroactive Effect of The New U.S. Nationality Policy

Former U.S. citizens resident in Canada may request to have their cases reconsidered under the new nationality policy in order to regain their U.S. citizenship retroactively to the date of loss of nationality. It appears that the Internal Revenue Service will require "restored" U.S. citizens to file U.S. federal income tax returns for the intervening tax years when no returns were filed because they had reason to believe they were no longer U.S. citizens. U.S. federal income taxes payable for those years, plus interest thereon, will be required to be paid. However, abatement of penalties for "reasonable cause" should be requested. Presumably the administrative practice procedures discussed herein may be used in these cases. However, the U.S. federal income tax consequences of regaining U.S. citizenship no doubt will add a price tag for former U.S. citizens who may want to have their cases reconsidered by the U.S. Department of State.

U.S. Federal, Estate and Gift Tax Considerations

U.S. citizens and dual citizens resident in Canada are also subject to the U.S. federal estate and gift tax provisions of the Internal Revenue Code. A detailed analysis of these additional U.S. federal taxes is beyond the scope of this article. However, in terms of potential liability for the U.S. federal estate tax, the following points should be noted:

1. Generally, the "gross estate" for U.S. federal estate tax purposes includes the date of death fair market value (in U.S. dollars) of all property *wherever situated* in which the U.S. citizen had an interest at death.[16]

2. For U.S. citizens and presumably dual citizens resident in Canada, a U.S. federal estate tax unified credit of (U.S.) $192,800 is currently available to reduce or eliminate U.S. federal estate tax liability.[17] This unified credit, in effect, exempts the first (U.S.) $600,000 of a U.S. citizen's and dual citizen's "gross estate" from U.S. federal estate tax.

3. Allowable deductions for U.S. federal estate tax purposes include a marital deduction for property transferred at death to a surviving spouse.[18] However, amendments made to the Internal Revenue Code in 1988 and 1989 severely limit the availability of the marital deduction when the surviving spouse is not a U.S. citizen.[19] Therefore, U.S. citizens and dual citizens resident in Canada who anticipate a U.S. federal estate tax "gross estate" in excess of (U.S.) $600,000 and who have non-U.S. citizen spouses should have their potential U.S. federal estate tax liability reviewed.

Conclusion

If you have clients who are either former or current U.S. citizens, the new U.S. nationality policy should be brought to their attention. This new policy provides opportunities for U.S. citizens to become Canadian citizens with little risk of losing their U.S. citizenship and for former U.S. citizens to regain their U.S. citizenship. In both cases, professional guidance is required to enable these individuals to make informed decisions. Due to the recent implementation of the new U.S. nationality policy, further developments in the application and implications of this policy are anticipated. □

Footnotes

[1]From a speech made by Mr. Carmen DiPlacido, U.S. Department of State, Office of Citizen Consular Services, on June 8, 1990 at the American Immigration Lawyers Annual Conference, Seattle, Washington.

[2]*Andrews v. The Law Society of British Columbia*, [1989] 1 S.C.R. 143.

[3]*Supra*, footnote 1.

[4]All references to the U.S. Internal Revenue Code and the Regulations thereto are to the Internal Revenue Code of 1986, as amended (herein referred to as the "IRC").

[5]IRC Regs. Section 1.1-1(b).

[6]*Ibid.*

[7]IRC Sections 6011 and 6012.

[8]IRC Section 6501(c)(3).

[9]IRC Section 6651(a).

[10]*Ibid.*

[11]See, for example, IRC Section 6662.

[12]IRC Sections 6601 and 6621.

[13]IRC Regs. Section 1.162-21(b)(l)(ii), IRC Temp. Regs. Section 1.163-9T and, for example, subsections 20(12) and 126(5) of the *Income Tax Act*, Canada.

[14]See, for example, IRC Section 1034(k).

[15]IRC Sections 541, 542 et seq.

[16]IRC Section 2031(a).

[17]IRC Section 2010(a).

[18]IRC Section 2056(a).

[19]IRC Section 2056(d).

The authors are both members of The Law Society of British Columbia. ***Preshaw*** *is also a member of the Washington State Bar Association, and* ***Shapiro*** *is also a member of the Pennsylvania Bar Association.*

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THE BOARD'S WORK

by **Lindsay Thompson**
Editor, Bar News

Seattle, December 14-15, 1990

Present: President Halverson and the Board of Governors. **Also present:** Stephen Anderson (WSTLA, Friday); Robert F. Bakemeier (WSBA/YLD); Judge Daniel J. Berschauer (Superior Court Judges' Assn., Friday); C.C. Bridgewater (Prosecuting Attorneys' Assn.); Frank Edmondson (Government Lawyers, Friday); John Fattorini (WSBA Legislative Liaison); Dennis P. Harwick (WSBA Executive Director); Donna McNamara (SKCBA/YLD); Larry Ransom (SKCBA Trustees); Kristin Stred (Washington Women Lawyers); Lindsay Thompson (*Bar News* Editor/Clark County Trustees); and Robert Welden (WSBA General Counsel).

Just Metaphorically, Of Course: Executive director Dennis Harwick, who'd been on the job about a week, said he was the man on the cover of the December *Bar News* shouting "Throw me a rope!" Otherwise, he said, the transition was going pretty smoothly and the finances of the Association are in good order.

No, Really, We're Right on Schedule and Everything Is Under Control: Seattle lawyer Wayne Blair was offered up by the Commission on Washington Courts for sacrifice before the Board of Governors. They had taken a first run at the preliminary report of the group, more commonly known as the Gates Commission, last month, but wanted to have at it wholesale this month, when the final report was to be out.

Trouble, was, it wasn't. The copy that went out in the Governors' briefing book turned out to be incomplete from the copier. Then it turned out that Blair's copy was missing two chapters, and the Really Official Edition wasn't to be out until the day the Governors were considering the matter. So they decided to appoint a subcommittee of the Board, composed of Governors Chambers, Hester, Tolman and Tubbs, to go over the report once a complete copy can be had and have it report to them in January.

Even though they didn't deal with the whole report, the Board got their licks in on parts of it. Governor Ron Gould revived a motion he'd made in Bremerton in November, urging that the Board go on record as unequivocally opposing any proposal, in the Gates Commission report or not, to allow the imposition of pro tem judges on litigants who do not want one. "Pro tem judges are fine when people agree on them," Gould said. "But the Commission proposal is a drastic and fundamental departure from our system of justice. To force a nonjudge on a litigant could lead the litigant to think the system is contriving against him. There are tremendous concerns about the quality of pro tem judges. There is nothing wrong with encouraging it voluntarily, and everything wrong with making it mandatory." The Board agreed, and approved the resolution unanimously.

Under examination by Governors, Blair admitted that the Commission report's summary of testimony was "misleading" by saying there was no opposition to the pro tem judge recommendations when, in fact, a number of legal

organizations had made their opposition known. Blair said toward the end the Commission just ran out of time and as a result some of the later hearing testimony was not summarized in the final report. Blair also said the Commission had shifted the focus of its inquiries along the way. Originally they looked at the Oregon system of state-run courts, but found the issues therein were too complicated. The review of finances for the Washington courts, one of the three original subject areas to be reviewed, "sort of stalled out."

"So we looked at management," Blair said. He characterized the system as being "unmanaged," and needing "someone to be in charge." Not, mind, that he intended a unified court system. What he hoped was that the Commission's report would just sit and percolate for a year before anyone tried to enact anything, and then test out its recommendations here and there on a trial basis.

All in all, it was pretty unedifying. The report, which seems to consider everything else under the sun to do with courts, appears to omit any consideration of the state's collapsing county law library system, shows every sign of having been thrown together, is engendering almost no response from county and other bar associations despite containing wildly unpopular proposals in some sections, will be the subject of certain legislation this legislative session, and will be taken up again by the Governors next month on the motion of Monte Hester.

Speaking of the Honorables: With the Legislature coming back into session, the WSBA Legislative Committee is shifting into high gear. They had a slew of bills to present to the Board for possible endorsement:

- technical revisions to RCW 11.40.010, to restore an amendment lost in 1989 to require that all creditors' claims be filed with the court. This is part of a revision of the statute in light of *Professional Collection Services v. Pope*, a U.S. Supreme Court decision that threw handling decedents' creditors' claims into a cocked hat.

The Board voted unanimously to sponsor the idea.

- a bill to permit service of district court summonses and complaints by registered or certified mail. The Board voted unanimously to oppose the bill because of concerns about disputes that might arise about faulty service.
- technical amendments to RCW Chapter 23B, the 1989 Corporations Act revision, which needs tidying up. For example, the Legislature failed to pass the cross-referencing bill which connects other statutes referring to the old RCW Chapter 23A to the new law. The Board voted unanimously to sponsor it. Telecopier afficionados will be interested that fax service of corporate notices will be allowed if the articles or bylaws permit its use.
- amendment of RCW 2.36.010 and 2.36.055 to expand the state jury pool to include licensed drivers and identification card holders has found widespread approval in the legal community since being proposed in 1989, and the Board voted unanimously to sponsor it.
- amendment of the state and gift tax laws to shuffle deductions and deal with other aspects of this always-complex area won a unanimous vote to sponsor from the Board.

Remember Who Really Makes the Office Run: The Board adopted a resolution presented by Governors Howell and Gould which noted that the Washington Association of Legal Secretaries' 18 chapters improve the quality of delivery of legal services to clients

and improve the professionalism of law office staffs, and urged WSBA members to encourage their staffs to belong, to support the Association's activities, and to become more active themselves as speakers and advisors in the Association's educational activities.

A Call to Serve: The Board's Special Disciplinary Subcommittee reported on its work. Governors Don Curran, Monte Hester and John Slater told the Board the Association is having to spend more and more every year to hire lawyers to take over as custodian of impaired, suspended or vanished lawyers under RLD 8.6 and 10.2. In 1989-1990, for example, these problems cost the Association over $31,000. The committee recommended that the Governors appoint several blue-chip lawyers in their districts who will be able to step in and perform these services voluntarily. After some discussion of liability (covered by the court rules, it turns out), the Board approved the proposal unanimously.

A Call to Do Nothing: In light of the fuss over the defeat of Chief Justice Callow at the polls, the Board set up a committee to look into whether anything needs to be proposed for changing the judicial electoral system. The committee, composed of the president and Governor Gould, gave a preliminary report. They were gathering information on the various methods of judicial selection in use or under study around the country. But several Governors, for various reasons, thought the Board should do nothing. More than one noted that members of the Supreme Court have said they prefer no change, mainly because change would likely require more campaigning and fund-raising that would take them away from their appellate duties too much. Other Governors wanted to wait until the Board has its annual meeting with the Court in January and see what the Court wants, if anything. Governor Tom Chambers moved to tell the committee to keep studying the issue but make no recommendations until asked for some. The motion failed, 4-6, Chambers, Gould, Long and Slater supporting it. Then Don Curran moved to thank the committee for its work and relieve it of any further assignment. That one passed, 8-2, Gould and Long opposed.

Not An Encouraging Sign: The Governors, always on the lookout for nifty member services to provide, nixed a proposal from an air express package company which said it would move members' mail around for half the cost charged by the Big Players. A key factor in the vote seemed to be that the proposal came to the Bar Association office by U.S. Postal Service Express Mail.

And Now, Meet the State Bureau of Alternative Dispute Resolution, Training, Licensing, and General Encouragement and Reform: Tacoma lawyer Claude Pearson made the case for not waiving the six-month requirement for approving future new sections of the Association with a breathtaking proposal to let nonlawyers join and help run the new Alternative Dispute Resolution Section, for which the Board waived the rules to create in one month last summer. The section wants to bring all of the various mediation, arbitration and dispute resolution services into the section, Pearson said, in order to "make stronger" the impetus for providing better and more-comprehensive ADR services, to set up codes of ethics and practice, and, eventually, to create a limited practice rule for ADR types. Asked why it was necessary to make nonlawyers members of the Section in

order to make their participation in the great work effective, Pearson said chaos would ensue in ADR in Washington if the Board didn't and that, basically, the Board should do it because the Section wanted it that way. What about the Association bylaws that say you have to be a lawyer to be a member of the Association, which includes the Sections? one Governor asked. Change it, Pearson replied. And if you don't let us move ahead in the Section, the Legislature will doubtless give authority over ADR to some agency.

Governors were, in the main, not impressed. They were concerned that the way the proposed Section bylaw amendments were written, a majority of the leadership of the Section could end up being nonlawyers who'd be making policy decisions for the Association. The Section hadn't considered whether such innovation was allowed by the State Bar Act, either. One Governor wondered why it wouldn't be a good idea to put a question of such moment to the members of the Association in some manner. Letting people express their opinion on it "is just a way to kill it," Pearson replied. After a long, semifocused discussion in which the Board expressed concern about their authority, and the ADR Section advocates rather testily took the Nike slogan as their mantra ("Just Do It. Just Do It.") the Board voted to approve the Section's first two years' budgets, and Pearson offered to come back another day with the bylaw amendments and the ADR model rules of conduct.

In other action, the Board worked on the composition of the new Long-Range Planning Committee and heard reports on the work of the Business Law Section from its chair, Chuck Katz; heard a report on the work of Evergreen Legal Services from its director, Ada Shen-Jaffe and its board chair, Vancouver lawyer Rick Potter; and appointed a committee of Board members to prepare a ballot on a referendum called for by Governor Alva Long and qualified by more than 250 WSBA member signatures. The referendum will refer to the WSBA membership the question whether the 1995 Bar convention should be held in Hawaii.

1991

January

11-12 WSBA Board of Governors' meeting, Olympia. *For information:* (206) 448-0441.

18 How to Handle An Estate and Handle Post-Mortem Matters, Seattle. *Sponsored by:* WSBA CLE and YLD. *For information:* (206) 448-0433.

24 13th Annual Seminar on Insurance Law, Spokane. Also presented January 25 in Seattle. *Sponsored by:* WSTLA. *For information:* (206) 464-1011.

25-26 Land Use and the Constitution: The New Realities, San Diego, CA. *Sponsored by:* LIncoln Institute of Land Policy. *For Information:* (800) LAND-USE.

28 Marketing for Lawyers, Seattle. *Sponsored by:* Pacific Lutheran University School of Business. *For information:* (206) 535-7330.

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

February

6 Legal Foundation of Washington Annual Charles A. Goldmark Awards Luncheon, Seattle. *For information:* (206) 624-2536.

7 Foreclosure and Repossession in Washington, Seattle. Also presented February 8 in Spokane. *Sponsored by:* National Business Institute. *For information:* (715) 835-7909.

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

17-23 Skimender '91, Whistler, B.C. *Sponsored by:* WSTLA. *For information:* (206) 464-1011.

March

22-23 WSBA Board of Governors' meeting, Bellevue. *For information:* (206) 448-0441.

April

19-20 WSBA Board of Governors' meeting, Winthrop. *For information:* (206) 448-0441.

May

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

June

21-22 WSBA Board of Governors' meeting, Kelso. *For information:* (206) 448-0441.

July

19-20 WSBA Board of Governors' meeting, Blaine. *For information:* (206) 448-0441.

August

23-24 WSBA Board of Governors' meeting, Leavenworth. *For information:* (206) 448-0441.

September

11-14 WSBA Board of Governors' meeting and State Bar Convention, San Diego. *For information:* (206) 448-0441.

("Calendar" carries information on events of interest to members of the Association. Please send event notices to Lindsay Thompson, Editor, Bar News, *7414 N.E. Hazel Dell Avenue, Suite A, Vancouver, WA 98665. Deadline is the* ***15th*** *of each month for the second issue following.)*

Notices of Interest to Association Members

Formal Opinion No. 188

Obligation of Defense Counsel in a Criminal Case to Disclose Information Regarding Defendant's Criminal History

Question:

What is the ethical responsibility of an attorney serving as defense counsel in a criminal case, particularly a felony case, to disclose to the court prior to sentencing, information regarding a defendant's criminal history known to the defense counsel solely through defense counsel's independent investigation or through disclosure of such criminal history to the attorney by the client?

Answer:

The answer to this question brings into play two distinct ethical obligations.

Under RPC 1.6(a), a lawyer may not reveal confidences or secrets relating to the representation of a client.

These terms are defined for purposes of the Rules of Professional Conduct, as follows:

> "Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

If criminal history information has been provided to counsel directly by the client, the information contained would be covered by the term "confidence", unless the client has specifically authorized disclosure. If the information was gained independently by counsel, with or without confirmation by the client, given the fact that such information in the circumstances would clearly be detrimental to the client if disclosed, and the client may well request that the information be held inviolate if the matter is broached by the attorney, this criminal history information also would be covered by the term "secret".

If counsel is aware that a prosecuting attorney in offering a plea bargain in a criminal case is, or may be, laboring under a misimpression as to a client's criminal history (where that criminal history would specifically be relevant to plea bargain determinations), defense counsel cannot reveal criminal history information which is a confidence or secret without the client's consent.

In felony cases under the current Sentencing Reform Act, a guilty plea entered *pursuant to a plea agreement* (RCW 9.94A.100) can be conditioned upon the defendant providing the prosecution, and the court, with the defendant's "understanding of what the defendant's criminal history is." The legality and constitutionality of this provision has been upheld (*State v. Ammons*, 105 Wash.2d 175, 183-184, 713 P.2d 719 (1986)), but such "understanding" is limited to those prior *convictions* which can be found by a preponderance of the evidence to exist and as to which the Court could be satisfied by a preponderance of the evidence would apply, by proper identification, to this particular defendant.

In this instance, counsel must not make affirmative misrepresentations to either the prosecution or the court regarding relevant criminal history information under such requirements, as to do so would be violative of the RPC 8.4(c) and (d), which provide:

> RULE 8.4 MISCONDUCT
>
> It is professional misconduct for a lawyer to:
>
> ...
>
> (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
>
> (d) Engage in conduct that is prejudicial to the administration of justice;
>
> ..."

However, unless the client consents, after consultation with counsel as to the client's affirmative duties, and the circumstances under which such duties arise, a lawyer shall *not* reveal such confidences or secrets.

The circumstances in nonfelony proceedings, guilty pleas at arraignment on a felony, a change of plea on a

felony (nonplea bargain) and at sentencing after a guilty verdict at trial, are clearly not governed by *any* affirmative obligation to disclose criminal history.

Entering a guilty plea with knowledge that the criminal history of the defendant as outlined to the court by the prosecutor is inaccurate does not change the obligation of defense counsel. Under the Criminal Rules, specifically CrR 4.2(g), the written statement of a defendant on entering a plea of guilty contains the following language as described in the rule:

> 12. I have been informed and fully understand that the standard sentencing range is based on the crime charged and my criminal history. Criminal history includes prior convictions, whether in this state, in federal court, or elsewhere. Criminal history also includes convictions or guilty pleas at juvenile court that are felonies and which were committed when I was 15 years of age or older. Juvenile convictions count only if I was less than 23 years of age at the time I committed this present offense. I fully understand that if criminal history in addition to that listed in paragraph 5 is discovered, both the standard sentence range and the Prosecuting Attorney's recommendation may increase. Even so, I fully understand that my plea of guilty to this charge is binding upon me if accepted by the court, and I cannot change my mind if additional criminal history is discovered and the standard range and Prosecuting Attorney's recommendation increases.

As can be seen from examining the language directed by the Supreme Court's criminal rules, the defendant is advised by the court that allowing the court to take a guilty plea with a misimpression of the defendant's criminal history imposes certain risks upon the defendant depending upon whether the misimpression is corrected prior to sentencing. The language of the plea form directed under the criminal rules, however, reinforces the concept that it is not the obligation of the defendant or his counsel to advise the court voluntarily of the criminal history of the defendant; rather, that it is an element to be established `by the prosecution in seeking a particular sentence range to be established under our current Sentencing Reform Act.

The answer is no different when a defendant is being sentenced by a court which is clearly laboring under a misimpression as to the accurate criminal history of the defendant; the answer as to the lawyer's ethical obligation is the same. The criminal history would be a confidence or secret relating to representation of the criminal defendant which cannot be revealed by defense counsel.

Under RPC 3.3(a)(1), the lawyer cannot knowingly make a false statement of material fact to a tribunal. This

creates the ethical obligation on behalf of criminal defense counsel not to knowingly misstate the criminal history of a defendant when such information is specifically requested of defense counsel by the court at time of a sentencing.

Further, under RPC 3.3(g):

> Constitutional law defining the right to assistance of counsel in criminal cases may supersede the obligations stated in this rule. (*See* RPC 3.3(a)(1) cited above.)

It would be improper for defense counsel to answer a query from a sentencing court with information which the attorney knows to be false regarding a defendant's criminal history. Defense counsel is obliged to decline to answer any question from the court regarding the defendant's criminal history.

Attorney Discipline

Disbarred

Tacoma attorney **Joel S. Rose** (admitted 1983) was disbarred by the Washington Supreme Court on October 4, 1990. The order of the Court was based on Rose's felony convictions for sexual assault.

Suspended

Seattle attorney **William J. Boyce** (admitted September 22, 1969) has been ordered suspended for 30 days, effective November 15, 1990, based upon his neglect of two client matters. The suspension will be followed by two years of probation, on the conditions that Boyce obtain counseling in professional office practice and management and that his files be reviewed on a quarterly basis by an attorney, designated by the Washington State Bar Association, to determine that they are maintained in a professional manner and that procedures have been established for regular contact with his clients.

Seattle attorney **Ben L. Hankin** (admitted 1982) was ordered suspended for one year, with time already suspended applied toward that period, by the Supreme Court on November 7, 1990. Hankin had been suspended for failing to fulfill CLE requirements since October 1985; he practiced law for at least four months while knowing of his suspended status. The Court also ordered that he be placed on probation for two years on a variety of conditions,

including supervision of his caseload and meetings with staff and peer counselors of the Lawyers' Assistance Program.

Nondisciplinary Notices

Interim Suspension

By Supreme Court order entered October 24, 1990, Seattle attorney **John Bredvik** (admitted 1979) was ordered suspended from the practice of law pending the outcome of disciplinary proceedings against him based upon his felony convictions.

Lacey attorney **Alan J. Martin** (admitted May 15, 1990) was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered November 2, 1990.

Interim suspensions are pursuant to RLD Title 3 and are not disciplinary sanctions.

Public Notices

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 December 1990 is 7.31%. The maximum allowable interest permissible for **January 1991** is therefore **12.00%**. Compilations of the average coupon equivalent yields from auctions of 26-week treasury bills appear in the *Bar News* on page 39 in October 1987 for 1982-1984; on page 37 in June 1989 for 1984-1985; and on page 51 in June 1990 for 1985-1990.

State Law Library Recent Acquisitions:

Listed below are some of the new titles recently acquired by the State Law Library and available for loan by telephone at (206) 357-2136 or by mail from Washington State Law Library, Temple of Justice, AV-02, Olympia, WA 98504-0502. A quarterly *Books Recently Cataloged* list, generally containing 150-200 new titles, is also available from the above address.

Gross, Samuel R. and Robert Mauro. *Death & discrimination: racial disparities in capital sentencing.* Boston, MA: Northeastern University Press, 1989. Pp. 282. HV8699.U5G76 1989

Stein, Sol. *A feast for lawyers: inside Chapter 11—an exposé.* New York: M. Evans, 1989. Pp. 358. KF1544.S74 1989

Child custody and the politics of gender. Edited by Carol Smart and Selma Sevenhuijsen. New York: Routledge, 1989. Pp. 313. K700.C48 1989.

Gross, Emma R. *Contemporary federal policy toward American Indians.* New York: Greenwood Press, 1989. Pp. 165. E93.G87 1987

Gerber, Rudolph Joseph. *Lawyers, courts, and professionalism: the agenda for reform.* Forewords by Sandra Day O'Connor and Daniel J. Meador. Contributions in Legal Studies no. 50. New York: Greenwood Press, 1989.

Pp. 170. KF297.G47 1989

Speakers: The Washington Commission for the Humanities is seeking speakers on issues related to the Bill of Rights. An honorarium and travel expenses are available for those selected. This is part of the nationally recognized speakers' bureau, The Inquiring Mind. To apply, contact Marianne Jones before January 15, 1991, at (206) 682-1770..

Reappointment of U.S. Magistrates: The current terms of office of U.S. Magistrates Walter Greenaway, serving in Port Angeles, and Gilbert Kleweno, serving in Vancouver, are due to expire. The U.S. District Court is required by law to establish a panel of citizens to consider the reappointment of these magistrates to new four-year terms. Comments from members of the Bar are invited as to whether the incumbent magistrates should be recommended by the panel for reappointment by the Court and should be directed to : Bruce Rifkin, Clerk, U.S. District Court, 1010 Fifth Avenue, Room 308, Seattle, WA 98104. Comments must be received no later than January 17, 1991.

King County Case Management Rules—Clarification:

Beginning January 1, 1990 the clerk's office began issuing an "Order Setting Original Case Schedule" for specified civil and domestic cases. The schedules for each type list case events entitled "Trial Confirmation Date" and "Dispositive Pretrial Motions." Below is a clarification of what these events are and what they require.

1. The event "Trial Confirmation Date" is a *deadline* for adjustment of the original trial date as set by the schedule. After this due date, the criteria for amending case schedules are very restrictive. There is no requirement for persons to file a document or make a telephone call to the court or clerk to confirm the trial date. Please read King County Local Rule 40(e)(2)(A). This due date is also the deadline for filing the document "Demand for Jury Trial" for civil cases.

(The court still requires parties to call and confirm trials for any civil or domestic cases filed before 1990, which are being tried before January 1991.)

2.The event "Dispositive Pretrial Motions" listed on the civil case schedule issued by the clerk is the deadline for hearing any dispositive pretrial motions in each individual case. It would be incorrect for parties to "note" any dispositive motions on or after this due date. A future update to the case schedule will emphasize the importance of this event by stating "Deadline for Hearing any Dispositive Pretrial Motions."

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

WESTLAW® Provides Access to Statutory Research

Editor's Note: The *Washington State Bar News* has been awarded a WESTLAW® Bar Journal Grant, which includes a WALT™ II terminal, WEST-JET™ printer, WESTLAW access for six months and WESTLAW training. West Publishing Company provides this copy to us as part of the grant program.

by **Joseph Scott**
Western Regional Manager
West Services, Inc.

Researching and updating state statutes and retrieving explanatory material for them is at times more cumbersome and confusing than researching other types of materials.

Fred Gordon, West Publishing Company senior associate editor, explains: "The various methods of creating laws chosen by each jurisdiction are endless." Every state uses different numbering and classification systems. If the system of a particular state is unfamiliar, statutory research becomes extremely difficult to perform.

Applicable Statutes in Annotated and Unannotated Databases

By striking only a few computer keys, a WESTLAW® user conveniently retrieves most state statutes from either an annotated or unannotated database. When a citation is unknown, a researcher using general descriptive terms can access either an individual state's unannotated database or the unannotated multistate database to display applicable statutes. A researcher who wants to learn how a statute has been construed can retrieve annotations and references as well as statutory language from annotated statute databases.

Background Information: the *SCOPE* Command

Once a particular database has been located, the SCOPE command will bring up a detailed description of that database. Senior associate editor Nancy Truax comments, "One thing that is unique to each jurisdiction is the way the laws take effect. There's no way a user could go from state to state and do statute research online and understand effective operative and applicability provisions without looking at the *SCOPE* screen."

This feature gives types of documents available in the database, the scope of coverage for these documents, and the fields or segments into which the documents are divided. It also provides search types and effective date information to assist the researcher in quickly locating laws.

Statute Research Time Shortened

"A specific word search, such as living will, is termed 'Natural Death Act' in California but 'Adult Health Care Decisions Act' in Minnesota. This lack of language uniformity between states makes statutes difficult to word search," says senior associate editor Rich Gramling.

WESTLAW's statute index databases effortlessly provide language uniformity. The indexes cross-reference similar terms which are used in other states to those commonly used in the researcher's state.

When a citation is known, retrieving the full text of a state statute is easy. WESTLAW's *FIND* command can be used at any time during a research session to immediately retrieve statutes and constitutional provisions.

Within a document, the *LOCATE* command, coupled with specific terms, takes a user to the precise point in the statute being sought.

The Most Current Law

Once relevant statutes are found, the researcher needs a timely updating tool to confirm their validity, such as the legislative service databases (*LEGIS*). They contain laws enacted after the annual update to the statute databases. As laws are approved, they accumulate in the *LEGIS* database throughout the legislative session. After the session is over, the statutes are updated with this material, and the current legislative service database is archived as a historical database on WESTLAW.

UPDATE, another statute-related command, is also an updated tool. It looks behind the scenes at the statutory cite and pulls information from it, transferring the information to the legislative database and running the search automatically. This quick process reveals the document that amends or repeals the statute being viewed.

"Many people don't realize new session laws are available even before the Legislative Pamphlet Service is printed. The *UPDATE* command and *LEGIS* databases are definite legal research advantages," says Truax.

The following statute information can be found on WESTLAW for Washington.

General Statutes	
WA-ST-ANN	Annotated Statutes
WA-ST	Unannotated Statutes
WA-ST-IDX	General Index
WA-LEGIS	Legislative Service
Historical Statutes	
WA-STANN891989	Annotated Statutes
WA-LEGIS89 1989	Legislative Service
WA-LEGIS88 1988	Legislative Service
Court Rules	
WA-RULES	Court Rules
WA-ORDERS	Court Orders
Topical Statutes	
WAIN-ST	Insurance Statutes

To find out more about statute research on WESTLAW, contact: West Services, Inc. (Training Center), 3200 4th Ave. Plaza Bldg., 1000 Fourth Avenue, Seattle, WA 98154; (206) 628-6435.

Quick Guide to Canadian and British Columbian Legal Material in Washington State

The Canadian legal system is very similar to that of the United States. As the United States has federal and state law, Canada has federal and provincial caselaw, statutes and administrative regulations. The following is a selected list of the most-important Canadian primary legal materials and a few of the secondary sources and finding tools most often used. Please call or write the law libraries listed for specific holding information. These libraries all have additional Canadian legal material in their collections.

Federal Caselaw

Canada Supreme Court Reports
King County Law Library
University of Washington
Washington State Law Library

Federal Court Reports
Gonzaga University
University of Washington

National Reporter
King County Law Library
Washington State Law Library

Federal Statute Law

Revised Statutes of Canada 1985
Gonzaga University
King County Law Library
University of Puget Sound
University of Washington
Washington State Law Library

Canada Gazette Part III
Gonzaga University
University of Washington

Acts of the Parliament of Canada
Gonzaga University
University of Puget Sound
University of Washington
Washington State Law Library

Federal Regulations

Consolidated Regulations of Canada, 1978
Gonzaga University
University of Washington
Washington State Law Library

Canada Gazette Part III
Gonzaga University
University of Washington

British Columbia Cases

British Columbia Law Reports
Gonzaga University
Washington State Law Library

Dominion Law Reports
Gonzaga University
King County Law Library
University of Puget Sound
University of Washington
Washington State Law Library

Western Weekly Reports
King County Law Library
University of Washington
Washington State Law Library

British Columbia Statutes

Revised Statutes of British Columbia 1979
Gonzaga University
King County Law Library
University of Puget Sound
University of Washington
Washington State Law Library

B.C. Statute Citator
University of Washington

Statutes of B.C. Judicially Considered
Gonzaga University
King County Law Library
University of Washington

British Columbia Regulations

Consolidated Regulations of British Columbia
University of Washington

Digests and Citators: National and Regional

Canadian Abridgment (2d)
Gonzaga University
King County Law Library
University of Puget Sound
University of Washington
Washington State Law Library

Canadian Current Law
Gonzaga University
King County Law Library
University of Puget Sound
Washington State Law Library

Canadian Citations
Gonzaga University
King County Law Library
University of Puget Sound
Washington State Law Library

Canada Statute Citator
King County Law Library
University of Washington
Washington State Law Library

Secondary Sources

Canadian Encyclopedic Digest (Western 3rd)
Gonzaga University
King County Law Library
Washington State Law Library

Index to Canadian Legal Literature
Gonzaga University
University of Washington
Washington State Law Library

Encyclopedia of Words and Phrases, Legal Maxims, Canada, 1825 to 1985, 4th
University of Washington

Legal Citation

Canadian Guide to Uniform Legal Citation 2nd
Gonzaga University
University of Washington

Research Guides

Banks, Margaret A., *Using a Law Library: A Guide to Students and Lawyers in the Common Law Provinces of Canada* 4th. Toronto: Carswell, 1985.
Gonzaga University
University of Puget Sound
University of Washington
Washington State Law Library

MacEllven, Douglass T., *Legal Research Handbook* 2d. Toronto: Butterworths, 1986.
Gonzaga University
University of Washington

Marshall, Denis S. "An Introduction to Canadian Legal Research," 81 *Law Library Journal* 465 (1989).
Gonzaga University
King County Law Library
University of Puget Sound
University of Washington
Washington State Law Library

Law Libraries

GU School of Law Library
E. 601 Sharp Avenue
Box 3528
Spokane, WA 99220
.....(509) 484-6092 ext. 3758
The law library is open to the public. Materials are available for use in the library only.

King County Law Library
W621 County Courthouse
516 Third Avenue
Seattle, WA 98104.....(206) 296-0940
The law library is open to the public. Materials circulate to King County residents only.

UPS Law Library
950 Broadway Plaza
Tacoma, WA 98402....(206) 591-2975
The reference department has an answering machine for calls outside normal working hours. The reference staff will return calls the next working day.

UW Gallagher Law Library
Condon Hall JB-20
1100 N.E. Campus Parkway
Seattle, WA 98105.....(206) 543-6794
The law library provides a limited photocopy service for a fee. Exact citations are required. Call circulation for further information, ...(206) 543-4086.

Washington State Law Library
Temple of Justice AV-02
Olympia, WA 98504.....(206) 357-2136
The law library will lend to any member of the Washington State Bar. Please call first to make sure item circulates. □

Compiled by ***Peggy Roebuck Jarrett****, Reference Librarian, Gallagher Law Library, University of Washington. Many thanks to the staffs of the participating libraries for their assistance.*

NEWS FROM HOME

Interim Associate Judge **Douglas Luna** of the Northwest Intertribal Court System in Edmonds has completed an advanced course at the National Judicial College in Reno, Nevada.

"Alcohol and Drugs and the Courts" was designed to improve the judicial system by helping judges to recognize addicts and to consider the relationship between crime and substance abuse. The 50 judges who completed the course also studied the latest developments in laws dealing with drinking drivers.

Faculty for this course included medical, scientific and social experts from throughout the nation, and was coordinated by Circuit Court Judge Michael B. Getty of Chicago. Nearly 1,000 judges, from all 50 states, have taken the drug course, which is offered twice each year.

Judge Luna is also a vice president for the Central Council Tlingit and Haida Indian Tribes of Alaska, and a former commissioner for the Washington State Commission on Asian American Affairs.

The National Judicial College, on the campus of the University of Nevada, trains more than 1,800 trial and administrative law judges per year. Affiliated with the American Bar Association, NJC is the leading judicial education and training institution in the nation. Since its establishment in 1963, the college has issued more than 26,000 certificates of completion to judges from all 50 states and 117 foreign countries.

BRITISH COLUMBIA REPORT

by TERRY T. PRESHAW

Greetings from the sodden (formerly frozen) North. The U.S./Canada Free Trade Agreement is now two years old, and the Vancouver-Seattle corridor continues to offer outstanding opportunities to lawyers on both sides of the border.

There are currently two dually qualified (i.e. Washington state and B.C.) lawyers practicing out of Vancouver: **Michael Jacobsen** and **Terry T. Preshaw**. Michael recently left Swinton & Company (a B.C. law firm affiliated with Short Cressman) to start his own practice focusing on immigration and enforcement of extra-provincial judgments. Terry left Ogden Murphy Wallace in June 1989 to start her own practice, which focuses on U.S. business immigration.

Congratulations to **Susan Merrill**, presently of Seattle but formerly from B.C. Susan is a B.C. barrister and solicitor (that's Canadian for "lawyer") who recently passed the Washington State Bar exam.

Greg Boos (Whatcom County) and **Sam Hyman** (Vancouver, B.C.) recently presented a very well received paper entitled "FTA Part Four and the States and Provinces: Thoughts, Issues, and Perspectives," before the Conference of the Western Attorneys General held in Victoria. Greg is a popular immigration speaker on the Vancouver "FTA" circuit.

Congratulations and welcome to the Seattle firm of Franco Asia Bensussen and Coe. This form has hired **Mark Dwor**, a B.C. lawyer, to manage their new Vancouver office, which is operating under the name of Franco Asia Consultants, Ltd. The office is open for consultation on immigration matters and referral for general Washington state matters. This arrangement is being observed with great interest because it appears to be a way around B.C.'s stringent foreign legal consultant regulations.

Robert Kaplan (Bogle & Gates), **Roberta Shapiro** (Vancouver, B.C.), and **Terry T. Preshaw** will be speakers at "Transborder Business Considerations," a conference organized by Insight Educational Services scheduled for February 4, 1991 in Vancouver.

PACE (Pacific Corridor Enterprise Council), a transborder network organization headed by **Michael Sandler** (Foster Pepper & Shefelman) and **Peter Manson** (Ladner Downs) recently held a conference in Vancouver which featured the mayors from Seattle, Portland and Vancouver as the key speakers. Seattle Mayor **Norm Rice** gave the luncheon address entitled "Seattle and Vancouver: Competition, Cooperation and Community Between Neighboring Cities."

CLARK COUNTY REPORT

by JOHN F. NICHOLS

Yes, folks, its time for the *9th Annual Beagle Awards*. The Beagles, for the uninformed, are bestowed annually for dubious achievement in the field of yellow pages advertising. Unlike the Grammys, the famous Beagle contemplating a fire hydrant cannot be returned, nor is it subject to verification of vocal/legal ability. Due to the recent courthouse shuffle, Judge Johnson was busy redecorating. Consequently, the honor of presenting the statuettes and wearing the ceremonial string of pearls was inherited by Judge **Alfred Bennett**.

This year's ads bordered on the sublime but ended up firmly entrenched in the friendly confines of boredom. Either the shock threshold has reached a new high or taste is back in style... naah. And the winners are...

The Ben Johnson Award: Who said steroid use is down among CCBA members? Consider the following

nominees: **John Meader** - "Assertive Courtroom Manner;" **Jim Rulli** and **Diane Woolard** - "Aggressive and Experience;" Weber & Gunn-"Agressive and Professional." The Winner: **Marlene Hansen**, who is not only "assertive" but also "sensitive & concerned." Sounds like a real '90s type attorney.

Slogan of the Year Award: Once again those gag writers at Thayer (Steve) & Muenster easily outpaced the field. The winning entries "Fair compensation is no accident," and "Representing the innocent and the accused." Hey, how about us guilty guys, Steve?

The Frank Lloyd Wright Award: Always a tight battle, this year featured previous winners in the battle of office pictures. Poyfair & English submitted a fine effort with noticeable repairs done to the tilting problem of last year. However, they were unable to beat out Marsh, Higgins & Foster. The difference? Better landscaping. I would suggest a heavy dose of Round-up and some rhodies.

The Man in the Street Award: Schauermann & Thayer (Bill), whose practice is "primarily limited to personal injury and criminal law," advises that to find a good attorney "ask the people who know." Those willing to make a collect call to Walla Walla may get some good advice.

The Just Say No Award: **Kathy McCann** is the unfortunate recipient of this award. Kathy's smart photo is directly left of the familiar frying pan complete with boiling egg. The handle of said pan, (vaguely resembling an arrow), points unerringly at Kathy with the caption, "This is your brain on drugs." If that doesn't stop you...

The GM Corporate Award: This goes to a friendly new boutique called the "Cascade Legal Clinic." The clinic is a bankruptcy shop and notes in fine print that it is a "division of Robert Gregg Law Offices." Now, Mr. Gregg's office is a two-man firm, not a factory. The topper is that he has a competing bank ad in the next column. Capitalism, I love it.

O.T.J. Experience Award: **Mike Foister.** Mike appears in his **Steve Martin**, Man-from-Glad outfit with the following caption: "Felony/Traffic Homicides - 15 years' experience." So Mike, what ye in for?

The Beagle of the Year (B.O.Y.): This year's winner combines all that is heartwarming about yellow page ads. It has location, size, garishness and, of course, a photo. It features my favorite colors: black, yellow and red; and has those popular scenes of people and motorcycles getting smashed by vintage automobiles. It has those unisex international figures fighting over a unisex baby, thereby representing family law. Finally, that familiar silhouette, who looks a lot like my brother behind bars, as a trademark for criminal law. In sum, its fresh, its alive, its a Beagle. The winner and new champion, **Mary Arden.**

Congratulations to all winners. To those who didn't win, remember, it's an honor just to appear in the yellow pages.

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Morgan "Bolts" or Higher Court: It may have been a coincidence; it may have been planned; but, then again, it may have been the shoes. In any event, **Ben Shafton** proved once again that being a flashy dresser is no match for a quick mind and a silver tongue. Presented for your edification is the following colloquy which recently took place in Judge **J. Dean Morgan's** court. His Honor was attempting to ascertain the value of the claim of Ben's client.

Judge: "Counsel, what are the parameters of your client's claim."

Shafton: "My nut is $25,000."

Judge: (somewhat quizzically) "Your nut?"

Shafton: "Yes, your honor, my nut."

Judge: "What do you mean, your nut?"

Shafton: "Well, I am not talking about my client or a place or a thing."

Following the above, Judge Morgan immediately filed for the vacancy on the Court of Appeals and was ultimately appointed. Ben was last seen roaming the courthouse with his Black & Decker tool belt, tightening up any loose ends he came across.

Sandman Goes Two For Two in Double-Header: Two months ago, as you may recall, it was reported that **Richard** "Sandman" **Saunders** KO'd a fellow golfer with a misplayed five iron. To prove that accidents don't just happen, Richie proceeded to the softball field and thereupon ricocheted a line drive off the pitcher's forehead into left field. The game was immediately stopped and the ball was presented to Sandman as being his first hit out of the infield this season. All CCBAers are hereby advised to wear hardhats when in the vicinity of Saunders.

EAST KING COUNTY REPORT

by RANDOLPH I. GORDON

We find ourselves in Diluvian times, and the rain continues to fall. Literally, east King County continues to battle the flooding Snoqualmie River and saturated earth as western Washington copes with the heaviest rainfall in decades. The governor has requested federal disaster relief for 13 counties, as of this writing. The remark attributed to Louis XV ("après moi, le deluge") takes on new meaning, non? This is a true disaster for many. It will also be a trial by water for the Disaster Response Plan devised by the WSBA and outlined in these pages just months ago by WSBA public affairs director, **George Scott**.

In a larger sense, however, the true test of the legal system is not how it deals with the disasters arising from the spasmodic excesses of Nature, but with the commonplace and banal. When the next one-hundred year flood will occur, one cannot say. But today, as this is written, and as you read it, children will be abused, women battered, and people of modest means deprived of adequate representation. This is truly a subject worthy of the efforts of the WSBA.

Marie Sklodowska Curie, twice awarded the Nobel Prize (for physics and chemistry; the first with her husband, Pierre), discoverer of radium and polonium, the first woman professor at the Sorbonne in a millennium, and mother of a Nobel laureate, **Irene Joliot-Curie**, eschewed all worldly wealth and nearly all worldly medals and decorations. She would have disliked the thumbnail sketch of her life, above, preferring "scientist, Polish and French patriot, wife and mother." With characteristic clarity, she noted:

> We cannot hope to build a better world without improving the individual. Towards this end, each of us must work toward his own highest development, accepting at the same time his share of responsibility in the general life of humanity - our particular duty being to help those to whom we feel we can be most useful.

As attorneys, we can surely do more than what **H. L. Mencken** describes as "permitting scoundrels to commit their swindles without too much risk." There was once a Canon calling for improvement of the legal system, but it is harder to find among the Rules of Professional Conduct. Perhaps this is because improving the legal system is less a professional responsibility, than the responsibility of citizenship. Or, perhaps, it is a despondent recognition that lawyers are a mere shadow of their forefathers for whom public service was the highest calling.

Just two weeks ago, the Eastside Legal Assistance Program (ELAP), celebrated its first anniversary. In the past year, five clinic locations have begun assisting some of those requiring assistance. It is a noble effort bringing credit upon its founders (Present EKCBA president **Ken Davidson** figuring prominently among them) and the East King County Bar Association. But, resources are limited. It is but a small bucket and the floodwaters are rising.

Alexis De Tocqueville is often quoted as saying that in America, "all political problems become legal problems." Today, on the brink of war in the Middle East, in uniquely American fashion, dozens of congressman have brought a legal action to define the War Powers Act.

The converse is also true, legal problems become political problems. An electorate which is consistently disempowered and disenfranchised, a citizenry subjected to a legal process increasingly incomprehensible and inaccessible, will ultimately find some political solution. In a spasm of rage and despair the public may act, and lawyers may find themselves fighting a rearguard action with only the ghost of the brooding omnipresence of the Common Law behind them. Perhaps not. By then, even the lawyers may have forgotten what they are supposed to do.

It is not too late for the Bar Association to convoke a professional, and then public, assembly to deliberate the state of the legal and political system. The sewers are backing up, the roads are impassable, I am beginning to hear strange sounds under the house and—it is still raining.

KITSAP COUNTY REPORT

by KATHLEEN M.S. WRIGHT

Disgruntled Voter Fallout: Is the electorate of Kitsap County opposed to law and justice? That was the message to the bar and judiciary as the bond measure to build a new Law and Justice

Center went down in overwhelming defeat in the November elections. This leaves Judge **William Kamps** in the library and the library in the parking lot trailer. Not a pretty sight. (Aside: Have yuu ever wondered why disgruntled is used only to modify an unhappy spouse or employee? Why is it that content workers are not gruntled employees?)

Governors Road Show: The Board of Governors held its November meeting in Port Orchard at the bar lunch. This reporter could not attend, and the scary thing is that not one of my sources could remember anything memorable about the agenda.

Moves: **Steve Holman** has departed from the offices of Wecker, Hunko & Holman and is now practicing from his home within the new city of Bainbridge Island. Steve remains the municipal court judge in Winslow and a court commissioner for district court.

New Year's Resolutions: This was to be a very clever section, revealing interesting tidbits about various bar members' bad habits. Lawyers are innately suspicious creatures though, and no one in the bar would own up to actually making a New Year's Resolution. The closest thing to a response came from **Connie Bartholomew, Richard Stocking, Robert Conoley, Kathleen Lappi** and **Rob Beattie**, who all replied that their resolution was not to make any New Year's resolutions. So much for investigative reporting.

MICRONESIA REPORT

by **STEPHEN A. COHEN**

The attorney general's office in the Commonwealth of the Northe Mari-ana Islands has experienced a further influx of Washington lawyers. King County attorney **James B. Parson** and former South Korea/Australia practitioner **Tom Sheldon** have joined the civil division, and Spokane County attorneys **Maggie Gleason, Dennis O'Shea** and **Robert Kingsley** have joined the criminal division.

Also in the attorney general's office, **Patricia Halsell**'s duties have been expanded to include the position of hearing officer for the Department of Commerce and Labor, and **Bruce Turcott** has transferred to the post of legal counsel to the Public School System. **Richard Weil** has been engaged in advising the Commonwealth team seeking to clarify the North Marianas' legal relationship with the United States.

Private practitioner **Brian McMahon** has become a partner in the newly formed Saipan law firm of Fitzgerald, McMahon and Long. With his Kitsap County office, Brian's practice continues its trans-Pacific character. Formerly the public defender of the North Mariana Islands, Brian is currently co-counsel with King County attorney **Bruce Erickson** for the Johns Mansville asbestos trust fund in the Territory of Guam. Bruce was also a public defender for the North Mariana Islands.

King County attorney/businessman **Ken Larson** has formed another business on Saipan, Ozone Pure Water, Inc., which he operates in addition to his other local business, Tropical Pacific Tuna, Inc.

North Marianas public defender **Ron Hammett** was the proud recipient of a speedboat, motor and trailer which he won in the annual Red Cross raffle. The prize was won last year by **Tim Bruce**, legal counsel to the governor.

Private practitioner **Edward Manibusan** was the chairman of the organizing committee which hosted the Micronesian Games on Saipan, which drew athletes from the Territory of Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and the Commonwealth of the North Mariana Islands. The Territory of Guam was the overall winner.

In Guam, former King County attorney **Haim Habib**, a private practitioner, has vindicated the Peoples' traditional right to import betel nut into the Territory with his victory over federal authorities in the case of *In re 1/2 Lb. of Betel Nut, a/k/a "Pugua,"* Guam Superior Court Civil Case No. 585-90.

Also in Guam, assistant attorneys general **Happy Rons** and **Ken Orcutt**, both formerly of Clark County, became Mr. and Mrs. in August. The ceremony took place in Vancouver.

The Washington crowd has been busy on the travel front. **Patricia Halsell** was in Bali and Java, assistant attorney general **John Cool** was in Hong Kong and China, and attorney general **Robert Naraja** was in North Carolina.

Assistant public defender **Jeff Cohen** was in Bali; private practitioner **John Biehl** was in Bali, Singapore,

Jakarta and Hawaii; and **Ron Hammett** was in Hawaii, San Francisco and Washington, D.C.

Private practitioner **David Nevitt** was in London, Tokyo, Seattle and Hawaii; **James B. Parson** was in Palau, and Revenue, and Taxation appeals officer **Christine Matson** was in Texas, New York, Orlando, Hawaii, Seattle and Canada.

Gail Geiger, attorney-advisor for the Bankruptcy Trustee of Guam and the North Mariana Islands, was in Los Angeles and Honolulu; **Edward Manibusan** was in the Philippines, and **Bruce Turcott** was in Portland, Olympia and Seattle.

Brian McMahon was in Tokyo (where he witnessed the Denver Broncos beat the Seattle Seahawks in a preseason game); private practitioner **Jim Sirok** was in the Bahamas, Florida, Indiana and Australia; and private practitioner **Eric Basse** was in Seattle and San Francisco.

Happy Rons and **Ken Orcutt** were in Thailand, Saipan, Truk, Yap and Palau; Senate legal counsel **Pamela Brown** was in Alaska; and **Stephen A. Cohen** was in Truk, Pohnpei, Los Angeles, Miami, Puerto Rico, Portland, Seattle and Tokyo.

Finally, the North Mariana Islands received a number of visitors from the Seattle-King County Bar. Attorneys **Anne Harper, Ann Danielli** and **Paige Garberding** were hosted by **Patricia Halsell, Pamela Brown** and private practitioner **Steve Nutting**; attorney **Darrell Hallett** was hosted by **Stephen A. Cohen.**

SEATTLE-KING REPORT

by JAMES VARNELL

Dress for Success. Ordinarily, a listing of Seattle's best-dressed attorneys appears in this column on an annual basis. However, due to an extended vacation of our colleague and advisor, **Mr. Blackwell**, a new feature is presented. This year, we report on those attorneys whose sartorial splendor most closely resembles various actors, rock stars and other famous personalities. We also offer suggestions and advice for certain attorneys in order that a past faux pas not be repeated.

First, **John Weston**'s blue jeans and Pendleton shirt (closely resembling the rugged, **Bruce Springsteen** look) has apparently left more than one judge dancing in the dark. Those stretch pants worn by **Mike Withey** may look good on **Mick Jagger**, but leave his fellow partners with no satisfaction. **Jeff Beaver**'s wearing of a Brooklyn Dodgers jersey à la **Spike Lee**) was definitely not the right thing recently in federal court. Although **Pete Curran** may think that knickers look good on **Payne Stewart** at Augusta, that ensemble is not par for the course in King County Superior Court. And, **Kelly Corr** may think that a Stetson hat, boots and jeans are fine in Garfield County, but **George Strait**-wear doesn't get it in Seattle.

Marisa Velling, not being from south Georgia, might do well to dispense with the **Julia Roberts**—Southern belle—look. Ditto the **Ivana Trump** opening-night wardrobe worn by **Nancy Gibbs** at a recent bar association dinner. And, another appearance in court by **Lynn Moberly** with the **Madonna**-like bustier will result in her being sent back to the King County Prosecuting Attorney's filing unit. **Bart Waldman** would do well to remember that a U.S. Air Force flight jacket may look good on **Tom Cruise**, but is not proper attire for the civil motions calendar. And, **Jerry Diskin**'s efforts to resemble **Kevin Costner** before a federal grand jury are nothing more than a field of dreams.

In the entertainment category, although **Monica Fernandez**' rendition of the National Anthem was well received by a recent Seattle Seahawks crowd, she needs to get rid of the **Roseanne Barr** smock. Finally, it is with much pleasure that we now recognize newly elected member of the WSBA Board of Governors **Alva Long** for the complete turn-around in his wardrobe: Alva has ditched the open-neck shirt and leisure suits, and is reported to have purchased directly from the movie studio all of the suits worn by **Richard Gere** in the movie "Pretty Woman."

Of Note. The Reed McClure law firm recently celebrated 100 years of law practice in the Pacific Northwest. **Jackson Schmidt** and **Leonard Barson** have been recognized for donating their time in the successful (thusfar) efforts of the Citizen's Alliance to keep the Pike Place Market Public. **Robert Mussehl** has been appointed to the American Bar Association's Special Advisory Committee on International Activities. **Daniel Waggoner** has been

appointed to the governing committee of the American Bar Association Forum on Communications Law.

Office Moves. **Robert Spitzer** has joined Garvey, Schubert & Barer as a principal; **Miriam Federe** and **Sally Sullivan** have become of counsel to the firm; and **Timothy Burkart, Robert Griffith, Lisa Newman, Douglas Owen, Brian Peyton** and **Ann Preston** are new associates. **Ronald Anderson** and **Dennis Shelton** are now partners at Christensen O'Connor, Johnson and Kindness. **Lynn B. Squires, David J. Farrell, Jr.** and **Clayton G. Ramsey** of Squires & Farrell have merged with Helsell Fetterman.

Other new partners or principals locally include: **C. Dean Little** at Reed McClure; **Douglas W. Elston** at Bryan Schiffrin McMonagle Elston & Twiss. New associates in Seattle firms include: **Frederick A. Kaseburg** at Ordal & Jones; **Charles Manger** and **Anita Barbour** at Tousley Brain; **Janet E. Garrow** at Cairncross, Ragen & Hempelmann; **William D. Marler** at Keller Rohrback; **Susan M. Gulickson** at Groshong, Lehet & Thornton; **Shaya Calvo** at Shulkin, Hutton & Bucknell; **Lisa M. Brownlee, Penelope S. Buell, Fara E. Faubus, Alitha E. Leon Jenkins, Steven G. Jones, Kurt R. Walters, Thomas L. Weinberg** at Foster Pepper & Shefelman; **David A. Strickland** at Aiken & Fine; **Katherine See Kennedy** at Pence & Dawson; **John J. Sullivan** at Hillis Clark Martin & Peterson.

THURSTON COUNTY REPORT

by CHRISTINA A. MESERVE

Approximately 100 well-wishers were gathered at the Tyee Motor Inn on November 3 to honor **Evelyn Foster Read** and **Ernest "Bud" Meyer** on their 50 years of membership in the Washington State and Thurston County bar associations. Emcee for the occasion was former TCBA president **Alan Swanson**. Joining him on the roasting panel were **Ralph Swanson, Jerry Buzzard, Steve Bean, Fred Gentry, Steve Foster, Tom Meyer, Jim Vanderstoep** and Judge **Gerry Alexander**.

Last time, we reported on the running teams sponsored by Swanson, Parr, Cordes, Younglove, Peeples and Wyckoff. In addition to the "Hood to Coast Run" and the infamous "Loopholes" summer softball team, SPCYP&W ("We Gator to Your Needs") also sponsors a volleyball team in the city league! These guys eschew *The Yellow Pages* in favor of more aggressive advertising.

The latest edition of *The Yellow Pages* indicates that 200 attorneys are in private practice (or at least willing to advertise it) in Olympia-Lacey-Tumwater, an increase from 179 a year ago. Notable are the number of Seattle (and Bremerton) firms that are opening branch offices in the state capitol.

Moves: **Tom McPhee** has obviously left Connolly, Holm, et al. **Gayer Dominick** and **Dick Hemstad** are staying in the Twin County Credit Union Building while Law, Lyman and Daniel will be moving to 910 Lakeridge Way S.W. (the Frank Morris Building). **Frank Morris** will be staying in his building (at least for awhile), but **Charlie Williams** is moving to Custer Way--along with the Fullers, who are moving back to the Custer Way building. That means that Barckley, Kopp and Mitchell will be moving to Lacey effective January 1.

WASHINGTON WOMEN LAWYERS/ SEATTLE-KING COUNTY CHAPTER

On November 1, 1990, the Seattle-King County Chapter of the Washington Women Lawyers was on hand at the swearing-in ceremony to welcome the new admittees and let them know that we are here as a resource and support.

The president of the Seattle-King County Chapter, **Rosemary Daszkiewicz** of Perkins Coie, was one of the CLE speakers for "Rambo Meets Atticus Finch, How to Wield the Power of Civility in the Practice of Law" on December 7.

Also seen on the CLE circuit was **Adrianne Tollefsen** of U.S. BanCorp, who is the secretary of the Seattle-King County Chapter of the Washington Women Lawyers. She spoke on drafting basic contracts and business forms.

The chapter is also sponsoring and planning with the Oregon Women Lawyers a cocktail reception and continuing legal education seminar for the National Conference of Women's Bar Associations to be held February 8 and 9, 1991.

ANNOUNCEMENT

1991 *RESOURCES* MEMBERSHIP DIRECTORY

The 1991 directory of attorneys is presently in its compilation stage. Listings for the directory are being compiled from information contained on 1991 dues statements (mailed to all WSBA members in early December). When sending in your dues to the Bar office, please note the instructions on the statement relative to the address and phone number to be used for your listing in the directory. Corrections for directory listings must be received by February 28, 1991—the deadline for dues payment.

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Theodore Spearman, a graduate of the University of Michigan Law School and former adjunct professor of law at Wayne State University Law School, has concentrated his practice over the last 17 years on major injury claims for plaintiffs. Mr. Spearman has lectured nationally on civil litigation issues and contributed to professional journals. He is the National Chair of the State Coordinating Committee of Trial Lawyers for Public Justice. He will represent plaintiffs in claims involving personal injury, maritime injury, constitutional rights under Title 42 U.S.C. § 1983, and professional, product or other general liability.

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Salary and benefits: Starting salary between $40,000 and $45,000 per annum, depending on experience. Comprehensive health plan. Liberal holiday, vacation and sick-leave policies.

Qualifications: Admission to practice in Washington state. Experience in criminal litigation, minimum qualifications per WDA guidelines to try Class A felonies. Administrative or executive experience would be helpful. The ability to work with colleagues and county executive personnel is necessary.

Please provide resumé and contact for interview: Geral Barnhart, Administrator, Clallam-Jefferson Public Defender, 111 East Third Street, Suite 2D, Port Angeles, WA 98362.

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Resumé/references and cover letter by January 15, 1991 to: 11th Floor Judicial

Chambers, Public Safety Bldg., Seattle, WA 98104, Attn: Caulette Holman.

Environmental attorney: Weyerhaeuser Company is seeking an environmental lawyer to join its legal staff at its corporate headquarters in Federal Way. Candidates must have at least two years of legal experience and should have a minimum of two years of recent environmental regulatory experience in a governmental agency, a corporation or a law firm. Interested applicants should send a resumé to: Weyerhaeuser Company, Law Department, Search Committee, Tacoma, WA 98477. Weyerhaeuser Company is an equal opportunity employer.

Domestic-relations attorney wanted by four-lawyer firm with offices in Olympia and Shelton. Prefer at least two years of experience. Contact Marya Fuller, 204 Custer Way, Olympia, WA 98501, (206) 352-2000.

Attorney jobs--*National and Federal Legal Employment Report:* highly regarded monthly detailed listing of hundreds of attorney and law-related jobs with U.S. government, other public/private employers in Washington, DC, throughout U.S. and abroad. $32 - three months; $55 - six months. All new jobs each issue. Federal Reports, 1010 Vermont Ave., N.W., Washington, DC 20005. (202) 393-3311. Visa/MC.

Small Tacoma law firm with growing commercial practice seeks an attorney with at least two years' experience in civil litigation and real estate for possible partnership. Applicants should have background in management and be willing to invest capital. All interested parties reply to Box 303, WSBA.

Attorney position available with general practice firm. Emphasis on family law, bankruptcy, DWI and personal injury. Prefer someone with two-plus years' experience. Salary DOE. Please mail cover letter with resumé to: Kenneth B. Shellan & Associates, 127 Park Avenue N., Renton, WA 98055.

Tax associate—The Portland office of Davis Wright Tremaine seeks a tax associate with a minimum of one year's experience and/or LL.M. Must have top academic credentials and superb writing skills. Send confidential replies to Linda Favero, Davis Wright Tremaine, 2300 First Interstate Tower, Portland, OR 97201.

Wilson Smith Cochran & Dickerson, an expanding 14-lawyer firm, is seeking an attorney with at least three years' experience involving medical malpractice and/or pharmaceutical litigation. Applicants should possess a strong litigation background with excellent trial advocacy and writing skills. Please send resumé to the attention of Gary A. Western, Hiring Partner, 1215 Fourth Avenue, Suite 1700, Seattle, WA 98161.

Position available for construction and litigation attorney with a minimum of five years' experience. Reply to Stephen L. Nourse, Carney, Stephenson, Badley, Smith & Spellman, P.S., 2300 Columbia Center, 701 Fifth Avenue, Seattle, WA 98104.

Prominent Tacoma law firm seeks to hire litigation attorney with at least two years' experience. Excellent academic record and writing skills required. Send resumé, transcript and writing sample to Hiring Partner, P.O. Box 1533, Tacoma, WA 98401.

For an expanding corporate, computer and intellectual property practice, Hendricks & Lewis, a six-attorney law firm, seeks an attorney with excellent writing and analytical skills and at least two years of experience in one or more of the following practice areas: corporate, tax and securities law. Resumé should be directed to Hiring Coordinator, Hendricks & Lewis, 2675 First Interstate Center, 999 Third Avenue, Seattle, WA 98104.

Small downtown Seattle insurance defense law firm seeks associate with at least one year's experience in civil litigation. Send resumé and writing sample to Box 305, WSBA.

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Registered professional land surveyor with J.D. and extensive experience as an expert witness in boundary disputes. Author of articles and regular columns in recognized journals and instructor for land surveyors' seminars; active in professional societies. Jerry R. Broadus, Geometrix Inc., (206) 840-5680.

The Bonjorni Company, Robert C. Bonjorni, MAI, RM, real estate appraisers and consultants serving Washington and Alaska, P.O. Box 1461, Bellevue, WA 98009; (206) 827-8764.

Kerr Stores Legal Search handles placement for attorneys in the Pacific Northwest, Alaska, Hawaii. Send letter and resumé in strictest confidence to 628 Skinner Building, Seattle, WA 98101; (206) 625-1855.

Oregon litigation? Member of WSB nd OSB with offices in the Portland area is available for court appearances, depositions and writing assignments. Reasonable rates. Four years' experience. Call Christopher B. Rounds, (503) 635-3546.

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Investigations: confidential, civil, criminal, fraud and traffic accidents. Executive protection. Twenty-six years in police service. Retired chief of police. References available. Albert Anglin, (206) 885-2608.

Legal research and writing: Attorney with strong research and writing skills--polished memoranda, briefs. Priority service available. Phone: (206) 526-9985.

WILL SEARCH

Bill Albert Mudd (deceased July 1990): Anyone with knowledge of a will executed after February 7, 1981 by Bill Albert Mudd of Seattle, contact Christopher J. Fox, attorney, 1600 Market Bldg., Kirkland, WA 98033; (206) 827-8757.

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HOW TO PICK THE BEST BUSINESS APPRAISER

When you need to choose an independent business appraiser, you want nothing less than the best. Appraising a business is, after all, a complex and highly specialized process — and a lot rides on the outcome, particularly if litigation is involved.

With so much at stake, there's no room for amateurs. You need people who know what they're doing. But how do you find them?

Ask for references.

In our case, the best endorsement of our performance comes from people who have worked with us, and can attest to the quality, thoroughness, and integrity of our appraisals. We are proud, too, of our reputation for completing projects on time and on budget.

Our list of references includes accounting firms, trust departments of financial institutions, and some of the leading legal firms in the Northwest. We'll be happy to provide this list; just give us a call.

Check their qualifications.

One way to measure the competence of business appraisers is participation in professional designation programs. In the field of business valuation, there are two relevant programs:

Chartered Financial Analyst (CFA). Requires a college degree, three years of professional experience, and successful completion of three successive annual six-hour examinations.
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All three principals of our firm are CFAs, and two are Senior Members of ASA in Business Valuation.

Weigh their experience.

We have completed several hundred business appraisals, in numerous industries and for almost every conceivable purpose. We'll be pleased to send a detailed list on request. We are equally experienced as expert witnesses before courts and arbitration panels.

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