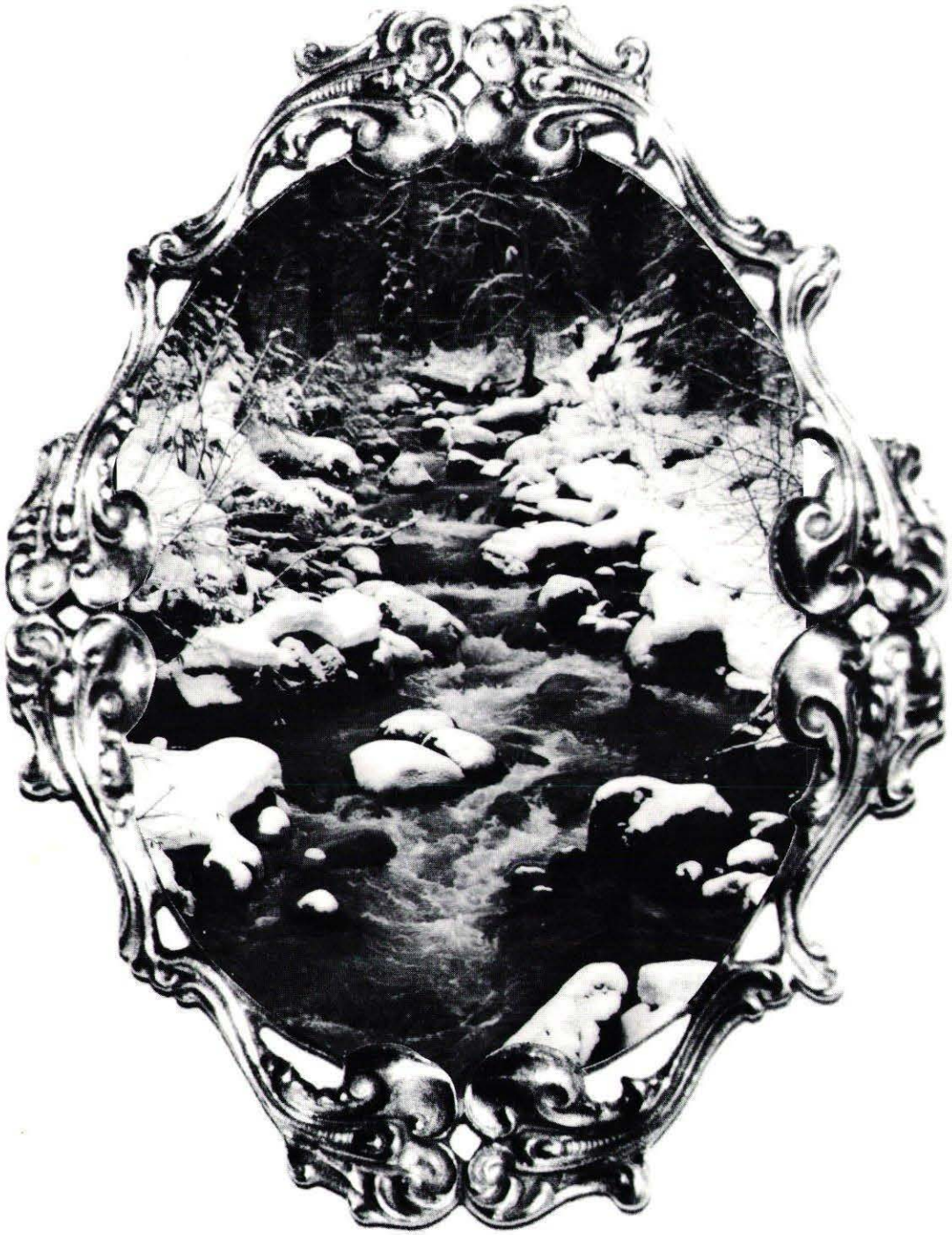
Washington State Bar News
Vol. 45, No. 12, December 1991



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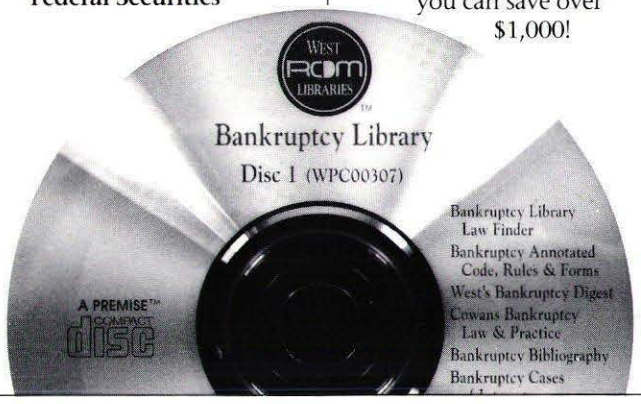

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Washington State Bar News

Vol. 45, No. 12, December 1991

Published by
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SEATTLE, WA 98121-2599

LINDSAY THOMPSON, *Editor*
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FEATURES

ANNUAL CHEMICAL DEPENDENCY ISSUE

BILL OF RIGHTS BICENTENARY

The Bill of Rights was ratified December 16, 1791. Here are two views on how it's faring in the 1990s.

DEPARTMENTS

ART CREDITS

Cover: Our winter scene of a tributary to Lake Kachess in Kittitas County was photographed by staff member emeritus **Jeff Barecca.** The frame is patterned after one by family-owned Elias Artmetal Co. of College Point, New York. The company was started by a Constantin Elias, a Greek immigrant who arrived in the late 1800s. Many of its designs originated in silver and brass at the turn of the century. The *Bar News* found a collection of them at Leslie's, 1420 First Avenue, Seattle, WA 98101; (206) 467-8837.

WSBA Telephone Numbers

Administration	(206) **448-0441**	Lawyer Referral Service	(800) **552-0787**
Admissions	(206) **448-0563**	Lawyers' Assistance	(206) **448-0605**
Continuing Legal Education	(206) **448-0433**	Legal Department	(206) **448-0307**
Public Affairs	**(206) 441-0677**		

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.

All We Need to Know

Editor:

Thanks for your biography of the new bar president (*Bar News*, September 1991). I have been hearing about Joe Delay (Sandpoint High School Class of '44) all my life from my mother (Class of '45) and my father (Class of '43).

From their perspective, telling us where Joe Delay was born and grew up is everything we needed to know about the man.

CHRISTINA A. MESERVE
Olympia

A Kind Word for Plastic

Editor:

I have just been handed my October, 1991 copy of the *Washington State Bar News*, and I must say it is a mess. Somehow, it manages to become thoroughly soaked in water, causing extreme damage to the first six pages, making them illegible.

1. Why couldn't you wrap the magazine in a good plastic cover so as to keep it dry?

2. You did so previously on that wonderful, informative piece on the San Diego convention, so I vote for you to continue the practice.

Incidentally, we have found a great secondary use for the plastic covering. It makes a great temporary container for the storage of soiled plastic disposable diapers.

WADE E. GANO
Yakima

(1) For a wonderful example of illegibility, I refer to you the signature of Walter James Kennedy, III, Esq.

(2) See *Trial* magazine as a good *national* example of this practice.

Remember the Key Question

Editor:

The recent "Office Practice Tips" column (*Bar News*, September 1991) gave some excellent suggestions on how to handle the potential client who telephones with a question.

But the article omitted what is to lawyers representing plaintiffs, the one vital piece of information which must be elicited immediately. That is, "When did it happen?"

Obviously, the article could not attempt to deal with specific questions to pursue, given the vast range of possible situations. But if the statute is about to run, merely advising the caller that you can't advise him until he comes in for a formal appointment may cost the caller his case. That's the way telephone calls turn into malpractice suits.

RICHARD L. MEIGS
Mill Valley, California

More on Free Speech

Editor:

In response to Mr. Gehret's suggestion ("Letters," September 1991) that you "revise your policy and exclude those [letters] that have as their sole purpose the demeaning of other lawyers," may I respectfully disagree. Whereas I have the highest regard for your editing skills, I prefer to make my own judgment as to the author's "purpose" in letters to the *Bar News*.

On the other hand, perhaps the Board should appoint a committee to determine each letter's moral, spiritual and philosophical "correctness" before publication. I'm sure Misters Gehret, Olmstead and Ende would be glad to serve. As for me, I still believe the best way to expose a fool is to provide him a soapbox.

STEPHEN W. HAYNE
Seattle

Editor:

Except for the fact that you ask for typewritten letters, I would be taking pen in hand to let you know how excited I was to see that the Board of Governors of the Bar Association has finally gotten around to considering mandatory (i.e., at the risk of professional discipline) politically correct speech ("The Board's Work," *Bar News*, September 1991). It's about time that someone proposed reining in the unfettered free speech that has plagued the Bar for who knows how long—it has obviously gotten out of hand, and those feeling the ominous overtones of such speech can hardly be blamed for wanting to censor that which they find objectionable for whatever reason. Lawyers have for too long propounded the principles set forth in the Bill of Rights and it's time to set things straight.

Also, perhaps you could pass my name along to the Board. I'm sure they will have to put together some sort of screening panel to decide which speech is correct and which is not and, like most others I know, I certainly have my thoughts in that regard and would be

most willing to serve in such a lofty capacity where I could share (read: impose) those views.

Gee, I hope such insensitivity to such a sensitive issue doesn't offend anyone—I wouldn't want you to have to censor my letter.

What an interesting way to celebrate the 200th anniversary of the Bill of Rights.

ROBERT LOVE
Grapeview

Editor:

I was excited to learn of your policy of printing "all letters that are not actionable or unsigned" ("Letters," *Bar News*, September 1991) regardless of whether they contain the word "vomit." I look forward to seeing this letter in print.

GEOFFREY STAMPER
Wichita, Kansas

More On Language

Editor:

It is striking when one person engages in the very abuse of the language of which that person has accused another. Mr. Jeffrey Cowan's letter in the October 1991 issue stridently attacks Mr. James J. Mason's earlier letter for the apparently unforgivable offenses of referring to a physician conducting an abortion as an "abortionist" and to the human being discarded in an abortion as a "child." Based on this transgression, Mr. Cowan suggests that Mr. Mason has violated his ethical duty as "an officer of the court" and further demands that this journal "condemn" Mr. Mason by attacking his views through editorial comment.

Mr. Cowan would prefer that Mr. Mason speak (as does Mr. Cowan) in the euphemisms of the "pro-choice" movement. For example, Mr. Cowan prefers to think of abortion in cold terms as "a legal medical procedure" conducted to remove a "fetus." By this clever use of clinical terminology, Mr. Cowan intends the reader to view abortion as an innocuous medical procedure with no greater moral implications than the surgical removal of a tumor or a wart.

Because Mr. Mason failed to conform his speech to Mr. Cowan's preferred patterns, Mr. Cowan charges that Mr. Mason has done "violence to the very concept of rational discourse." Mr. Cowan then proceeds to contribute to such "rational discourse" by resorting to name-calling. He characterizes anyone who disagrees with his views about abortion as an "ignorant zealot" in the grip of "anti-choice hysteria." Mr. Cowan also implies that no person of "goodwill" could ever conceive of abortion as constituting a harm to a "baby" or a "child." This apparently is what Mr. Cowan views as a "reasoned" discussion of this subject.

Mr. Cowan's anger is understandable. Advocates of abortion on demand become uncomfortable when someone, like Mr. Mason, addresses the issue with plain talk. Like the emperor with his new clothes, supporters of easy availability of abortion veil the issue in such popular rhetoric as freedom of "choice," without acknowledging the real nature, or attempting to defend the legitimacy, of the victim of abortion

and so instead must resort to such dehumanizing language as "fetus" and "product of concept" to disguise the issue.

The plain and unadulterated truth is that abortion destroys a living organism (i.e., kill), one that has a unique and separate genetic identity (i.e., an individual) and one that is indisputably human in origin, in genetic makeup, and (within a few short weeks) in form as well (i.e., a human being). Until we are willing to ask openly and honestly why some individual human beings should be subject to death because they are inconvenient, we are not facing up to the true issue of abortion. The question of abortion requires us to honestly admit that we are being asked to draw a line between those human beings who have a right to live and those human beings who are subject to being discarded as unwanted based solely upon the "choice" of another.

Mr. Cowan correctly raises the question of abuse of language to avoid meaningful discussion of a vital issue. But he is the one that is guilty of the charge.

GREGORY C. SISK
Assistant Professor of Law
Drake University

Oh, For the Days of the WSBA Travel Committee Again...

Editor:

While planning an upcoming trip to Central America, I purchased *The New Key to Costa Rica* (10th ed., 1991), an authoritative travel book published in English in that country. The author offers advice on everything from hotels and restaurants to investments and retiring in Costa Rica. I was especially intrigued by the advice about Costa Rican attorneys and thought the membership might enjoy it:

Legal advice: If you live here and have a business or buy land, etc., sooner or later you will need to hire a lawyer. Here are our guidelines for choosing one in Costa Rica:

1. Shop around. There is usually no charge for meeting and consulting with a lawyer. Find someone you respect and communicate with easily. Actually, your paperwork will probably be handled by law students working in the lawyer's office and they will be the ones you end up having to communicate with, so meet them too. Probably the most important person to have a trusting relationship with is the secretary. Some lawyers are always "not there" or "in a meeting" according to their secretaries. You can talk to them for *weeks* and never get to talk to them.

. . .

5. Most legal work does not get done unless you keep tabs on what your lawyer is doing. It is best if you educate yourself on rules and regulations, etc. Do not sit back and expect that everything is humming along now that *Licendiado X* has your affairs in his capable hands. Check and double check, ask to see receipts, ask to see your *expediente* (file). Watch out if the lawyer tells you, "*Tranquilo. No hay problema. No se preocupe.*" (Relax. No problem. Don't worry.) This is Costa Rican for "Don't make me think about it."

6. Whether you have a good lawyer or a mediocre one, things still take a long time to get done here. So, as long as you know that things are *en tramite*, enjoy the relaxed pace and go on a couple of long weekends yourself.

Apparently, things are the same the world over.

DOUGLAS K. SMITH
Tacoma

Ethnic Associations

Editor:

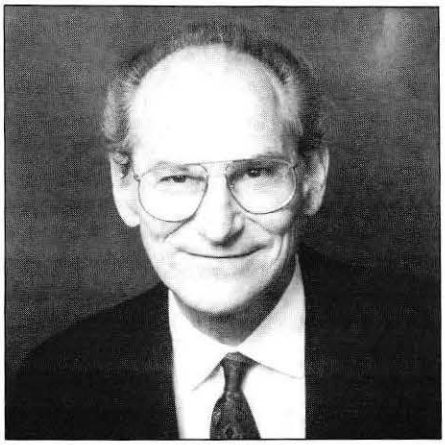
Washington Protection and Advocacy System (WPAS) provides advocacy services to people with developmental disabilities and people identified as mentally ill pursuant to the requirements of the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. Sections 6000-6083 (1975) *(as amended)*, and the Protection and Advocacy for Mentally Ill Individuals Act, 42 U.S.C. Sections 110801-108 51 (1986) *(as amended)*.

WPAS is committed to cultural diversity in both its representation and its hiring practices. Of course, WPAS regularly recruits attorneys to help fulfill its mission. It would be helpful to add any attorneys who are African-American, Native American, Hispanic, Asian or members of other ethnic groups to our recruiting resource list. To this end, I am writing to request your assistance in identifying lawyers for particular ethnic groups within the state of Washington.

Thank you for your assistance with this request. Please don't hesitate to contact me at (206) 324-1521 if you have any questions.

MARY CAVERLY
WPAS, Suite 506, 1401 E. Jefferson
Seattle, WA 98122

Christmas Is a Time for Sharing



Joseph P. Delay

Christmas is a time for sharing with those who are so unfortunate as to be hungry. As a lawyer, each of us has an obligation to improve society. What better way is there than to make a contribution to the Washington state Lawyers' Campaign for Hunger Relief?

This is the first year of the campaign. It is an effort started by a handful of lawyers and business people in the Seattle area who, following the report of the Governor's 1988 Task Force on Hunger, have begun a program for all lawyers across the state to address the needs of hungry people—especially children—in our state and, to a lesser extent, throughout the world. By means of the insert enclosed here, the campaign seeks contributions of at least the monetary value of one billable hour from each of our 17,000 lawyers. This campaign provides us with a unique opportunity to combine our financial strength to help alleviate hunger—an ever-increasing problem in our area.

One hundred percent of the proceeds of your contributions will go to each of the five programs designated for this first year by the campaign board of directors. These programs are briefly explained in the insert. Eighty percent of the contributed funds will remain in Washington state to be divided equally among the four in-state programs which have been targeted. The remaining 20 percent will go to international relief causes, principally to at-risk children, under the direction of CARE. The in-state programs, particularly the support for the public awareness and the utilization of the Women's, Infants' and Children's (WIC) program and the food bank programs, will address the hunger needs in your own particular areas, not just in the western part of the state.

The Lawyers' Campaign for Hunger Relief represents a unique opportunity for lawyers across the state to improve negative perceptions about our profession. As lawyers we have, or should have, an awareness of the inequities which exist around us; we also should have the willingness to help improve the circumstances of those less fortunate than ourselves. Historically, lawyers have been leaders in addressing issues of social injustice throughout our country. Certainly, hunger represents social injustice of the highest order.

The Lawyers' Campaign is not intended to be a stop-gap measure seeking only to feed hungry people for the short term. Certainly, there are many organizations out there which attempt simply to provide food, and I am sure many of you already support such programs.

However, this campaign stands out as an effort primarily to reach the hungry children of this state, children whose early years of education may be jeopardized by a lack of sufficient food for breakfast and lunch. By primarily targeting children, the campaign hopes to break the cycle of hunger and poverty—to the extent that this can be done by feeding programs and public awareness campaigns.

Finally, the Lawyers' Campaign seeks to promote and be a model program for each of the other 47 states which do not yet have similar hunger relief campaigns.

I encourage each of you to contribute the value of one billable hour to our Lawyers' Campaign. It is a small price to ask from each of us, but with our combined contributions we can have an impact upon this most-critical issue.

You may send your donations to Washington State Lawyers' Campaign for Hunger Relief, 1111 Third Avenue Building, #1010, Seattle, WA 98101-3202.

Merry Christmas to All and A Happy New Year!

Joseph P Delay

FROM THE ARCHIVES

Five Years Ago,

Washington State Bar News, December, 1986:

In an article, "Computerized Law Books?," Pasco attorney Edward V. Hiskes predicted that Washington case and statutory law could be made available on a handful of computer disks. "A research system covering Washington Reports can be implemented by using [computer] hardware to additional large hard disks or a $999 optical disk drive. An optical disk can hold over 300 law books, but can be manufactured for $10. Thus, the day of law books costing less than four cents each is at hand."

Ten Years Ago,

Washington State Bar News, December, 1981:

"By unanimous vote, the Board has settled on the following convention schedule: 1982 - Vancouver, 1983 - Spokane, 1984 - Vancouver, and 1985 - Seattle.

"The Board's decision to hold the '85 convention in Seattle was based on the results of the Bar Association's first-ever survey of lawyers (*see Bar News* 35:5:21). According to the results of that poll, 7 percent of the responding lawyers favored an occasional convention in Seattle. Executive director Friar pointed out that a Seattle convention probably would not be a success; however, the Bar should nonetheless be responsive to the wishes of the membership. Friar mentioned that the Louisiana bar conventions used to be held in New Orleans and were unmitigated disasters. That state's bar has, therefore, chosen Biloxi, Mississippi as its permanent (and very well attended) bar convention site. Upon hearing this news, Governor Beezer was heard to mumble the suggestion that Washington, too, hold its convention in Biloxi."

Fifteen Years Ago,

Washington State Bar News, December, 1976:

In a letter to the editor, Seattle lawyer Thomas M. Walsh challenged WSBA president Richard Riddell's October column, in which Riddell said the appointment of lay members to the California State Bar's Board of Governors was a "serious challenge to the independence of the California bar." Walsh said appointment of lay members should be seen "as an indication of serious consumer discontent.... Rather than look upon the appointment of lay members as a threat, we should welcome it as a reasonable attempt to learn and remedy the causes of consumer dissatisfaction. I laud the efforts of Governor Brown and the California legislature to keep the bar responsive to consumer needs, and I hope that we in Washington can follow their lead."

Bar News editor Jay White reported that the Board of Governors "approved motions designating annual meeting sites as follows in the years indicated: 1978: Spokane; 1979: Vancouver, B.C; 1980: Hawaii; 1981: Portland, Oregon."

Future WSBA president David Welts brought the Skagit County Report up to date after a reportorial hiatus. "Apparently the only way anyone knows anything about what's going on up here is through this journalistic effort. Never was this demonstrated more clearly than when our pal Fred Lubbe was appointed to the Lawyers Referral Committee for 1977. Fred has been dead for a year and a half.... Of recent vintage are newborn children to Mike Lewis, Colonel Betz and David Yamashita and spouses. I was so impressed by this contribution to the perpetuation of our race that I went out and got married."

Twenty Years Ago,

Washington State Bar News, December, 1971:

Obscenity and pornography was the cover topic this month after a court battle (*Seattle v. Mecca Twin Theater*) over the Seattle city ordinance against smut. *Bar News* editor Edmund Raftis thought *Seattle Times* editorial criticism of Judge Ross Rakow unfair: "[L]et's not accuse Judge Rakow of not interpreting the public interest. Put the burden where it lies. Unless the United States Supreme Court does an about-face or the constitution is amended to allow prior restraints, Judge Rakow is duty-bound to uphold the law of the land." Raftis continued, "Even strict constructionist William Rehnquist recognized, in his testimony before the Senate Judiciary Committee: 'When you put on the robes, you're not there to impose your personal views but to construe as objectively as you possibly can the constitution and the statutes.'"

The Board of Governors referred the reform resolutions passed at the September bar convention to the WSBA Committee on Organization and Governance of the Bar for comment and a report in January, 1972. The resolutions called for direct election of the WSBA president; expansion of the Board of Governors to 12 and realignment of districts to achieve numerical equality of lawyers; establishment of an independent Young Lawyers Section; and a call for greater social activism by the bar. The Board

further approved resolutions from the convention calling for publication of Bar Association financial information in the *Bar News* and forbidding WSBA board, committee or section meetings in places which discriminate on the basis of sex, race or creed. "The Board thus expanded upon the resolution approved by a majority of members at the September annual meeting, which disapproved meetings in places which discriminated on the basis of sex. The convention resolution was also directed to local-bar meetings, but the Board of Governors decided the State Bar may not impose such legislation upon local bar associations."

"Quinby R. Bingham of Tacoma appeared [before the Board of Governors] and informed the Board that the requirements of his own law practice make it unfeasible for him to continue serving as the Bar's legislative representative after 1972. He told the Board that the seemingly annual session plus the increasing activity of interim legislative committees indicate the desirability of the Bar's seeking out a full-time representative. The Board decided to seek out for employment of such a representative, whose salary would be paid from the Legislative Fund voluntarily contributed by Bar members."

"The 1972 annual meeting of the State Bar will be held in Spokane Thursday through Saturday, September 7-9, at the Ridpath Hotel, the Board confirmed."

Buckle Up
Bundle Up

"1992 WSBA Licensing Form"

Either you have received—or soon will receive—your 1992 WSBA Licensing Form. In years past, this would have been called your "dues notice," your "CLE certification," and your "trust account declaration"—and would have arrived in separate mailings. We have made a concerted effort to consolidate these separate mailings into a one-size-fits-all multi-purpose form bearing the caption "Licensing Form."

The new title, though more semantic than substantive, is a deliberate attempt to shift the perception and understanding of membership in the WSBA from a discretionary "dues"-like process to what it truly is—a licensing process to practice law. In addition to the obvious economies of combining the billing process, the CLE certification, and the trust account declaration, we hope that this consolidation will reflect the unique role the WSBA plays as an extension of the Supreme Court in regulating the right to practice law.

The licensing form contains three other components in addition to the license fee, CLE certification, and trust account declaration. It includes discretionary sections for section dues, demographic information, and a place to voluntarily resign from membership rather than go through an extended attrition process.

The section dues (which cover a membership year from October 1 to September 30) were already billed to current section members, so if you've already joined for this year, it will show on your licensing form. This form, however, allows you to join new sections.

Demographic Information

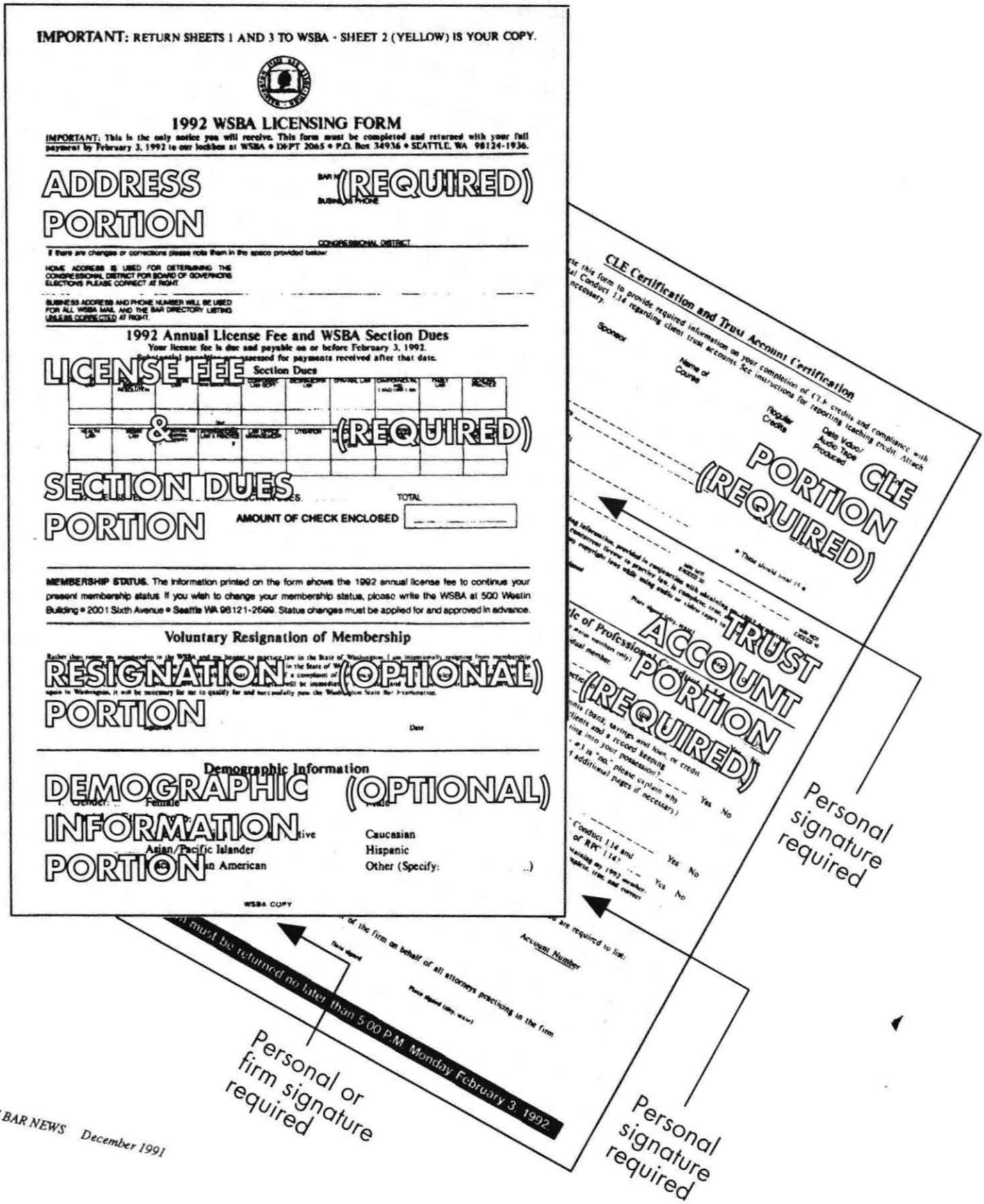
Perhaps the most unusual part of the 1992 licensing form is the area for collecting demographic information. Over the years, the WSBA has often been asked for simple information such as, "How many women belong to the WSBA?" We don't know. We've never collected that information. Similarly, we have no data on the racial or ethnic composition of our membership. Both the WSBA Long-range Planning Task Force and that on Opportunities for Minorities in the Legal Profession have recommended that we collect such information. Our effort to collect gender and race/ethnicity information has the unanimous support of Washington Women Lawyers and the various minority bar associations.

Dennis P. Harwick

It is important to understand that this is not a "survey." Rather, it is a "self-identifying" process and is our effort to break the log jam in collecting this data. Obviously, there is no penalty for declining to provide this information. I do, however, encourage each of you to voluntarily take the time to mark a couple of boxes to help us identify, understand, and meet the needs of our membership.

Too Complex?

We have tried to strike a balance between making the licensing form "user friendly" and making it serve a number of technical roles. I'd hate to tell you how many revisions the form itself went through so that it could be computer-generated, include all financial information on one page, and all CLE and trust account information on the other. I'm sure that we've made some mistakes that we will learn from, and welcome any suggestions you might have for improving the form.


IMPORTANT: RETURN SHEETS 1 AND 3 TO WSBA - SHEET 2 (YELLOW) IS YOUR COPY.
1992 WSBA LICENSING FORM
IMPORTANT: This is the only notice you will receive. This form must be completed and returned with your full payment by February 3, 1992 to our lockbox at WSBA • DEPT 2065 • P.O. Box 34936 • SEATTLE, WA 98124-1936.
ADDRESS PORTION
(REQUIRED)
1992 Annual License Fee and WSBA Section Dues
LICENSE FEE & SECTION DUES PORTION
(REQUIRED)
AMOUNT OF CHECK ENCLOSED
MEMBERSHIP STATUS. The information printed on the form shows the 1992 annual license fee to continue your present membership status. If you wish to change your membership status, please write the WSBA at 500 Westin Building • 2001 Sixth Avenue • Seattle WA 98121-2599. Status changes must be applied for and approved in advance.
Voluntary Resignation of Membership
RESIGNATION PORTION
(OPTIONAL)
Demographic Information
DEMOGRAPHIC INFORMATION PORTION
(OPTIONAL)
Caucasian
Hispanic
Other (Specify:
WSBA COPY
CLE Certification and Trust Account Certification
CLE PORTION
(REQUIRED)
TRUST ACCOUNT PORTION
(REQUIRED)
Personal signature required
must be returned no later than 5:00 P.M. Monday February 3, 1992.
Personal or firm signature required
Personal signature required

The Pro Bono Honor Roll Rolls On

Last month we published the Pro Bono Honor Roll for **Adams**, **Clark**, **East King**, **Franklin**, **Grant**, **Grays Harbor**, **Kitsap**, **Pierce**, **Whatcom** and **Yakima** bar associations. The following pages honor the **Clallam**, **Seattle-King**, **Skagit**, **Snohomish**, **Spokane** and **Thurston-Mason** bar associations and pro bono panels.

Clallam County Pro Bono Lawyers: Mark Baumann, Ronald Bell, David Bendell, George Buck, Gary Colley, Brian Coughenour,. John Doherty, Marjorie Forest, Carl Gay, Michael Hastings, John Hayden Jim Hickman, Harry Jackson, Penny Jackson, David Johnson, Joseph Lavin, Kenneth Leuthold, William McDowell, Craig Miller, Stephen Moriarty, Larry Nicholson, Stephen Oliver, Susan Owens, Mary Pfaff-Pierce, Frank Platt, Theodore Ripley, Craig Ritchie, Richard Lynn Rogers,. John Rutz, Charles Schaaf, Christopher Shea, Gary Sund, H. Clifford Tassie, S. Brooke Taylor, C.T. Walrath, Gary Williams, Kenneth Williams, Lane Wolfley, George Wood, Jr.

Skagit County Legal Clinic: Otto Allison, Thomas E. Ashton, James E. Anderson, Earl F. Angevine, David G. Arganian, Colonel F. Betz, Don Bisagna, Joseph D. Bowen, Eileen E. Butler, Terance G. Carroll, Jim Cleland, Robert R. Cole, David L. Day, Kenneth J. Evans, Bradley E. Furlong, Warren Gilbert, Jr., Warren M. Gilbert, Dianne E. Goddard, Kurt E. Hefferline, Karen Herrin, John Hicks, Elliott W. Johnson, Gary T. Jones, J.G. Kamb, Jr., John G. Kamb, Thomas R. Kamb, Eugene Knapp, A.J. Kuntze, II, Michael L. Lewis, Martin Lind, Paul Luvera, Steve E. Mansfield, Helen M. Mattox, William R. McCann, Mary McIntosh, Pat McMullen, John M. Meyer, John R. Moffat, C. Thomas Moser, Gerald T. Osborn, Brian Paxton, Paul H. Reilly, Michael Rickert, Pat Caulfield, Stephen Schutt, John Shultz, Steve R. Skelton, Gail R. Smith, Lindford C. Smith, Mark T. Soine, Ken R. St. Clair, Brian L. Stiles, Brock D. Stiles, David A. Svaren, Paul W. Taylor, Cindy Tims, Marjorie Thomas, Keith Tyne, Thomas Verge, John H. Ward, Susan Ward, W.V. Wells, David A. Welts, Richard A. Weyrich, Michael A. Winslow, T. Reinhard G. Wolff.

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Codependency: Don't Throw the Baby out with the Bathwater

by **Lori Dwinell**

We are in the midst of throwing out the baby with the bathwater. For the past 14 years, North America has been influenced by a grass-roots social phenomenon, the Children of Alcoholics Movement. Its purview has expanded from an initial focus on children reared in alcoholic families to children from co-dependent, shame-based, or dysfunctional family systems. Since this movement originated in America, the land of hyperbole and entrepreneurial zeal, it has been a major money-maker for self-help publishers, conference conveners and self-styled "ACOA" therapists; it became apparent that the degree to which millions of people were in pain also meant that "there was gold in them thar ills." Social movements always overstate their case and initially engage in contrary-to-fact assertions. As such movements mature, a winnowing process takes place whereby the valuable is retained, and excess and messianic zeal fall by the wayside.

We hope such will be the case for the concept of co-dependency within the context of this current, widespread social movement. The alleged parent-bashing of the Children of Alcoholics Movement has now been replaced by a bashing of the concept of co-dependency in the popular press. Current criticism of much that has been written and said about co-dependency as a concept may result in a healthy winnowing of the most extreme and ridiculous assertions made in this social movement, without the discarding of concepts which have been useful and growth-promoting at a time in social history when people are starving for relief from their emotional pain.

Let me put this in a brief context. The recovery movement in North America began in 1935 with the founding of Alcoholics Anonymous as a prototype of all subsequent 12-step, peer self-help psychotherapy systems. Alcoholics Anonymous' importance stems from its being the first psychologically and spiritually oriented, widely available, free and effective response to alcoholism in this century. Alcoholic Anonymous' goal was to sober up the alcoholic and, hence, sober up the family system. Its founding was followed by the development of AlAnon, a peer self-help psychotherapy system designed to provide support for family members and friends of alcoholics affected by the magnetic force field of alcohol addiction. Family members of alcoholics had discovered that they could not *not* respond to the pull of alcoholism as an addiction. Addiction became the central organizing principle in an alcoholic family, and AlAnon's gift was in helping family members learn to detach from the enabling behaviors they had developed in the face of such a potent force. AlAnon "cooled off" the family system and helped nonalcoholic family members learn to take care of themselves and their own needs, rather than having their needs preempted by the alcoholic's dysfunction. Hence, AlAnon, in its

restoration of healthy self-focus, was really the first co-dependency treatment program. This is especially true if we adopt a working definition of co-dependency as the chronic abuse or neglect of self in favor of someone or something else.

The Children of Alcoholics Movement emerged in the late 1970s in response to the success of both Alcoholics Anonymous and AlAnon in this century. There were finally enough recovery resources in the culture so that children raised in these families found their voice and could speak to their own pain—pain which, incidentally, did not abate when they became adults and left their actively addictive families of origin. Instead, many individuals reared in alcoholic families found their adult lives plagued by chronic depression, low self-esteem, relationship or intimacy problems and active addictions, in spite of their determination as children that it would never happen to them, i.e., they would never repeat their parents' dysfunction.

It has been said that the current generation of adults engaged in this social movement are the first to treat their childhood as an illness from which they must recover and the first to hold their parents accountable for all their problems—including the pain of the human condition and existential angst. The movement has gone too far. It has overstated its case. The recovery movement is not to be taken literally. It is not about parental shortfall or familial dysfunction. Rather, it is a metaphor for widespread pain in a contemporary society that has come through 50 years of rapid, unprecedented social change and has, therefore, lost many of the lateral supports for humanness that we used to depend on to deal with the pain of the human condition.

Attorneys must avoid getting caught up in the assumption that everyone is a victim and that there is always a wrong to be righted. Litigation in every case of human misery—assigning blame and seeking compensation—may only perpetuate a client's refusal to accept adult responsibility. Life is difficult. A survivor must be vigilant, must learn to deal with it and to communicate.

It is essential that we not throw out the baby with the bathwater. If this social movement has overstated its case, it speaks of the pain which people are desperate to heal. The self-help books, conferences, self-help groups and therapists have been an attempt to provide mini-communities and surrogate families within which contemporary humans can heal pain.

Their purpose is not to polarize the society into a collection of whiners and adversaries, but to equip individuals with the self-understanding necessary to a clear vision of themselves in context. Then they can take responsibility for who they are and cope with the difficult, challenging relationships and situations which we all confront.

Lorie Dwinell, M.S.W., A.C.S.W., *is a nationally renowned therapist and co-author of* After the Tears. *Her office is in Seattle's Pioneer Square.*

Managed Care:
Changing the Parameters of Deferred Prosecution

by **Julie S. Mitchell**

Over the past several years, Washington state has led the nation in shaping DWI legislation to promote chemical dependency education and treatment as an integral part of the legal process. Thousands of individuals have been successfully treated and have changed their lives. However, a new element has entered the treatment equation.

Managed Care

"Managed care" is the term for the service that controls and coordinates healthcare delivery and reimbursement for insurance companies with the specified goal of reducing costs. It was introduced as an attempt to contain the nation's rising cost of healthcare in a traditional medical setting. Whether or not this method is effective is under considerable debate.

The current answer to the nation's healthcare crisis has begun to erode and undermine the effort that has gone into the design and application of our DWI laws: it limits levels of care or denies access to chemical dependency treatment, sometimes solely on the basis that the treatment is "court-motivated" and possibly not "medically necessary." The future of third party reimbursement for court-involved clients is in jeopardy.

Reimbursement for court-involved clients is addressed in Section 5 of WAC 284-53-010, Standards of Coverage of Chemical Dependency. This section says that the insurance carrier may require the patient to furnish, at his or her own expense, an assessment of the need for chemical dependency treatment. This is meant to enable the carrier to finally determine medical necessity prior to admission to treatment.

The success of a deferred prosecution or a Department of Licensing-monitored treatment regimen depends largely on the accuracy of the diagnosis and the proper use of admission criteria to design treatment plans. Without appropriate placement, the chance of relapse and subsequent re-offense increases significantly. Groups and individuals opposed to deferred prosecution often say that such treatment is not effective.

It is neither the structure of the law nor its application on a practical level that lends itself to this accusation. The problem results from limited access or inappropriate levels of chemical dependency treatment.

In general, managed care excludes certain types of treatment based on cost, not patient need; sets arbitrary and often poorly defined criteria; and operates with short-term economic incentives built in as bonuses when cost savings to the insurance company exceed a predetermined amount.

Specific Managed-care Measures

Specific managed care measures used alone or in combination include: preauthorization (requiring approval of recommended treatment plan prior to admission), concurrent review (an ongoing review of a particular treatment) and retrospective review (a review of what costs will be reimbursed after treatment has been completed). The following examples illustrate each of these methods.

Preauthorization

Recently a woman was referred to an outpatient facility by her attorney for an alcohol and drug evaluation to determine whether or not she was a candidate for a deferred prosecution. Diagnostic results indicated early late-stage alcoholism, with symptomology including daily drinking, increasing frequency and duration of blackouts, severe physical withdrawal and a history of unsuccessful attempts at abstinence. The recommended treatment plan included inpatient treatment. The client, her family, her employer, her attorney, and ultimately the court all agreed that, given her degree of addiction, inpatient treatment was necessary.

However, this individual's insurance carrier required preauthorization prior to admission. This preauthorization was completed by the managed-care company which never saw the client, over the telephone, based on criteria it would not reveal because it was "proprietary." In this case, outpatient treatment was approved. Finally, reasons given for this decision were 1) no prior treatment and 2) a "failure at outpatient," which would have allowed for inpatient approval. This woman was set up to fail. The likelihood of relapse and reoffense was increased, thus threatening the integrity and future of deferred prosecution.

Concurrent Review

Concurrent review generally determines length of stay for inpatient treatment. It is common for an individual to be admitted to a 28-day inpatient treatment facility with only the initial three days approved. Each additional day is then approved one at a time, as determined by a utilization

review person's decision. Until recently in Washington state, concurrent review was only being applied to inpatient treatment. Now, however, outpatient treatment providers are beginning to see limits on days of intensive outpatient approved for reimbursement. For example, we now see prior approval of only one week of intensive outpatient treatment, which is usually a four- to six-week program.

This raises some interesting issues. First, RCW 10.05 Deferred Prosecution refers to intensive outpatient treatment as defined by WAC 275.19 (Alcohol and Drug Treatment Facilities) as a minimum of 72 hours of treatment within a maximum of 12 weeks. Managed-care companies have made it clear they do not concern themselves with these RCW or WAC requirements for treatment providers and clients on deferred prosecution. Therefore, the individual needing the full intensive outpatient program may end up with a large private-pay portion, causing a definite financial hardship. Second, once a treatment provider recommends a specific course of treatment, there is automatically an ethical obligation to ensure that the client accesses the needed treatment, regardless of probable reimbursement difficulties.

The end result is many individuals whose insurance limits treatment reimbursement, yet who are employed and thus do not qualify for state funds. This leaves three options: the client pays for treatment; the provider offers treatment at reduced or no cost; or no treatment is possible.

Retrospective Review

This take place after the fact. Occasionally, after services have been rendered, a review process is implemented to determine reimbursement. If it is denied, the balance of treatment costs ends up as a private-pay arrangement.

Impact on the Chemical-dependency Treatment Field

The chemical-dependency treatment field is in trouble. According to the NAATP (National Association of Addiction Treatment Providers), nearly half the nation's private inpatient beds are empty, and an estimated 200 facilities have closed in the last two years, 13 of them in Washington state. Paradoxically, as the alcohol/drug problem gets worse, the payment system tightens, making it more difficult for people to get treatment.

These problems directly affect the future of treatment and individuals' lives; they indirectly impact criminal defense. Concerted efforts on several levels are necessary to address this. Individual cases of limited or denied access to treatment must be brought to the attention of state officials, e.g., the Insurance Commissioner. They cannot investigate practices or complaints they are unaware of. When one of your clients becomes tangled in the managed-care web, file complaints on behalf of your client with the Insurance Commissioner, appeal the managed-care decision, and encourage your client to take similar action.

Complaints must reflect the fact that the *client's* rights and remedies are the

issue here, not those of the provider. In the event state regulatory entities are unresponsive, the potential role of the client's state legislators should not be overlooked. The various statewide treatment provider organizations have addressed, and will continue to address, the following needs: standardized criteria for the treatment of alcoholism and drug dependence (the American Society of Addiction Medicine and NAATP recently developed such criteria); regulations for utilization review in Washington state, modeled after comprehensive laws governing managed care and utilization review that presently exist in 19 states; continued research to determine the efficacy and cost-effectiveness of chemical-dependency treatment; and the expansion of publicly funded treatment programs for uninsured and underinsured chemically dependent persons in need of care.

Attention to these issues with each individual client and on national and statewide legislative levels by chemically dependent people seeking treatment, their legal counsel, and treatment providers will help to preserve deferred prosecution, the law that has saved many lives—not only the lives of those people who have successfully completed treatment and are in recovery, but also those individuals whose lives might have been taken if the drinking and driving pattern had not been stopped.

Copies of the American Society of Addiction Medicine's and NAATP's admission criteria or Legal Action Center's model legislation regulating utilization review are available upon request from: Julie S. Mitchell, Lakeside Recovery Centers, Inc., 14500 Juanita Drive N.E., Bothell, WA 98011; (206) 823-3116.

***Julie S. Mitchell** is vice president in charge of outpatient services of Lakeside Recovery Centers, Inc. in Bothell. She holds an Alcoholic Studies Certificate from Seattle University.*

WE'RE LISTENING

At CareUnit, we're listening to what people have to say about treatment for alcohol and chemical dependency problems and we're responding to their concerns. People like our patients and their families, our business and industry partners, our referral sources and our clinical experts.

The key is flexibility. We realize there is no one solution to every situation. That's why we listen and offer alternatives that meet individual needs. Individual healthcare and emotional needs as well as financial and lifestyle needs. That's why we offer a continuum of care.

With levels of care ranging from outpatient to day treatment to intensive inpatient, our CareUnits meet the constantly evolving treatment needs of patients and their families. CareUnit's flexible options enable our clinical professionals to work as a team with patients and referral sources to design treatment programs that work.

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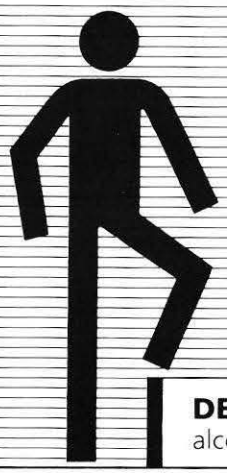

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The Glare Before the Crash

by **Wilma Anderson & Gary Rentel**

Attorneys are a rare breed. In the spotlight constantly, they are usually over-achievers, well-educated, bright and always looking for the better solution. That can be a tricky trap. Starting in law school, pressure becomes a daily companion. Add on the competition for new clients and that to join and stay with the "right" firm; plus throw in the glare of the ego so necessary to be successful, and the basic foundation is built.

Increasing numbers of attorneys are now adding an extra "flash" to their lives to help them stay on top or achieve even more. What is this elixir? Alcohol and/or drugs, especially cocaine.

It all starts innocently enough. Those pills we use to stay awake in law school, to keep going, to perform in court are the beginning. But are pills enough? Introduce alcohol early in the day with those two or three drinks at lunch or dinner on a regular basis, and you may be headed down the path.

Pills and alcohol may not be enough for too long, though. Keeping pace with the busy professionals, especially the attorneys, the drug industry has generously provided cocaine to the market. This now has become the drug of choice for thousands of attorneys across the country. Don't let anyone kid you. Cocaine is very addicting.

Recently I met a former Washington attorney, "Mike," who tells a chilling story of addiction from cocaine and alcohol. Mike was one of this state's highest paid attorneys, winning huge judgments, appearing on TV, unable to keep up with the increasing demand for his legal services. A partner in a successful firm, drinking daily, working so long and hard that his family hardly knew him, and having every possible thing that money could buy—a classic picture of making it to the top.

Eight years ago a friend dropped by Mike's office late one afternoon and offered him a small vial of white powder as a token of their friendship. Two lines of cocaine later, the sense of euphoria was overwhelming. He stopped after the second line and told himself the drug was great, but it wasn't addicting. Two years later this same attorney sat alone in a bare living room trying to ingest 3.5 grams of cocaine and chasing it down with a few beers. His practice was in a shambles. His wife and family were gone. All his possessions and his once-healthy bank account were gone, too.

It started with the drinks at lunch and then a few lines of cocaine for recreation. He was using it only on weekends and he certainly wasn't an addict. He never used a needle! The denial never let him think he had a problem. His partners were suspicious, but Mike still was producing revenue for the firm. At that time he spent more time in his office bathroom than at his desk. When the guys from the firm got together to play basketball after work, Mike went home first to change and snort a few lines of cocaine. After all, it would help him play better basketball. His long slide to ruin was beginning.

After 18 months of recreational use, the physical effects were starting to show. With a constant cold and frequent nosebleeds, Mike came armed to the office each day with nasal spray in easy reach and claimed that hay fever and his allergies were really acting up.

A cocaine high lasts only 30 minutes, so the addict has to snort cocaine again and again and again. This leads to chronic irritation of the nostrils. You'll often see a coke addict do a lot of sniffling and nose-rubbing, and many suffer from nasal discharge. The chronic blood vessel constriction of the nose from cocaine use leads to the rotting of the inside of the nose. The marked decreases of secretions, including saliva, also causes dry mouth. The addict can avoid the nose problems if, instead of snorting, he or she switches to smoking crack or freebasing. This gets coke to the brain in seconds and in very high concentrations, which means that hallucinosis, psychosis, and cardiac arrest occur more often.

The most damaging effects for the cocaine user are the psychiatric problems that inevitably come, the most common of which is cocaine hallucinosis. The addict hears voices or feels sensations that aren't really there. As the addict's suspicions become unshakable, the progression to cocaine psychosis is next.

Sleeping dysfunction and sexual dysfunction are also side effects which can add to the addicted attorney's cocaine lifestyle.

Statistics indicate that 70 percent to 80 percent of all drug users in this country are employed. A 1990 Gallup poll revealed that 31 percent of all attorneys know of substance abuse by fellow workers on and off the job. This drug use has strong impact on the work environment and the safety and effectiveness of fellow workers.

These signs may indicate drug use by one of your firm's employees or one of the firm's attorneys:

* Lateness for work three times as often as other employees
* Requests to leave work early two times as often as other employees
* Absence from work 2.5 times as often as their colleagues
* Frequent nosebleeds
* Erratic behavior, irritability, tearfulness
* Long, unexplained lunches or breaks
* Decline in quantity and/or quality of work
* Frequent absence from work on Mondays

Do not suspect employees or partners of drug addiction if they occasionally have one or more of these signs. But do look for a consistent pattern. If you feel there is a problem with someone and want more information about treatment for addiction, there is help available. The Crisis Response Center at CareUnit is available at (206) 821-1122, 24 hours per day, to answer your questions and give you the necessary steps to get your partner or your co-worker into treatment. That phone call may be the one that saves a life.

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*With over 24 years of healthcare experience, **Wilma Anderson**, national speaker, consultant, and author is also the director of marketing for the CareUnit Hospital & Clinics of Washington.*

***Gary Rentel**, an alcoholic and addict who has been clean and sober and in recovery for the past eight years, is a marketing representative for CareUnit Hospital & Clinics of Washington. He was a Washington attorney for 10 years.*

'Tis the Season to ...

by **Jeff Tolman**

The holidays are upon us. As always, they are a mixed blessing. Buying gifts and trying to control hyperactive children bring great angst. Exchanging seasonal cards with too-seldom-contacted friends and family brings great joy. Counting one's blessings and feeling the seasonal spirit bring great reflection. Loneliness during the holidays often brings great depression.

Holidays are a time of celebration, tradition and a passage from one season to another; a time to look at ourselves and our lives and to set priorities for the upcoming year. This year I hope you will consider some of the resolutions that each year are my Self-assistance Program.

Bill 12 fewer hours next year, and spend one more hour per month with your family.

Tell your children every day that you love them and they are valuable people. A criminal-defense attorney friend of mine says the common denominator among his clients is that they feel insignificant and without value. Let's make sure our children never do.

Write one letter a month to a family member or an old friend with whom you've been out of touch. Few things brighten up one's day like receiving contact from someone you've missed. It will make them, and you, feel better about life and selves.

Make a point to spend more time with people who are optimistic, hopeful about life in general, and who understand the importance of life's small wonders.

Plan a vacation with your family that everyone is excited about, and don't let the office interrupt it. The years family members have to enjoy each other are fleeting. Babies and toddlers don't remember much. Adolescents don't want to be around their parents (read: they are embarrassed by everything you do). Young adults are busy establishing their own lives. Your time with the family, together and interested, is brief. Make the most of it.

Remind yourself that it won't be your clients or partners or staff who will be caring for you in years to come. It will be your family and close friends—if you've cared for them. Gale Sayers' autobiography is titled *I am Third*, his top two priorities being God and family. Many a lawyer's would be titled *My Family is Third*, after billable hours and clients. Do these strike anyone else as odd priorities?

Finally, remind yourself there are real traps in our profession, and avoid them:

Trap #1: It is not the journey, it is the end (2,000 billable hours, for example) that is important.

Shouldn't the journey be enjoyable, too? The journey is *all* there is—the small delights of each day help make our lives bearable. In the long run, which will be remembered: the extra six hours spent at the office or the soft, contented sleep-breathing of a toddler? If we think our kids will understand our work-driven lives when they are adults, forget it. They'll remember the good times missed much more easily than they'll understand the need to bill 2,200 hours yearly. What is your child most likely to talk to his or her peers about (or, for that matter, care about): the activity you had together or that you met your billing quota for the year?

Trap #2: Good lawyers are organized, objective, pragmatic and goal-oriented.

Would anyone in his or her right mind really want a spouse or parent like that? Do something impulsive, fun, and a bit out of character once in awhile.

Trap #3: You can tell how I'm doing by my billing rate and compensation.

See *A Christmas Carol,* by Charles Dickens.

Holidays can and should be a time of family joy and personal reflection, compatible and not inconsistent with your career. There is Seattle legal folklore about the big-firm senior partner who called his office on Thanksgiving morning and was appalled to find so few lawyers there. Is this how any of us really want to live?

This holiday season give yourself a gift—a little extra time with your family or friends—and your family or friends a gift—extra time with you. Those gifts will last long after the other gifts are broken and forgotten.

Working hard and making a living are necessities of life. Everyone who has a job knows that. Lawyers especially seem to have difficulty managing work and family life. I hope each of you will do some thinking about yourself and find a reasonable balance. Have happy holidays and a wonderful '92.

TWELVE ANGRY MEN

The 200th

In commemoration of the 200th anniversary of the Bill of Rights, Empatheater, a new and brave Seattle theater, opened its premiere production of "Twelve Angry Men" on November 29. It will run through December 28 at The Theater Off Jackson in Seattle's International District. The powerful and compelling drama was adapted by Reginald Rose from his 1950s teleplay. It is the story of 12 jurors who must confront their own fears and prejudices in order to justly determine, "beyond a reasonable doubt," the fate of a minority teenager accused of murdering his father. Tickets and information are available from (206) 298-3633.

SEXUAL HARASSMENT

Did (S)he or didn't (S)he?

In an effort to inform and educate employers and employees about sexual harassment, the Northwest Women's Law Center is offering seminars year-round to businesses and community organizations in the Seattle area.

The seminars, tailored to the specific needs of an organization, address various facets of sexual harassment; local attorneys discuss how widespread the problem has become, legal remedies and responsibilities under federal, state and local laws and informal remedies.

Seventy percent of working women have experienced some form of sexual harassment; 42 percent of those harassed will change jobs as a result.

"This problem cannot be ignored," says Lindy Cater, executive director of the center. "Through participation in seminars such as these, harassing behavior can be identified and changed."

Northwest Women's Law Center is a Seattle-based nonprofit, public-interest organization composed of men and women, lawyers and nonlawyers. It is committed to advancing legal rights for women.

For more information, call (206) 682-9552.

November 22-23, 1991, Seattle

Present: The president and the Board of Governors. Also present: Judge Mary Brucker (Superior Court Judges' Assn., Saturday); Mary Gallagher Dilley (Administrative Law Judges' Assn.); Frank Edmondson (Government Lawyers' Assn.); Sheryl Garland (Washington Women Lawyers); Judge Donald Haley (Superior Court Judges' Assn., Friday); Dennis P. Harwick (WSBA Executive Director); Grant Johnson (WYLD); Jim Kaufman (Prosecuting Attorneys' Assn.); Donna McNamara (SKCBA/YLD); Mary Alice Theiler (SKCBA Trustees); Lindsay Thompson (*Bar News* editor); and Robert Welden (WSBA General Counsel).

Meeting in the WSBA offices Friday, the Board met in executive session for thirty minutes. The president called the public session to order at 8:30 am and reported on his official calendar since the last meeting.

Next: Who Do We Go With For Long Distance—Cliff Robertson or Candace Bergen? Dennis Harwick told the Board the Bar office will put a new telephone system into service December 12. Advances in technology since Alexander Graham Bell installed the old one mean there'll be more lines for $1,000 less per month. The new system will allow direct dialing and voice mail to all WSBA employees, as well as new phone numbers all around. Initially, callers will be switched over to the new numbers automatically; by and by, that disembodied "PLEASE make a note of it" voice will tell callers what the new numbers are. The *Bar News* will publish a directory as soon as it is assembled.

At the president's and Harwick's request, the Board scheduled a "retreat" for April 11, 1992 to sort out some budget and policy priorities going into the 1992-93 fiscal year.

It's All in the Numbers: The Board returned to consideration of the resolutions passed at the Annual Meeting in September. Topic A was how many signatures will be required to get a referendum sent to the membership. The September resolution called for raising the number from 250 to 500 and eliminating the requirement that at least half the membership vote for the result to be valid.

Much of the discussion retrod ground covered when the Board first referred the resolutions to the Resolutions Committee, and/or during the Annual Meeting. In brief, there was concern that 500 signatures was still too low: in a 17,000 member association, that number of people could get a referendum sent out on matters of the most narrow, parochial concern, and stick the membership with the $20,000 price tag. Or, said Governor Steve Tubbs, look at the last dues increase in 1986. They put that off until there was no way to avoid it, and the members voted it down. If the Board had gone along with that, the Association would be out of business now. Sometimes we have to make hard, unpopular decisions, and a small, disgruntled clutch of members ought not to be able to defeat those decisions too easily. Others thought putting the number too high would defeat the democratic intent of the resolution's proponents by making it too hard to bring a matter to the membership by referendum. And still others wanted the number expressed as a percentage rather than an absolute number to avoid the problem that overcame the old 250 signature requirement: in 1933, 250 signatures was 8.5% of the membership. Today it's 1.5%.

Governor Lem Howell moved to amend the resolution from 500 signatures to the signatures of 10% of the active membership. After some more discussion, Howell amended his amendment to 5%, but Long thought that too high. "We have to, somehow or other, trust the Bar not to abuse the referendum process," he said. "When you make it more restrictive than the committee and the Annual Meeting wanted, you're going to create the impression we can second-guess anyone, and don't want the members to have any meaningful input." He proposed amending the percentage down to 3%, but Howell refused to accept the amendment and it got no second. The vote on the amended motion to require signatures of 5% of the active membership to send out a referendum split the Board, 5-5, Blair Howell, Larson, Nappi and Slater in favor; Chambers, Hester, Long, Schultz and Tubbs opposed. The President broke the tie in favor of the 5% requirement. On the main motion, to pass the resolution as amended, the vote was 6-4, Schultz switching over.

Maybe I Should Have Compared the Budget to the Arrival of the Hindenburg: After last month's year-end budget report indicated 1990-91 has crash-landed, more bills came in. The *Bar News*' September printing bill came in at $24,000; an error in the Bar Exam budget threw things out another $60,000, a flurry of spending by WSBA Sections marked the fiscal year-end, and hey, presto! The deficit went to $280,000.

Those inclined to the dramatic included the budget's intended reservation of $170,000 in now-nonexistent surplus for the reserve account and intoned that the WSBA had actually gone $450,000 into the hole. Governor Wayne Blair said, "We'll have to plan for a dues increase." Steve Tubbs said the Board would have to decide whether to

end some WSBA operations or raise dues. Some of the others, who've refused to even contemplate a dues increase discussion, or who campaigned against ever increasing dues, had little to say. The Budget & Audit Committee will be meeting December 6 to take the problem apart and see how it can be solved. Watch for developments in Governors' newsletters and this space.

Diversity on the Bench and How to Accomplish It: Mary Fairhurst and Richard Jones, co-chairs of the Task Force on Opportunities for Minorities in the Legal Profession, appeared with Robb Bakemeier, former Young Lawyers Division president, to present some old matters carried forward by the Board. Fairhurst and Jones offered a revised version of a resolution presented to the Board in the spring, which called for the Bar to take various steps to ensure that where possible, more minorities could be advanced to the bench, and that all candidates for judicial appointment, minority or not, be screened for their sensitivity to minority issues and concerns. This version took out some parts that had caused problems the first time, such as "finger-pointing language," as Jones called it, calling counties outside the Seattle area to task for having no minority judges. Denizens of those areas had pointed out that there were often few, if any, potential minority candidates to advance, given the comparative attractions of Seattle and the more isolated, rural areas of Washington.

Bakemeier was referring to a plan to get the WSBA involved in recommending candidates for federal judicial appointments, a topic that arose after the ad hoc federal bar committee Senator Gorton relied on for nominations to succeed Judge Jack Tanner was widely criticized as insufficiently politically correct in its collective views.

The debate this time seemed to take as a given that the WSBA ought to have some say in federal judicial nominations. The plan called for the activation of an ad hoc committee of lawyers and lay members whenever a U.S. Senator, the federal Department of Justice, or the Board of Governors asked that it consider and recommend candidates for federal judicial appointments. An alternative view held that the Bar has a standing committee to evaluate contenders for state appellate posts. Why not give the task to them. Lem Howell thought the standing committee insufficiently diverse to be trusted with the task until Steve Tubbs said it was inappropriate for the Board to set up and fund a new committee when there is one working already and the Board is looking at reducing options in other areas.

How to merge the federal nominations into the format of the Judicial Selection Committee's work was a problem. Bakemeier said he had never talked with them and didn't know how they operated."This was drafted in ignorance," he said. "There is a different political wind blowing at the federal level of judicial appointments," he continued, "and this plan was drafted with those more in mind. " The Board asked Bakemeier to redraft the plan with the Judicial Selection Committee in mind as its eventual home, voting 9-1. John Schultz opposed the plan, saying selection of federal judges is a federal, constitutional process in which the WSBA has no say and ought not to be meddling.

After comparing the old Fairhurst & Jones resolution with "the new, improved, omnibus" version, the Board approved it, 9-1. Schultz was opposed because it was a needless duplication of sentiments the Board had expressed in approving the prior version.

Meanwhile, Back at the Hindenburg...: Treasurer Lem Howell brought up a series of revenue raisers and expense cutting measures developed by the Budget Committee to address last month's version of the 1990-1991 budget deficit and its likely effects on the current budget. The Board unanimously approved increasing bar exam fees $25, then bogged down on how much to cut the cost of their attendance at the annual Western States Bar Conference, a midwinter affair that alternates venue between southern California and Hawaii. Years ago the entire Board and president used to attend, then they cut the roster to one year's intake of governors and the president. The Budget Committee recommended sticking to that plan (the president, second-year governors and executive director) but reimbursing them only up to a point according to a per diem expense formula. This would reduce the cost from $10,000 to $5,700.

Governor Mike Larson said he had no problem with a certain amount of pay-as-you-go philosophy, but if governors were going to have to pay their way to everything it would create an elite class of lawyers: the only people who could seek bar leadership roles would be the very well-to-do. Governor Tom Chambers agreed, noting that the American

Trial Lawyers Association had become such a group. Governor Monte Hester concurred.

Governor Steve Tubbs thought the threshold question one of whether going at all was meritorious. If so, then we should send delegates, and cutting the cost by almost half was a fine measure of responsibility. Governor John Slater said the interchange with governors and presidents of other bars was valuable and was of benefit to WSBA members. He thought a partial subsidy of attendance OK.

Governor Wayne Blair thought the president and executive director should go on the Bar's tab, but the rest of the board should attend—if they so chose—on their own nickel. "It's not a big cost in our budget, but it's not worth the benefit. They only meet in the mornings; let's face it, it's a vacation trip. From a PR standpoint, it's a total nightmare. You're $280,000 in the red, a dues increase is unavoidable, and you want to send a bunch of the Board to the hotel the membership rejected for the 1996 convention?"

Some more discussion followed. An amendment of the Budget Committee recommendation to have all WSBA delegates pay their own way or not go failed 3-7, Howell, Long and Schultz in favor. Before voting any further, Tubbs then announced that as a second-year governor, he would not attend the '92 meeting. Lem Howell then moved Blair's suggestion that the Association pay only for the president and executive director. That failed, 3-7, Blair, Howell and Schultz in favor. Then the per diem plan recommended by the Budget Committee was approved, 6-4, Blair, Howell, Long and Schultz opposed.

Next, the Board took up whether to cut out WSBA funding for annual "appreciation dinners" for such entities as the disciplinary board, the CLE board, the bar examiners and the president's dinner. Members noted that the Association had begun picking up half the tab for the outgoing president's dinner after one president laid on such a groaning spread that to follow him would be a personal and corporate humiliation. The tab in recent years had been running in the $4,000-5,000 range. Governor Tom Chambers thought the president's dinner should be subsidized if necessary, depending on the president's wishes and financial ability. President Delay said he planned to pick up the tab for his on his own. Some were concerned that making the president spend money like there was no tomorrow would again lead to the elite class of leaders. Alva Long asked, "Is this another bout of 'Young Lawyer's Syndrome': I can't afford to be a bar leader?:" The Board voted 9-1 to kill off all the dinner funding save for the president's. Lem Howell, the dissenter, told the Board, "The president's dinner is for the president's friends and the bar establishment. It's not open to the membership. You need to think about that."

"He not only loses, but scolds the majority," Chambers commented.

The Board accepted a recommendation from the Budget Committee to defer to another, more prosperous time, consideration of a plan by President Delay to develop a public television program about the law. A prototype in Oklahoma has brought much praise for the bar there, but there is no money here to do it. They then adopted a recommendation for tightening up on the WSBA Sections' expenditures, and passed a motion by John Schultz that while the president and governors are at the Western States Bar Conference, they meet with the hotel picked for the 1996 convention and affirm the cancellation of that contract in light of the 1990 referendum.

The Board then went into executive session to discuss with counsel what matters relating to unionization of WSBA employees could be discussed in open session Saturday.

Unions: After considering a bale of committee reports and lesser matters, the Board went into a third executive session to sort out some more details on how to talk about unionization. When they came back, the topic, much discussed of late in the state's newspapers, was called to the table.

Executive director Dennis Harwick told the Board the move by some WSBA employees to unionize by affiliating with Local 1001 of the United Food and Commercial Workers arose last spring when he made some changes in personnel policy after taking over as executive director. There was at once a good deal of pent-up frustration at the restrictive management and information-sharing style of the previous administration, and higher than reasonable expectations of the new executive director, which combined to make for disappointment when Harwick made his changes, most notably, increasing the work week

from 35 to 40 hours. He said objections to that had been met by setting the work week at 37.5 hours with an increase to 40 in 1993, and that he had tried to deal with the other concerns of staff by appointing committees to study those concerns and make recommendations for cures, which he then tried to implement. Prior to his arrival there was not staff grievance procedure; he said he had created one and then amended it to meet objections by staff. He added he had worked hard to obtain for staff the tools they needed to do their jobs efficiently; half are still using typewriters on tasks word processors are needed for.

Once the union was invited to canvass the staff, they contacted Harwick and asked to be recognized as a bargaining authority. The usual practice, Harwick said, is to decline; the union then petitions the state or federal authorities, and an election is conducted under supervised rules.

What makes the WSBA unique is that because of its existence as an arm of the Supreme Court it is covered neither by federal nor state collective bargaining laws. Harwick thought such problems as gave rise to the unionization effort could be solved internally; for such reasons, he declined to recognize the union.

The union then held an unsupervised, unrecognized election in May and there was nothing else heard from them until November, Harwick said, when they wrote to Chief Justice Dore and asked that GR 12 be amended to require the WSBA to unionize. The union also asked that the rule change not be referred to the Board of Governors for comment as is usually done.

"Who would be affected by this?" Lem Howell asked Harwick. "All but me and the seven department heads," Harwick replied. "About 58 people in all."

After some further discussion, Governor Joe Nappi moved that the Board reaffirm its January, 1991 resolution entrusting personnel matters to Harwick and continue the matter to January for another report on developments. Lem Howell thought that unnecessary. "There is nothing before us to act on. Our predicament is because of newspaper stories. We cannot affect what the Supreme Court does, and the union is not in contact with the bar association."

The president said he thought it important to write the chief justice and tell him the board's position, which is basically that they have none presently. Howell thought it unnecessary; Wayne Blair thought they should. "It's a fundamental policy issue we, not the court, need to face and address."

Alva Long said the Board was avoiding the issue in front of them. "The press has picked it up, the genie is out of the bottle and members of the bar are taking strong positions....Sooner or later we have to take a position. We should come to grips with it rather than just saying it's a management issue. I voted for the January resolution, but no one was talking about unions then.

"The problem is how we are being viewed by the public and the lawyers. We are not presenting ourselves, or our views; we should seek the advice of our constituents." The Board then voted to allow the president to write to the Chief Justice. Long commented, "This doesn't mean we are ignoring the dead horse in the living room."

Wrap-up in Seattle: The Board also did the following things: appointed Mary Wechsler to the Supreme Court Ethics Advisory Committee; Tacoma police officer Jackie Reaves to a lay member position on the Client Security Program board; reappointed Nancy Gibbs to the board of the Legal Foundation of Washington; appointed Seattle lawyer Thao Tiedt to the chair of the Legal Assistants Committee; approved amendments to the bylaws of the International Law & Practice Section; created an award for 40-year members of the bar association; heard a report by John Schultz on the most recent meeting of the Superior Court Judges' Association board; heard a presentation by Paul Stritmatter on LawFund, the new entity raising money for indigent civil legal services, heard reports from the access to justice, bylaws and convention committees of the Board, heard a report from John Schultz on computerization of law in Washington; heard a report from Andy Benjamin on the Lawyers' Assistance Program and endorsed legislative action to deal with a funding crisis in the state's county law libraries. They also met with the Board of the Legal Foundation of Washington. Friday they lunched with the trustees and some members of the Seattle-King County Bar Association.

Next meeting: January 3-4, 1992, in Olympia.

Applications/Nominations for President Solicited

Applications or nominations for President of the Washington State Bar Association for 1992-93 are sought from members of the Washington State Bar Association. The practice has been that the presidency has been rotated geographically around the state. Every other year the president is elected by the Board of Governors from King County and, on alternate years, from western Washington outside King County and from eastern Washington.

For 1992-1993 applications or nominations are sought for candidates from King County.

Applications with resumés or nominations should be sent to: Lembhard G. Howell, Chair, WSBA Presidential Search Committee, WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599. Deadline is December 31, 1991.

Notices of Interest to Association Members

WSBA Nondisciplinary Notices

Interim Suspension: Oak Harbor attorney **Chris L. Custer** (admitted November 8, 1979) has been ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order October 11, 1991.

Interim suspension is pursuant to RLD title 3 and is not a disciplinary sanction.

WSBA Disciplinary Notices

Suspended: Salem, Oregon attorney **Dale Olcott Thompson** (admitted 1984) has been ordered suspended for six months, five months of which are stayed pending a two-year probation, by the Washington State Supreme Court on September 13, 1991. The order of the Court was based on reciprocal discipline imposed under RLD 12.6 as a result of an order of the Oregon Supreme Court for neglecting an appeal and intentionally misrepresenting the results of the appeal to his client.

Disbarred: Suspended Seattle attorney **John Bredvik,** (Bar No. 8826; admitted January 30, 1979), has been ordered disbarred by Washington State Supreme Court Order effective October 16, 1991. The disbarment was based upon Bredvik's guilty pleas to two felonies involving the propagation of marijuana.

Disbarred: Montesano attorney **Daniel J. Tighe** (Bar No. 6307; admitted 1975) has been ordered disbarred by the Washington State Supreme Court on October 14, 1991 for convictions on four felony counts for forgery, four felony counts of offering a false document for filing and two felony counts of income tax evasion.

Public Notices

In re RCW 19.52.120(1): Legal Interest Rate ("Usury Rate")

The average coupon equivalent yield from the first auction of 26-week treasury bills in November 1991 is 5%. The maximum allowable interest permissible for **December 1991** is therefore **12%**. 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; on page 51 in June 1990 for 1985-1990 and on page 55 in June 1991 for 1985-1991.

WSBA Judicial Recommendations Committee to Schedule Interviews: The WSBA Judicial Recommendations Committee is currently accepting applications from attorneys and judges seeking consideration for appointment to fill potential appellate court vacancies. Interested candidates will be interviewed by the Committee at its Winter 1992 meeting. The Committee's recommendations are reviewed by the Board of Governors of the WSBA and are then referred to the Governor for review when appointments are made to fill vacancies on the Court of Appeals and Supreme Court.

If you are interested in scheduling an interview, please contact the WSBA at 500 Westin Building, 2001 Sixth Avenue, Seattle, Washington 98121-2599, (206) 448-0441, to obtain a questionnaire. Please specify whether you need the questionnaire designed for a judge or an attorney. All questionnaires must be received in the Bar Office *no later than 5 p.m. on Monday, January 20, 1992* to be considered for an interview at the Winter meeting.

CALENDAR

December 1991

3 Domestic Relations: An Inside View, Seattle. *Sponsored by*: SKCBA. *For information:* Monique Gill, (206) 624-9365.

4 Advanced Will-drafting, Seattle. *Sponsored by*: SKCBA. *For information:* Monique Gill, (206) 624-9365.

5 Bankruptcy Basics, Seattle. *Sponsored by*: SKCBA. *For information:* Monique Gill, (206) 624-9365.

6 Staying Out of Hot Water: Managing Client Funds, Olympia. *Sponsored by:* WSBA CLE. *For information:* (206) 448-0433.

6 Noncourt Day in King County Superior Court. For details see "Digest," *Bar News*, September 1991.

6 Alternative Dispute Resolution Section Executive Committee Long-range Planning Task Force meeting, Seattle. *For information:* Diane FitzGerald, (206) 624-7141.

6 Collection of Judgments, Spokane. Also December 13 in Seattle. *Sponsored by*: WSBA CLE/Creditor-Debtor Section. *For information:* (206) 448-0433.

7 Whatever Happened to the Fourth Amendment? Seattle. *Sponsored by*: WSBA CLE/Criminal Law Section/UW School of Law CLE. *For information:* (206) 685-3050.

10-11 Practical Applications in Employment Law Today, Seattle. *Sponsored by*: Council on Educational Management. *For information:* (415) 934-8333.

10-12 Eighth Annual National Hazardous Waste Law and Management Conference, Seattle. *Sponsored by*: UW School of Law CLE. *For information:* (206) 685-3050.

12 Creative Alternatives to the Hourly Billing System, Seattle. *Sponsored by*: WSBA CLE. *For information:* (206) 448-0433.

12 Staying Out of Hot Water: Managing Client Funds [video replays], Bremerton, Ellensburg, Walla Walla and Port Angeles. *Sponsored by:* WSBA CLE. *For information:* (206) 448-0433.

13 Collection of Judgments, Seattle. *Sponsored by:* WSBA CLE/ Creditor-Debtor Section. *For information:* (206) 448-0433.

13 The Uses and Abuses of Civil Rule 11, Seattle. *Sponsored by*: National Lawyers' Guild. *For information:* Fred Diamondstone, (206) 622-1266.

13 Law of the Elderly, Seattle. *Sponsored by*: UW School of Law CLE. *For information:* (206) 685-3050.

13 Advanced Probate, Seattle. *Sponsored by*: SKCBA. *For information:* Monique Gill, (206) 624-9365.

13 Copyright Seminar, Seattle. *Sponsored by*: Washington Lawyers for the Arts. *For information:* Karen Campbell, (206) 547-6993.

15 *Bar News* deadline, February, 1992 issue.

16 Anatomy for Lawyers, Session 1, Seattle. *Sponsored by*: SKCBA. *For information:* Monique Gill, (206) 624-9365.

17 Boundary Law in Washington, Seattle. Also presented December 18 in Spokane. *Sponsored by*: National Business Institute, Inc. *For information:* (715) 835-7909.

18 How to Draft Wills (and Other Estate Planning Documents), Spokane.

Also presented December 20 in Seattle. *Sponsored by*: WSBA CLE/Young Lawyers Division. *For information:* (206) 448-0433.

19 Best of CLE, Seattle. *Sponsored by*: WSBA CLE General Practice Section. *For information:* (206) 448-0433.

20 How to Draft Wills, Seattle. *Sponsored by:* WSBA CLE/YLD. *For information:* (206) 448-0433.

21 Superior Court Judges' Association Board of Trustees meeting, Westin Hotel, Seattle. For information: (206) 753-3365.

21 The Art of Persuasion with Juries, Seattle. *Sponsored by*: SKCBA. *For information:* Monique Gill, (206) 624-9365.

23 Eleventh-hour video replay, Seattle. *Sponsored by:* WSBA CLE/YLD. *For information:* (206) 448-0433.

24 Loan Loss & Lender Liability Avoidance, Seattle. *Sponsored by*: SKCBA. *For information:* Monique Gill, (206) 624-9365.

28 Dissolution & The Effects of Bankruptcy, Seattle. *Sponsored by*: SKCBA. *For information:* Monique Gill, (206) 624-9365.

30 Eleventh-hour video replay, Seattle. *Sponsored by:* WSBA CLE/YLD. *For information:* (206) 448-0433.

30 Anatomy for Lawyers, Session 2, Seattle. *Sponsored by*: SKCBA. *For information:* Monique Gill, (206) 624-9365.

January 1992

2-6 Obstetrics, Gynecology, Perinatal Medicine, Emergency Medicine and the Law, Kauai, Hawaii. *Sponsored by*: American Society of Law & Medicine. *For information:* (206) 262-4990.

3-4 WSBA Board of Governors meeting, Olympia. *For information:* (206) 448-0441, or contact your local governor.

9 How to Probate an Estate, Olympia. *Sponsored by:* WSBA CLE/YLD. *For information:* (206) 448-0433.

11 Superior Court Judges' Association Board of Trustees meeting, Wyndham Hotel, Salon D, Seattle. *For information:* (206) 753-3365.

15 *Bar News* deadline, March, 1992 issue.

16-17 Learning the Ropes, A Practical Skills and Ethics Workshop for New Admittees and Lawyers Entering Into Private Practice, Portland. *Sponsored by*: Lewis & Clark Law School/Oregon Professional Liability Fund. *For information:* (503) 244-1181.

17 How to Probate an Estate, Seattle. *Sponsored by:* WSBA CLE/YLD. *For information:* (206) 448-0433.

24 Coping with the Growth Management Act, Seattle. *Sponsored by:* WSBA CLE/YLD. *For information:* (206) 448-0433.

31 First Annual Northwest Law Office Management Seminar/Expo, Seattle. *Sponsored by*: WSBA/Association of Legal Administrators. *For information:* (206) 448-0433.

31 21st Annual Estate Planning Seminar, Portland. *Sponsored by*: Lewis & Clark Law School/Estate Planning Council of Portland. *For information:* (503) 244-1181.

February 1992

6 How to Handle Effective Real Estate Foreclosures, Vancouver. *Sponsored by:* WSBA CLE. *For information:* (206) 448-0443.

7 Coping with the Growth Management Act of 1990, Bellingham. *Sponsored by:* WSBA CLE/YLD. *For information:* (206) 448-0443.

7 Intellectual Property Litigation, Seattle. *Sponsored by:* WSBA CLE/Industrial & Intellectual Property Section. *For information:* (206) 488-0433.

13 How to Handle Effective Real Estate Foreclosures, Spokane. *Sponsored by:* WSBA CLE. *For information:* (206) 448-0433.

14-15 WSBA Board of Governors meeting, Tacoma. *For information:* (206) 448-0441, or contact your local governor.

15 *Bar News* deadline, April, 1992 issue.

19-20 8th Annual Hazardous Waste Conference, Portland. *Sponsored by*: Lewis & Clark Law School. *For information:* (503) 244-1181.

21 How to Handle Effective Real Estate Foreclosures, Seattle. *Sponsored by:* WSBA CLE. *For information:* (206) 448-0443.

28 Coping with the Growth Management Act, Spokane. *Sponsored by:* WSBA CLE/YLD. *For information:* (206) 448-0443.

28 Health Law, Seattle. *Sponsored by:* WSBA CLE/Health Law Section. *For information:* (206) 448-0443.

March 1992

5 Family Law, Bellingham. *Sponsored by:* WSBA CLE/Family Law Section. *For information:* (206) 448-0443.

6 Franchises—Keeping Up with the Changes, Seattle. *Sponsored by:* WSBA CLE. *For information:* (206) 448-0443.

6 International Business Law: Russia and Vietnam, Portland. *Sponsored by*: Lewis & Clark Law School. *For information:* (503) 244-1181.

12 Family Law, Vancouver. *Sponsored by:* WSBA CLE/Family Law Section. *For information:* (206) 448-0443.

13 The Science Behind Environmental Law Made (Almost) Easy, Seattle. *Sponsored by:* WSBA CLE/ELUL Section. *For information:* (206) 448-0443.

15 *Bar News* deadline, May, 1992 issue.

19-20 International Law Institute: Establishing Operations, Franchises or Distributors Abroad. *Sponsored by:* WSBA CLE/International Law and Practice Section. *For information:* (206) 448-0443.

20 Family Law, SeaTac. *Sponsored by:* WSBA CLE/Family Law Section. *For information:* (206) 448-0443.

27 Essentials of Evidence, Seattle. *Sponsored by:* WSBA CLE. *For information:* (206) 448-0443.

27-28 WSBA Board of Governors meeting, Vancouver, Washington. *For information:* (206) 448-0441, or contact your local governor.

April 1992

15 *Bar News* deadline, June 1992 issue.

May 1992

8-9 WSBA Board of Governors meeting, Spokane. *For information:* (206) 448-0441, or contact your local governor.

15 *Bar News* deadline, July, 1992 issue.

June 1992

10-12 Oregon Trial Advocacy Academy, Portland. *Sponsored by:* Lewis & Clark Law School. *For information:* (503) 244-1181.

15 *Bar News* deadline, August, 1992 issue.

19-20 WSBA Board of Governors meeting, Bellingham. *For information:* (206) 448-0441, or contact your local governor.

23-27 XVIIIth International Congress, International Academy of Law and Mental Health, Vancouver, British Columbia. *For information:* Simon Verdun-Jones, (604) 291-3032 or 291-3213; fax (604) 291-4140.

July 1992

15 *Bar News* deadline, September, 1992 issue.

31-1 WSBA Board of Governors meeting, Oak Harbor. *For information:* (206) 448-0441, or contact your local governor.

August 1992

15 *Bar News* deadline, October, 1992 issue.

September 1992

15 *Bar News* deadline, November 1992 issue.

16 WSBA Board of Governors meeting at Annual Meeting and Convention. *For information:* (206) 448-0441, or contact your local governor.

October 1992

15 *Bar News* deadline, December 1992 issue.

Bulwarks of Liberty: Presumption

by **Tom P. Conom**

The hallmarks of American criminal justice are the presumption of innocence accorded every accused person and the necessity of proof beyond reasonable doubt in order to convict. These majestic, if ambiguous, phrases—presumption of innocence and reasonable doubt—serve the two highest values of the criminal justice system: fairness and certainty. ***Fairness*** in that no person is compelled to prove his innocence or even produce evidence in his defense; the entire burden of persuasion (and production) is borne by the government. ***Certainty*** in that no person may be condemned by criminal conviction without the highest level of confidence by the trier of fact that the defendant is, in fact, guilty.

The idea of protecting the unjustly accused can be traced at least 2,000 years, having been recognized long before it was enshrined in English common law. The Roman Emperor Trajan (52-117) pronounced: "it was better to let the crime of a guilty person go unpunished that to condemn the innocent" according to the *Digest of Justinian*. It was a maxim of Roman law that where there was a conflict in evidence the most favorable construction to the accused should be adopted.

A classic example of the presumption of innocence at work in antiquity is found in the anecdote of Emperor Julian (331-363) concerning the trial before him of a provincial governor, Numerius. The accused contented himself with denying his guilt, and there was insufficient evidence against him.

The accuser, seeing that the failure of the charge was inevitable, could not restrain himself, and exclaimed, "Oh, illustrious Caesar! If it is sufficient to deny, what hereafter will become of the guilty?" to which Julian replied, "If it suffices to accuse, what will become of the innocent?"

Moreover, the Romans may have had a standard of proof in criminal cases even higher than beyond reasonable doubt. It was said that: "All accusers should know that no criminal charge should be brought unless it can be supported by competent witnesses, or established by the most convincing documents, or shown by circumstantial evidence ***clearer than daylight resulting in undoubted proof."***

Presumption of Innocence

Some 700 years ago, the first strand of the golden thread of the accusatorial system appeared in English common law. This was the concept that the importance of individual liberty was so great and the consequences of mistaken conviction so terrible that the law should countenance the escape of the guilty before permitting the punishment of the innocent. This thread repeatedly reappears as the highest expression of the common law until ultimately it was woven into the fabric of the United States Constitution.

In mid-fifteenth century England, Chief Justice Fortescue expressed the great principle thusly: "Indeed, one would much rather that 20 guilty persons should escape the punishment of death, than that one innocent person should be condemned, and suffer capitally."

A century and a half later even the notorious Star Chamber professed to honor the principle that "it were better to acquit twenty that are guilty than condemn one Innocent." The relative humanity of English judges was in marked contrast to the inquisitorial system in use on the continent. It was said, for example, of an inquisitor of the French royal court that he conducted himself as if "sacrifice of a hundred innocent men were better than the escape of one guilty."

By the time Blackstone encapsulated the principle in the celebrated dictum, "The law holds, that it is better that ten guilty persons escape, than that one innocent suffer," it had had five centuries to become embedded into the law as bedrock. Although the number of guilty the law was willing to tolerate go free had been reduced by half, the grand principle was still very much intact and so vital that it carried easily to the American colonies, where it found a very hospitable reception in the climate of liberty.

It is not known when the general principle was distilled into a specific presumption directed to the trial jury. The presumption of innocence makes a dramatic appearance in the pages of history in the person of one of the great early champions of individual liberties and procedural due process, John Lilburne. In 1649, Lilburne was charged with high treason and put on trial for his life (one of four such trials). During the course of his trial, he continually berated the extraordinary panel of judges arrayed before him, for denying him counsel and a copy of the indictment—rights an Englishman would not be entitled to for another half century. Lilburne prodded the presiding judge and attorney general to reveal their prejudice that he had committed treason. In response, he addressed the court with a speech about the presumption of innocence. "For though I am [ever] so notoriously accused, yet in the eye of the law of England I am an innocent man, yea, as innocent as any of those who call me a traitor, 'til such time as I be legally convicted of the fact or crime laid unto my charge; and therefore, Sir, I beseech you, cease your calumniating of me, for you thereby deal not fairly nor legally with me." Following "an exhibition in the art of defending himself against the power of an oppressive government, equalled by few men, before or since," the jury acquitted Lilburne within an hour.

More than any other man, John Lilburne was responsible for es-

# of Innocence and Reasonable Doubt

tablishing the right against self-incrimination in English law and was well-known to the American colonists. There can be no doubt that the great principle he espoused in his own trial was ingrained in American law at the time of adoption of the Constitution. In denouncing a New York loyalty oath in 1784, Alexander Hamilton called it "a subversion of one great principle of social security: to wit, that every man shall be presumed innocent until he is proved guilty."

Although not expressly set forth in the Constitution, it is an indispensable part of "the right to a speedy and public trial, by an impartial jury" guaranteed by the 6th Amendment and the right not to "be deprived of life, ***liberty***, or property, without due process of law" guaranteed by the 5th, and later the 14th, amendments.

It is most likely that the presumption of innocence was not explicitly spelled out in the Constitution because it was deemed implicit in the very idea of a criminal jury trial as well as a fundamental tenet of "due process of law." This certainly was the understanding of the United States Supreme Court a century after adoption of the Constitution, when it comprehensively reviewed the subject, stating, "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the ***foundation of the administration of our criminal law***."

By the middle of the 19th century, it was well-established in the states that it was mandatory to instruct criminal juries on the presumption, and failure to do so was held to be reversible error. The United States Supreme Court acknowledged the importance of the presumption during the 19th century, but it was not until near the end of the century that the Court was squarely presented with the issue of whether the presumption of innocence was an essential component of a fair trial.

Indelible Characters in the Heart

Coffin v. United States was an insider bank scam case in which the trial judge had given the jury a detailed and accurate recitation of the reasonable doubt standard but inexplicably had refused to instruct on the presumption of innocence. The Court embarked on a scholarly exegesis of the historical origins of the presumption and concluded unanimously that it was indeed basic to a fair trial and therefore reversed for failure to instruct.

The Court held that "the protection of so vital and fundamental a principle as the presumption of innocence be not denied, when requested, to any one accused of crime." In its sojourn through the historical antecedents of the principle, the Court stopped and lingered at the 1817 landmark of *McKinley's case*, which declared the presumption of innocence "is a maxim which ought to be inscribed in indelible characters in the heart of every judge and juryman."

The Court in *Coffin* also engaged in an enlightening explanation of the distinction between the presumption of innocence and reasonable doubt. The Court determined, "One is a cause, the other an effect." The Court explained, "Presumption of innocence is a conclusion drawn by the law in favor of the citizen, by virtue whereof, when brought to trial upon criminal charge, ***he must be acquitted, unless he is proven to be guilty.***" Reasonable doubt, in contrast, is "the condition of mind produced" by the "presumption on the one hand, supplemented by any other evidence he may adduce, and the evidence against him on the other . . . from which the legal conclusion of his guilt or innocence is to be drawn."

The Court expressly held that the presumption of innocence was in the nature of evidence in favor of the accused. This portion of the *Coffin* case was interred in later cases, but the fundamental nature of the presumption as expounded in *Coffin* has never been seriously challenged. It did take, however, until 1978 for the Court to explicitly hold that the right to jury instruction on the presumption is protected by due process.

In *Taylor v. Kentucky*, the Court held that the "presumption of innocence, although not articulated in the Constitution, is a basic component of a fair trial under our system of criminal justice," and therefore due process guarantees a defendant the right to have his jury instructed on the presumption. In a curious method of analysis, the Court denigrated the *Coffin* Court's distinction between the presumption and the level of proof but nevertheless accepted Wigmore's suggestion that a jury should be so instructed as a "hint" and "caution" that "nothing but the evidence" be considered. There is no question that this is indeed one of the functions of the presumption of innocence. The Court properly observed that the presumption serves the purpose of admonishing the jury that "guilt or innocence [must] be determined solely on the basis of the evidence introduced at trial, and not on grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial."

But to limit, for constitutional purposes, the function of the presumption to a mere evidentiary admonishment is to ignore both the essential *purpose* and long *history* of the presumption. The essence of the presumption is the preservation of individual liberty. It fulfills this function first, by permitting the jury to acquit on the presumption alone and second, by telling the jury in a meaningful way that justice is better served by erring on the side of freeing the guilty than by condemning the innocent.

As stated by the Court in *Coffin*, enforcement of the presumption of innocence rests at the "foundation of the administration of our criminal law." It

is therefore erroneous to assume enforcement responsibility is discharged by mere instructional admonition. The presumption has application beyond the juryroom. It acts also as a brake, through the due process clause, on the power of legislatures and Congress to ease the burden of government to criminalize individuals.

The Supreme Court has had occasion to consider the obverse of the presumption of innocence: the presumption of guilt. The latter arises when a legislative body attempts to shortcut the process to conviction by enacting a penal prohibition which strips from the target the presumption of innocence and substitutes its opposite. Where, for example, Congress enacted a statute which created a presumption of guilt based only on proof of a fact which was neither criminal in itself nor an element of the crime, it ran afoul of the presumption of innocence and violated due process.

Consequently, "it is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime." Moreover, the Supreme Court has affirmed the "proposition that the Due Process Clause precludes States from discarding the presumption of innocence," such as by placing on the accused the burden of disproof of an element of an offense. Thus, the presumption of innocence is demonstrably more substantive than a utilitarian "hint." It is the alpha and omega of our system.

Reasonable Doubt

There can be little doubt that the concept of proof beyond a reasonable doubt was established in the common law at the time of adoption of the 6th Amendment. While it is true that the first reported case containing the term "reasonable doubt" did not occur until 1798, it is also true that the reporter (and defense counsel) of the case stated it as "a rule of law" in an evidentiary treatise. It is reasonable to deduce that what had become an established "rule of law" by 1798 must have originated and been generally accepted some time before.

As with the presumption of innocence, it was the states which took the lead in requiring proof beyond a reasonable doubt in criminal cases as a necessary concomitant of a fair trial. According to Justice Brennan in *Winship*, it was not until 1881 that the first statement appeared in an opinion of the United States Supreme Court to the effect that proof beyond a reasonable doubt is constitutionally required. This was the case of *Miles v. United States*. Following *Miles*, the Court decided *Davis v. United States* 46 in 1895, the same year *Coffin* was published. In *Davis* a murder conviction was reversed by the Court because the trial judge refused to instruct on reasonable doubt and instead told the jury it was their duty to convict when the evidence was equally balanced on the sanity of the accused. The theme trumpeted by *Miles/Davis* was this: "No man should be deprived of his life under the forms of law unless the jurors who try him are able, upon their consciences, to say that the evidence before them . . . is sufficient to show beyond a reasonable

doubt the existence of every fact necessary to constitute the crime charged."

Thus, by the close of the 19th century, there could be very little doubt that a federal criminal defendant had a constitutionally protected trial right not to be convicted except upon proof beyond a reasonable doubt. For state criminal defendants, the issue was not so clear. On the one hand it appears the reasonable doubt standard had virtually universal acceptance in the states. On the other, the Court never expressly had held the reasonable doubt standard to be constitutionally required in state criminal trials, and, if so, what the constitutional source of the requirement was.

"The Constitution does not mention . .. the presumption of innocence nor does it say that guilt must be proven beyond a reasonable doubt in all criminal cases. Yet it is almost inconceivable that anyone would have questioned whether proof beyond a reasonable doubt was in fact the constitutional standard. And, indeed, when such a case finally arose we had little difficulty disposing of the issue." That case, of course, was *In re Winship*. When the issue did arrive in the High Court it came in an unusual, and perhaps unfortunate, context. *Winship* was a juvenile case. The Supreme Court would have been hard pressed to hold that the 6th Amendment and 14th Amendment rights to jury trial guaranteed a criminal defendant proof beyond a reasonable doubt because such a holding would have done nothing for the juvenile appellant, since the procedural rights afforded a juvenile defendant do ***not*** include the right to jury trial. Of necessity, the Court focused on due process.

Justice Brennan began his analysis in *Winship* by expressing the Court's concern for the inevitability of error in decisionmaking. He quoted from his earlier opinion for the Court in *Speiser v. Randall:* "There is always in litigation a margin of error, representing error in factfinding . . . ." The reasonable doubt standard, he said, "is a prime instrument for reducing the risk of convictions resting on factual error." Justice Brennan then expressed the importance of certainty in decisionmaking to three groups: the triers of fact, society as a whole and criminal defendants, and concluded as to each that the reasonable doubt standard was indispensable. As to the trier of fact, "the reasonable doubt standard is indispensable, for it 'impresses on the trier of fact the necessity of reaching a subjective state of certitude on the facts in issue.'"

As to the general citizenry, "use of the reasonable doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned."

As to those suspected and accused, "It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty

of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty."

Finally, Justice Brennan addressed the astonishing suggestion of the majority decision of the New York Court of Appeals in affirming a preponderance of evidence standard for juvenile defendants that there was only a "tenuous difference" between the civil preponderance burden of proof and that of proof beyond a reasonable doubt. In *Speiser, supra*, Justice Brennan had noted, "[I]n all kinds of litigation it is plain that where the burden of proof lies may be decisive of the outcome." The obviousness of this proposition somehow had escaped the lower court. In any event, the *Winship* Court rejected the contention out of hand.

The Supreme Court concluded in *Winship* that due process does indeed protect against conviction except upon proof beyond a reasonable doubt in all criminal cases, federal and state, adult and juvenile. Picking up the golden thread, Justice Harlan stated in concurrence, "I view the requirement of proof beyond a reasonable doubt in a criminal case as bottomed on a fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free."

And so it came to pass that nearly two centuries after adoption of the American Constitution, the highest court in the nation determined that reasonable doubt was an essential component of that document.

As a result of *Winship*, the burden of proof always rests on the government. It never shifts to the defendant as to any element of the offense; nor may any presumption of law have the effect of shifting the burden.

As a result of *Winship*, it is now clear "that failure to instruct a jury on the necessity of proof of guilt beyond a reasonable doubt can ***never*** be harmless error."

Moreover, as a result of *Winship* and *Jackson v. Virginia*, there has been a revolution in the appellate courts in evaluating the sufficiency of evidence to sustain convictions. Although nominally setting a review standard for federal habeas corpus review, the standard established in *Jackson* has been generally applied to all sufficiency of evidence claims on appeal. The standard flows directly from *Winship* and in fact was seen by the *Jackson* Court to be a necessary complement to *Winship*. The standard for appellate review of sufficiency of evidence claims set forth in *Jackson* is: a criminal conviction cannot be sustained if, on review of the trial record in the light most favorable to the prosecution, "no rational trier of fact could have found proof of guilt beyond a reasonable doubt."

Guardian of Liberty

In our constitutional scheme, the role of ultimate guardian of the liberties of the people is assigned to the United States Supreme Court. In fulfilling this

function, the Court is obligated to honor the hierarchy of values implicitly as well as explicitly contained in the Constitution, regardless of individual justices' personal predilections or the "emotional storms which on occasion sweep over our people." Fairness and certainty in the criminal justice process, as expressed in the presumption of innocence and proof beyond a reasonable doubt and guaranteed by due process of law, are the highest values in the hierarchy.

Instructing the jury on the presumption of innocence rests at the foundation of the constitutional framework of criminal justice. Yet, incredibly, a majority of the Court has held that failure to instruct on this basic concept may be deemed harmless error.

As we have seen, the presumption of guilt has no place in American law, and legislative bodies may not discard the presumption of innocence. Yet a majority of the Court has approved an Act of Congress which does just that by denying pretrial bail altogether to certain persons.

Trial by jury itself, "the grand bulwark" of a citizen's liberties and chief enforcement instrument of the presumption of innocence and reasonable doubt, has been immeasurably weakened by a majority's unwillingness to insist on juries of 12 persons, on juries who are unanimous in their verdicts and on juries at all for "petty" offenses or for juveniles.

Winship, although scarcely two decades old, has been diluted by a majority of the Court's approval of placing the burden of proving self-defense on the accused, the burden of proving mental irresponsibility on the accused and of reducing the burden of proof on elements required for sentence enhancement to less than beyond a reasonable doubt as well as denying the right to jury determination of such factors.

In this, the 200th year after ratification of the Bill of Rights, it would do the present and future members of the Court well to heed the words of *Winship*'s author:

"Even if punishment of the 'guilty' were society's highest value—and procedural safeguards denigrated to this end—in a constitution that a majority of the Members of this Court would prefer, ***that is not the ordering of priorities under the Constitution forged by the Framers***, and this Court's sworn duty is to uphold that Constitution."

Tom P. Conom *practices law in Edmonds.*

Editor's note: Although the original typescript contained a wealth of footnotes, the context of each reference is clear, and in the Bar News, *the text stands alone. The emphases in boldfaced italics are the author's own.*

NOTES FROM THE ACADEMY

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

Civil procedure. In action by attorney to collect fee from client, attorney left summons and complaint with client's neighbor with instructions to deliver them to client. Neighbor filed affidavit confirming timely service, client did not appear, and attorney obtained default judgment. Client then moved to vacate, claiming he never received documents. Trial court refused to vacate, and appellate court affirmed, saying neighbor's affidavit created presumption of proper service, and client's own affidavit was not "clear and convincing proof" that service was improper. Appellate court likewise rejected client's argument that memorandum of law he had filed with court constituted appearance, which would have precluded default judgment. Court said memorandum was not appearance because client had not served it on attorney as required by CR 4(a)(3). ***Leen v. Demopolis***, __ Wn.App. ___, 815 P.2d 269 (Div. 1, 7/22/91).

—K. B. Tegland

Real property. (*Case 1.*) Plaintiff and defendant own adjoining lots in subdivision. Accurate surveys show their block actually is between 20 and 40 feet longer than indicated on plat. Court says in dictum that ordinarily this excess length would be apportioned among all lots in block, proportionally to their sizes. That would throw boundary line between plaintiff and defendant over onto land defendant has long used and upon which defendant has maintained edge of house, eves of house, and bushes under eves. *Held*: (1) Though ordinarily excess footage would be apportioned, in case where boundary between two neighbors has been fixed by "rule of possession" (adverse possession or other boundary-adjustment doctrines), there will be no apportionment of that boundary. (2) Defendant's acts on ground, chimney, eves, bushes, constituted adverse possession. Therefore, boundary is fixed at defendant's line of usage. ***Reitz v. Knight***, __ Wn.App. ___, 814 P.2d 1212 (Div. 1, 8/26/91).

(*Case 2.*) In about 1874, railroad company conveyed land in question, reserving right-of-way easement over this land. Many years later, railroad abandoned rail line, causing easement to end because its purposes could no longer be served. After that, owner of land conveyed it by deed that, after giving land description, said "excepting the Northern Pacific railroad right-of-way easement." Since there was no "easement" when deed was executed, issue is meaning of language of exception. *Held*, grantor's intent was to except in fee simple the area formerly occupied by railroad easement. Words "right-of-way easement" were intended to identify area of land, not legal interest, excepted. ***Harris v. Ski Park Farms, Inc.***, 62 Wn.App. 371, 814 P.2d 684 (Div. 2, 8/15/91).

—W. B. Stoebuck

Implied Consent is Fourth Amendment Fakery

by **Stephen Kruger**

Among judicial pastimes of recent years is evisceration of the Fourth Amendment. Just as the Supreme Court arbitrates the sociology of abortion and declares orthodoxy in the theology of public religion, it alters the fabric of the Fourth Amendment. In decision after decision, the judicial couturiers snip bits and pieces from the prohibition against unreasonable searches.

The loss of constitutional fabric over the past decade has been great. Residences, highly-regulated businesses, bank accounts, national-border checkpoints, citizen/police interactions, high schools and garbage cans have lost protections formerly accorded to them.

For travelers, a large swatch was torn away by the doctrine of implied consent. This magistratial masterpiece declares that people are willing to pay any constitutional price for personal convenience. Motorists are deemed willing to submit to general searches, rather than not drive. Airline passengers are deemed willing to subject themselves to writs of assistance, rather than not fly.

The judicial lie is laid bare in legislative hearings, public debates, newspaper editorials and private litigation. There is no doubt that concern for constitutional liberty thrives among the population at large. If, as the Supreme Court postulates, Americans are now ready to sell their constitutional birthright for a mess of technological pottage, then the New Order for the Ages will not survive its third century.

The justification for highway roadblocks and airport security barriers is that the traveler is assertedly not forced to submit to the breathalyzer or the magnetometer. Rather, the waiver of the Fourth Amendment is postulated to be a free choice, knowingly made by an individual who decides to drive or not to drive, to fly or not to fly. This figment of Supreme Court imagination denies the centrality of road travel and air travel in modern life. A motorist or flyer has no substitute for motor car or jetliner.

Other forms of transportation likewise have constitutional costs. Nowadays, ship passengers, like their airline counterparts, are screened. The Coast Guard is permitted to stop and board any vessel, without probable cause, for its inspection. The police may conduct dragnets within the confines of buses. Rail passengers, too, must give accounts of themselves to public officials. In Los Angeles County, for example, the Southern California Rapid Transit District operates interurban rail lines under the name Metro Rail. The RTD, a transit district established under Cal. Pub. Util. Code §3.0000 *et seq.*, is akin to a county public transportation authority established under RCW 36.57.010 *et seq.* Metro Rail passengers are required to show their tickets on demand of any inquiring RTD employee, though there is no reason to suspect fare evasion. If a person cannot drive, fly, sail, ride a bus or travel by rail without impliedly consenting to a governmental search, then the doctrine has displaced the guarantee.

The catch is that no court uses the implied-consent doctrine for a purpose other than circumvention of the Fourth Amendment, or for the benefit of an entity other than a government. Suppose that Crossbows, Inc., is sued by some of its employees; the allegation is that the corporate employer maintains a racially-discriminatory promotions policy. Crossbows asserts the defense that applicants are free to work or not work at the firm. Further, each applicant is advised, at the time that an offer of employment is made, of the corporate promotions policy. Should summary judgment be granted to Crossbows, on the ground that the plaintiff employees impliedly consented to waiver of their Fourteenth Amendment rights?

The reader who would deny summary judgment admits that the sole purpose of the doctrine is to relieve government from the constitutional prohibition against unreasonable searches. Were this not so, implied consent would be invocable by individuals as well as entities, and in areas of law beyond the Constitution. For example, the owner of posted private land should be able to raise the defense of implied consent against an injured trespasser.

Implied consent suffers from a defect in addition to its inherent anti-constitutional purpose: the doctrine lacks constitutional foundation. Whether the Search Clause should be read with Brennanite expansiveness or Rehnquistian narrowness is a red herring, because nothing in the writings of the Framers or of their contemporaries substantiates the implied-consent doctrine. It was accepted nonetheless by the Supreme Court, in its usurpated role of Continuing Constitutional Convention.

This acceptance is dangerous. If the doctrine of implied consent may be imposed on the Fourth Amendment, any doctrine can be imposed on any constitutional clause. There is nothing to prevent courts from manufacturing and declaring a doctrine of relative merits. Thereunder, the four-year presidential term might have been

extended in 1944 by two years, had the Supreme Court been of the view that the war effort outweighed electoral considerations. A treaty with civil-law countries, under which trial by jury is abolished, might be judicially approved if speaking with one voice in international relations is perceived to be more important than domestic preference for common-law verdicts of one's peers. An emergency can make a constitutional requirement appear disadvantageous. Suppose a Vice President is assassinated in downtown Seattle. Is the Fourth Amendment efficacious, if five justices have the power to determine that warrantless house-to-house searches on Queen Anne Hill for alleged perpetrators are relatively more important than the security of citizens' residences?

Absent original intent and an original understanding of the Constitution, its protections are illusory. Implied consent finds no anchor in the Constitution as understood at the time of its ratification. Therefore, the doctrine is Fourth Amendment fakery. Considering judicial lawlessness, however, it is too much to expect that implied consent will be declared unconstitutional.

***Stephen Kruger** is a member of the New York Bar.*

The Honorable Dale M. Green

by **Diane Altman**

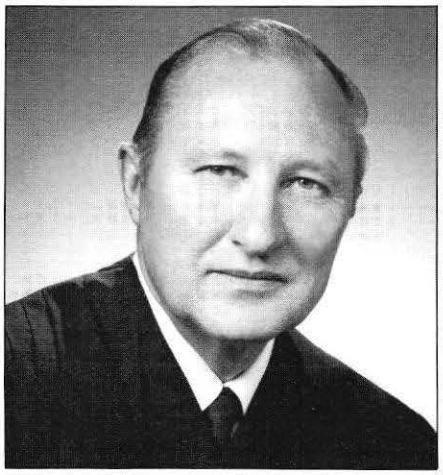
After 22 years on the bench, one of the original members of the Washington State Court of Appeals is hanging up his robe and setting aside case briefs to spend more time with his family.

Dale Green, who has written nearly 1,200 opinions and sat on 2,400 others, retired from the court September 30. The 69-year-old judge for Division III, which covers Eastern Washington and is based in Spokane, said he wants to spend more time with his wife.

Green's colleagues praise his experience on the bench:

"He's a very mild-mannered gentleman who is very learned in the law," said Judge Ray Munson, another of the original judges appointed to the appeals court. "Twenty-two years is a long haul," he said. "Some people don't even stay married that long...(Green) has a calming influence on the judges in Division III and all of the court."

Judge George Shields said Green is "an extremely good opinion writer and thoughtful in his work." He said the court operates more smoothly because Green is thorough, and that improves everyone else. "We are already missing him."



Dale M. Green

More than 125 people joined Green for a retirement party September 14 in Spokane to recount his many years on the bench.

Karen Phares, Green's judicial secretary for nine years, described him as "a very caring and fair individual."

The Court of Appeals was created in 1969 by the state Legislature to help relieve the backlog of cases in the state Supreme Court. Before then, cases were directly appealed to the Supreme Court from the trial court.

Green was appointed to the appeals court with 11 others by then-Governor Dan Evans. The 12 judges were divided into three divisions: Seattle, Tacoma and Spokane.

"It was a group, all dedicated to making a good institution out of the Court of Appeals," Green said. "There's not been one thing that I haven't totally enjoyed."

When the judges met to determine where to begin, they had little more than their robes and a pre-set docket.

"When we first started the Court of Appeals, we had nothing," Green said. "My dining room table was covered with briefs."

There were not courtrooms, secretaries or even typewriters. Pending cases were piled on the floor, since there were no filing cabinets.

But, in 1978, after many years on the second floor of the Broadway Center, Division III settled into their current courthouse in Spokane.

"The practice of law has obviously

changed a bit," said Green. When he began, lawyers looked at the impact their work had on a client, instead of the number of hours the work consumed. "Billable hours became the vogue, but most old-timers still remember the time we looked at what we accomplished for the client." Before computers, each docket was filed on a ledger card and cases were manually filed in the cabinets. "It was laborious to search for statistics."

Green acknowledges the merits of computer systems, but still prefers the dictating machine. "I'm of the old school and I learned how to dictate. The way I type, it's much faster."

Green's office reveals some of his character. The ivory walls are adorned with a gold copy of the U.S. Constitution and a famous quote from Abraham Lincoln: "A lawyer's time and advice are his stock and trade." Overlooking his desk are three solemn owls, which have been with him since the court moved to the current building. They represent decisions made each day. "It takes three wise owls to make a decision. That's what we do," Green said. Comic strips about the legal system line the top of his dark-wood desk.

A native of Yakima Valley, he still enjoys living in Eastern Washington. He attended Washington State University until the start of World War II, when he enlisted in the Army.

"I attended Washington College long enough to meet my wife," he said. The couple wrote letters each day for the 34 months he was in the Army. Upon his discharge in 1946, they were married.

Green continued his studies at the University of Washington and earned a degree in economics and business in 1947. He graduated from the UW School of Law in 1950.

"I became interested in law in high school debate," Green said. His interest became more serious after winning the state debate championship in 1939. "I like law because of the argumentation and public speaking."

In 1958, he was appointed by President Dwight D. Eisenhower as U.S. Attorney for the Eastern District of Washington.

The change in presidents in 1961 brought a change in jobs for Green. He went into private practice in Walla Walla until his appointment to the Court of Appeals in 1969.

Green earned the respect of many people. Two years ago he and Munson were asked to return to their high school in Yakima, where they graduated five years apart, to see their pictures placed on the school "Wall of Fame." The ceremony was held in a large auditorium. "It makes you think about the changes, since I attended the old school," Green said. "We used to attend ceremonies in the gym....You kind of feel proud if you come from a small school. You don't have to come from a big city to be successful. In this country you can achieve what you are willing to study for."

Green's achievements do not stop with those in the appeals court. Until last year, he chaired the state judge's Ethics Advisory Committee begun in 1983. The seven-member committee was created to deal with ethical questions raised by judges. Green does not equivocate when he talks about judicial ethics. "Judges should have the highest ethics," he said.

Green is also involved with his local church, the Chamber of Commerce and has been a Rotarian for nearly 27 years.

Six bowling trophies line a shelf in Green's office. He has been bowling weekly with the Spokane Rotarians since 1971. He said he believes it is a way of keeping in touch with people who aren't in the law.

Green said he always remembers the advice given to him by a colleague when he was sworn in to the appeals court: "I was told, 'Don't get yourself into an ivory tower, but mingle with the people.'" He will still spend some time on the bench, Shields said. "We are looking forward to having him serve on our court as a pro tem judge from time to time."

Green and his wife look forward to traveling outside the United States. He also plans to play golf and do odd jobs around the house. "I'm looking forward to reading something besides briefs for awhile," he said.

***Diane Altman** is an OAC Law Media Fellow and editor of the weekly* Judicial News, *which features court-related clippings from state newspapers.*

Document Storage Agreement

by **Gregory S. Morrison**

Lawyers are frequently asked to retain original documents belonging to their clients, such as wills, deeds, minute books, etc. Without a clear understanding as to the lawyer's responsibilities with regard to the storage of these documents, problems can arise. Does the lawyer have a continuing duty to advise the client of changes in the law that may affect the documents that the lawyer has custody of? Does the lawyer have an ongoing duty to continue maintaining storage facilities for the client's documents, even after the lawyer retires from practice? Is the lawyer liable for the replacement cost of the documents in the event of damage or destruction? The list of potential trouble spots could cause a reasonable lawyer to refuse to accept for storage any original documents.

However, in response to my clients' desires to have me store their documents for them, I drafted the following agreement which I feel is a reasonable attempt at addressing most of the issues that confront a lawyer who accepts documents for storage. I strongly encourage all lawyers to use this form, or at least use it as a guide to draft an agreement particularly suited to your specific needs.

DOCUMENT STORAGE AGREEMENT

_____ (Client) hereby requests

_____ (Attorney) to accept for storage the following documents:

( ) Original Will of _____

Dated _____

( ) Durable Power of Attorney of _____

Dated _____

( ) Community Property Agreement of _____

Dated _____

( ) Deed from _____ to _____

Dated _____

( ) Corporate Minute Book of _____

( ) Other _____

_____

Attorney agrees to store the following documents pursuant to the following terms and conditions:

Attorney is accepting the aforementioned document(s) solely as an accommodation to Client, and Client is under no obligation to use Attorney's services in the future. Attorney assumes no continuing responsibility to advise Client of the ongoing validity, enforceability, or effectiveness of the documents.

There is no charge for this service; however, if Client desires copies of said documents, Client hereby agrees to pay to Attorney a reasonable cost for said copies.

Client is assuming all risks associated with the storage of said documents and Attorney's responsibility is limited only to filing, indexing, and retrieving said documents.

There is no license created by this agreement and Attorney has no responsibility to continue storing these documents and any bailment that may be created is purely gratuitous for the sole benefit of the Client.

Said documents may be moved from time to time as may be determined necessary by Attorney.

This Agreement may be terminated by either Attorney or Client at any time.

Any damages arising from the loss or destruction of said documents shall be the sole responsibility of the Client.

Access to documents shall be during Attorney's regular business hours.

Documents must be signed for personally or by an agent authorized in writing.

Additional parties who may sign for receipt of the documents:

_____

_____

_____

Read and agreed to this _____ day of _____, 19 _____

_____ _____

Attorney Client

DOCUMENTS RETURNED

Documents returned	Received by	Date	Initials

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.

NEWS FROM HOME

• Four new associates have joined Karr Tuttle Campbell in Seattle this fall. **Susan Hanson**, who earned her law degree from Georgetown University, has joined the firm's litigation department. **John Lundberg** has joined the Business and Finance Department, drawing on skills as a CPA and former Boeing auditor as well as his UPS law degree. Another new addition to that department is **Vickie Vaska**, a graduate of the University of Washington School of Law. **Lisa Oman**, another UPS graduate and former coronary care nurse, is an addition to the litigation section of the firm.

• U.S. District Judge **Jim R. Carrigan** was the second Luvera Lecturer at Gonzaga University School of Law in October. A former Colorado Supreme Court justice, Carrigan spoke on "Lawyers, Juries and Justice in the '90s," treating issues confronting lawyers and the administration of justice today.

The Paul N., Jr. and Lita Barnett Luvera Lecture in Law series was established by Gonzaga Law (Class of '59) graduate **Paul N. Luvera, Jr.** of Mt. Vernon in 1990.

As lawyer **James P. Cissell** *As announcer*

• **Vic Vanderschoor** of Pasco was elected president of the Greater Pasco Area Chamber of Commerce in September.

• **Philip H. Brandt** of Tacoma has been appointed U.S. Bankruptcy Judge in the western district of Washington, succeeding retiring Judge **Robert W. Skidmore**. A graduate of Harvard University and the University of Washington School of Law, Brandt has taught at the University of Puget Sound School of Law, served as Director of the Criminal Justice Standards Project of the Governor's Committee on Law and Justice, and practiced as both a sole practitioner and a member of a law firm.

Bankruptcy judges are selected by the U.S. Court of Appeals for the Ninth Circuit, assisted by a local selection committee. Brandt will serve a 14-year term at a present salary of $115,092. He will maintain his chambers in Tacoma.

That Voice Sounds Familiar...

WSBA member **James P. Cissell** decided to forego the captive audiences of courtrooms and seek his fortune in the more competitive audiences of advertising. The Seattle resident, a 1989 graduate of the University of Washington School of Law, is a full-time actor and announcer.

Over the past two years, Cissell has worked on nearly 70 award-winning media projects, serving as the on- or off-camera voice of such varied clients as Perkins Coie, Boeing, Microsoft, Weyerhaeuser, IBM, Sony, the Seattle Seahawks, Dairy Queen, Sears, and Security Pacific Bank. He's been a Darth Vader voice for Nintendo, the news reporter in a Shirley MacLaine movie, a newscaster on a national TV show and a narrator on PBS, not to mention a full page of other fascinating assignments.

Cissell freely donates his time and talent on numerous public service announcements, including MADD, teen suicide prevention, the Northwest Burn Foundation, Campfire, arson detection, Seattle's MOHAI, and Big Brothers.

BENTON-FRANKLIN COUNTY REPORT

by **STEPHEN T. OSBORNE**

KING KHALID MILITARY CITY (KKMC), KINGDOM OF SAUDI ARABIA—This report comes to you via Southwest Asia, where your intrepid reporter has been assigned as the OIC of the Judge Advocate General's office at KKMC, otherwise known as The Emerald City. Though more than 10,000 miles from home, news from the home front (Tri-Cities) still trickles in and must be reported.

A new slate of officers was recently (if September can be called recently) installed by outgoing president **Ed Shea**. Assuming the reins of the presidency was **Michael Pickett** of Kennewick; vice president will be **Daryl Jonson** of Richland, and **Scott Naccarato**, also of Richland, will be the new secretary-treasurer. Hey, how did those Richland guys pull this one off?

The annual Ben-Franklin golf tournament may have been held recently, but that news has not arrived here yet. In the unlikely event that anyone is interested in the outcome, please contact **Steve Palmer**, the tournament chair.

Former Ben-Franklin Bar member and former tournament winner, **Andrew Bohrnsen**, has my thanks for sending most of his old Golf Digest magazines. Andy, considering I'm in the biggest sand trap in the world, you could have at least sent me a sand wedge, too.

Larry Stephenson of Kennewick recently purchased a new suit, the first one since his double-knit caught on fire when he got too close to one of his clients' cigarettes. Fortunately, he wasn't hurt seriously despite the fact that the client tried to douse the fire with his bottle of Mad Dog. Larry was heard remarking that he couldn't wait 'til next year's Rotary suit sale so he could buy one of those "new" denim suits. Have you learned your lesson yet, Larry?

More from the desert next month.

CLARK COUNTY REPORT

by **JOHN F. NICHOLS**

This month I follow the lead of that East King County reporter, Randolph Gordon, and digress from my standard bill de fare and mount my soapbox. The source of said digression is the latest editorial scud launched by one Edwin Feulner, president of something called the Heritage Foundation, a "Washington D.C.-based public policy research institute." Ed's article appeared on the opinion page of Vancouver's *The Columbian* (the largest newspaper in southwest Washington), under the headline, "Here's the problem: Too many lawyers making too much."

Now, I don't know Ed, and he doesn't know me. I don't know anything about "The Heritage Foundation," which is fair, since Ed doesn't know anything about the legal system. However, this lack of knowledge does not prevent Feulner from blaming lawyers for all the ills of the United States. Why am I wasting my high-priced time to respond to this most recent example of many lawyer-bashing diatribes? First, I had no other material for my usual column; second, the yellow-page ads aren't due out until next month; and finally, I always wanted to be a serious writer or, at least, taken seriously.

Ed starts his article with his depressing thought of the day: "The U.S. has one lawyer for every 300 normal people." Under these guidelines, Ed would not qualify for representation. As a result of these numbers, last year lawyers generated "$22 billion in attorneys' fees." The "average attorney makes $168,000 a year." Those of you in Seattle may blame us slackers in Clark County for bringing down the curve. Due to all of us "legal lepers" making all this money, we all pay higher taxes and force companies and governments to seek the protection of those last defenders of liberty, the insurance people.

Ed states that this "fear of lawsuits has prompted 4% of U.S. manufacturers to withdraw products from the market." Gee, and I thought that asbestos mouthwash was such a good idea. Unfortunately, such companies have been run out of business by "packs of ravenous lawyers." For the uninitiated, Clark County is pack #49, not pack six. Thus the legal profession has degenerated into a "miasma of greed and parasitic self-interest." With all the concern about sports team monikers, such as "Braves" or "Indians," how about the "Legal Lepers" or the "Ravenous Mouthpieces"? Surely, no one would be offended by the "Fighting Miasmas."

Who, pray tell, will save us from these evils, Ed? None other than V.P. Dan Quayle, J.D., and a lawyer, too, although not a miasma. Dan, whose billables have suffered mightily since

his appointment forced him to leave his booming practice, "has the answers." In a mere 50—(that's "5" "0")—point program. Among the highlights are eliminating: punitive damages; awards for "silly emotional distress"; frivolous lawsuits; and discovery. Furthermore, we should restrict the use of expert witnesses, "who are paid by lawyers to present quack theories." Apparently, we not only make the laws and control the economy, but we also tell the doctors what to say. Does the AMA know this?

Friend Feulner throws in one last "money-grubbing" insult and then brings his assault to a merciful close. Should we be concerned with this typical attack? Should we shrug it off with a casual, "consider the source"? Normally, I would say, "Forget it." But when this "miasma" appears in a respectable local paper rather than *The Enquirer*, then, methinks, the nightmare *is* in the closet.

EAST KING COUNTY REPORT

by **RANDOLPH I. GORDON**

The net effect of jury selection, Mark Twain asserted, was to assemble a panel of jurors who were either fools or scoundrels. Who else, asked about the most important social issues of the day by counsel, could respond that they had neither heard of the matters, nor formed any opinion respecting them? What would Twain think about the confirmation of Justice Thomas to the United States Supreme Court: a man who, by his own admission, has neither discussed nor formed an opinion respecting *Roe v. Wade*?

In fairness to any candidate to the High Court, it must be conceded that a political process will often induce the pragmatic individual to engage in classic political behavior; nominees will tend to provide vague and noncommittal responses respecting issues likely to generate differences of opinion which undermine their support and will, for similar reasons, repudiate any past political speech. In this respect it is not all that different from a job interview or dinner at the in-laws.' And like dinner, once you eliminate politics and religion as fertile grounds for conversation, you are left with one's personal life, gossip, sports, or silence. (Of these, the political process abhors only the last.) On the whole, one might reasonably question whether it is a dangerous precedent to select the protectors of our First Amendment rights from among those who have, by their own report, never exercised them.

Determining whether Justice Thomas was the most-qualified person for the post is complicated by the nomination process. Generally, when hiring for a position one interviews a series of candidates and chooses the best. This winnowing process was done far from the public eye. Presented with a single candidate, it is always difficult to determine whether the individual is the best. Moreover, the interview "model" all too readily shifts by small degrees to a trial "model." By Roman custom, a prosecutor was not required to confine his onslaughts to the particular charge brought; hence, **Cicero** violently attacked the entire record of **Gaius Verres**, governor of Sicily on trial for misgovernment before the Senators. So, too, it is all too easy to shift from interviewing an individual as to qualifications to a political show trial.

It will always be easier to discern who is better by a comparison of candidates. Circa 125 A.D., **Lucian of Samasota**, a Skeptic philosopher, in his *Hermotimus, or The Rival Philosphies*, notes:

> [I]f we mean to find either the man who has the sacred cup . . . or our best guide to the famous city of Corinth, we must absolutely go and examine them all, trying them carefully, stripping and comparing them; the truth will be hard enough to find even so. If I am to take anyone's advice upon the right philosophy to choose, I insist upon his knowing what they all say; everyone else I disqualify; I will not trust him while there is one philosophy he is unacquainted with; that one may possibly be the best of all.

For local judicial positions, the East King County Bar Judicial Selection Committee interviews the candidates and rates them much as the ABA did when it concluded that then Judge Thomas was "minimally qualified." How much different, and easier, would the confirmation process have been had the focus been upon finding the best jurist from among a list of highly qualified nominees? The focus would have immediately shifted to a comparison of experience, education, and temperament. Even our humble local bar often presents to its membership more nominations than trustee positions, leaving the selection of the trustees to the membership from among this list of qualified individuals. At this very moment such a list is before the membership for election.

Our local bar overbrims with qualifications. We note, in particular, that **Hugh W. Hawkins** of Revelle Ries Hawkins, P.S., is the 1991 recipient of the Washington Association of Realtors' Eddy Award for contributions to real estate education. Hawkins is the third Eastsider to be so honored since the Eddy Award was established in 1966. **Sheryl Garland**, also of Revelle Ries Hawkins, P.S., has been installed as president of Washington Women Lawyers, served on the state judiciary's Task Force on Gender and Justice and is vice president of Youth Eastside Services, a Bellevue-based human-service organization. Such individuals, like "the moon on the breast of the new-fallen snow/give the lustre of midday to objects below." Season's greetings to all.

PIERCE COUNTY REPORT

by **GEORGE S. KELLEY**

The superior court judges have once again shown that, left to their own devices, and without lawyers to guide them, they are capable of monstrous errors. Consider the case of the judge (who shall remain nameless herein, not to protect the innocent, but to protect this writer who might one day appear in his or her court) who scheduled the annual judges' retreat for the same weekend as the UW-Arizona football game. This scheduling conflict, as some of you may recall, also happened last year. This year, the error was compounded by holding the retreat at the very top of Snoqualmie Pass, where the TV cable did not carry the sports channel which was broadcasting the game.

Apparently, the retreat was not all work and meetings as someone scheduled a golf tournament. It was clear from the level of play that these

folks are in court most Wednesday afternoons and not on the links. For instance, Judge **Karen Strombom** won closest to the pin honors, but ended up three-putting the hole. Judge **Gary Steiner** won the "most gross" honors which is judge-talk for low gross.

In other news of the judiciary, Court of Appeals Judge **Stan Worswick** announced his retirement effective December 31. His Honor, who did a lot of midweek skiing prior to going on the bench, timed his retirement to enjoy the best part of the ski season. In the theater one would wish an actor well by saying, "Break a leg." One might wish the judge better than that.

Mike McKasy has returned from Minnesota, where he took in the first two games of the world series with his son. He did not think he'd ever see one in Seattle. If asked, he will show you a foul ball hit by **Kirby Puckett**, and a picture of him and his son posing with Kirby. The baseball is real—the picture is a fake.

Bud Jacobs is recovering from a mild heart attack. By the time you read this, he should be back to normal, or at least what passes for normal in Puyallup.

SPOKANE COUNTY REPORT

BY DON CURRAN

James J. Gillespie touts the sport of walking. Quoting Emerson: "Few people know how to take a walk. The qualifications . . . are endurance, plain clothes, old shoes, an eye for nature, good humor, vast curiosity, good speech, good silence, and nothing too much." . . . **Dan Keane** strikes a nice balance between parenting two children and a flourishing practice. . . .

Bernard W. McNallen's long-standing negativism about structured settlements with annuities issued by Executive Life makes him the local prophet of doom. . . . The active and resilient mind of **Smithmoore P. Myers** challenges the students at Gonzaga University School of Law. . . .

M. Laurie Flinn Connelly's maternal and professional instincts are satisfied by combining litigating skills as a city attorney and mothering twins, to the delight of papa **Patrick E. Connelly**. . . . **Joseph P. Delay, Joseph Nappi, Jr., John E. Clute** and **Federal Judges "Frem" Nielsen** and **Fred Van Sickle** are honored at a reception organized by **Judy Foster**, executive director of the Spokane County Bar Association. . . . **Willard A. Sharpe**, the golden-voiced wordsmith, drinks of the fountain of youth and at 66 splits his time between Palm Springs and **Evans, Craven & Lackie**. . . .

Jack R. Dean works part-time while taking radiation and providing leadership by example. . . . **Carole C. Hemingway**, ever even-tempered, is tested in the family law field. . . . Non-conformist **Pat Stiley**, threatened with sanctions if he shows up tieless in court, has assembled an outrageous collection of neck pieces sure to meet judicial scorn. . . . Outspoken and energetic **Steve Eugster**, nemesis of ultra vires government action, is described by a municipal bureaucrat as an attorney who has occasional flashes of silence that make his conversation perfectly delightful. . . .

William Clarke assumes the presidency of a private pre-college school and associate deanship of G.U. Law School. . . . Seattle attorney **Brian Ragen** has learned of the "shortage of attorneys" in Spokane and plans to open up a shop in the Lilac City. A superlative environment, yes. A paucity of lawyers, no.

WASHINGTON STATE LAWYERS' CAMPAIGN FOR HUNGER RELIEF

The Lawyers' Campaign continues to gain momentum as we approach year's end. On October 16 we hosted our first media breakfast at the Washington Athletic Club in Seattle. This event gave the Campaign its first real exposure, not only to the legal community but to the public at large. It also gave us the opportunity to acknowledge our "Charter Sponsor" law firms, Bogle & Gates and Betts, Patterson & Mines, P.S., and further added to the contributions we have received to date. It was a great success. Our keynote speakers, **Keith Blume** of the Campaign to End Hunger, the Honorable **Fred H. Dore**, Chief Justice of the Washington State Supreme Court and **LaVonne Douville**, Director of the City of Seattle Family and Youth Services Division, encouraged our hunger relief efforts as timely and much needed in all of our communities.

As we have reported in previous issues, we have been meeting and are continuing to meet with law firms in the Puget Sound area to request

corporate or firm donations. We have a packet of information and an informative video on hunger in Washington state which we bring to each firm presentation. If you would like to receive the packets and/or copies of the 10-minute video, please write to the Campaign at the address below and we will be sure to respond. In addition, if you would like someone from the Lawyers' Campaign to make a presentation to you or the members of your firm, please make this request, and one or more of us will accommodate you.

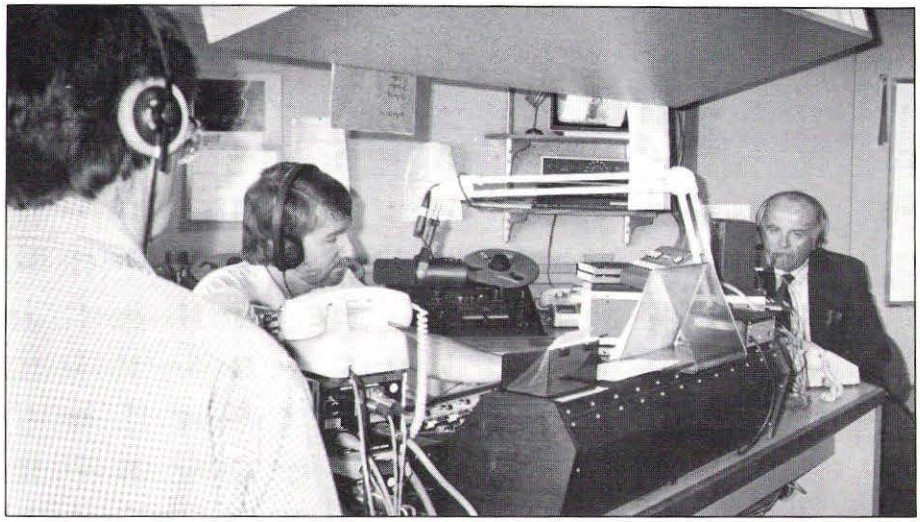
In this issue of the *Bar News* we are, with the gracious cooperation of the WSBA, making the first annual appeal to each individual lawyer in Washington state for a tax-deductible contribution to the Campaign. We are suggesting a contribution that is equivalent to the monetary value of one billable hour of your individual attorney time (but we will be glad to receive more, if possible, or any amount you can give—it will add up to a considerable sum if we are willing to combine our resources). Be sure to take out the insert that is in this copy of the *Bar News* for the purpose of mailing in your contribution. The insert includes a resolution recently enacted by the Board of Governors as well as letters about the Campaign from each of our honorary co-chairs, and a list of those individuals and firms who have contributed to the Campaign as of this writing.

Please join the Campaign, and help us end the hunger which divides our communities throughout the state. Together we can provide relief for children suffering from hunger, become a forceful and effective voice for hungry children and show people throughout the state that lawyers are prepared to assume a leading role in improving the lives of the hungry and the quality of our communities.

WASHINGTON STATE TRIAL LAWYERS ASSOCIATION

by **LETHA J. OWENS**

It's not too late to join with WSTLA members in eastern Washington for the Second Annual Holly Ball-East. This event is expected to be a party to remember, with the festivities being emceed by Judge **John Schultheis**.



Spokane attorney ***J. Donald Curran*** *(r) fields a listener telephone call on legal ethics during KXLY's "Legal Line" as co-hosts* ***Edward Dawson*** *of WSTLA (l) and* ***Alex Wood*** *of KXLY look on.*

Following a scrumptious dinner prepared by the fine facilities at Cavanaugh's Inn at the Park, music for dancing will be provided by the eclectic rock and roll group, Temple Monks. The cost for the evening is a modest $30 per person. WSTLA members are encouraged to bring their staff and guests to make this the best holiday party ever. Contact **Mary Springer** at the Spokane WSTLA office for more details.

To make the trip over the mountains even more inviting for those in the western portion of the state, there will be a Medicine for Attorneys CLE program from 8 a.m. to 4 p.m. on the day of the party. The sponsors have gathered a panel of medical experts to educate the attendees on such complex topics as thoracic outlet syndrome, carpal tunnel syndrome, neural psychology and head injuries, TMJ dysfunction and computer-assisted medical research. Also included will be the more basic subjects of orthopedics, anatomy and physiology, radiology, neurology and chiropractics.

If you have any plans to head east for the holidays, why not schedule a few extra CLE credits and join the festivities in Spokane? Contact the WSTLA office for ticket reservations and CLE registration, (206) 464-1011, or toll-free (800) 732-9251.

Public outreach through talk radio. For the past four and one half years, every Thursday at 2 p.m., eastern Washington WSTLA members have been transformed into radio talk show hosts. WSTLA attorneys appear as a regular feature of host **Alex Wood**'s program on KXLY AM 920, Talk Radio for the Inland Empire. The show presents a unique opportunity to educate the public on basic issues that affect their lives. The regular format calls for Wood to be joined by a WSTLA co-host, most often **Bryan Harnetiaux** and a guest expert in one particular area of the law.

Topics can be standard, such as wills and probate or criminal law, or directed to address area concerns. Recently, a program aired on settling property damage claims, an especially pertinent topic following October's firestorm in the Spokane area. Hosts and guests field questions from the radio audience. While most attorney participants have dreaded appearing on the show, reports are that after the show most are anxious to do it again.

Breaking from tradition. A town meeting format was recently used for a special two-hour show on Initiative 119, the death with dignity initiative. Six speakers from medical, legal and religious fields presented both the pro and con positions to a live audience and answered questions from the floor as well as call-in responses. Other initiatives on the November ballot were covered in one-hour programs, usually with two speakers, one for and one against.

Last year, WSTLA honored KXLY's commitment to educating the public by naming the station the WSTLA's 1990 Media Outlet of the Year.

Happy Birthday Bill of Rights. In September, each primary and secondary

school in the state received a special instruction guide called, "Happy Birthday, Bill of Rights: A Sourcebook for Teachers." The sourcebook is designed to enrich students' understanding of this most important document, which will turn 200 years old this month. The sourcebook was developed by the Office of the Superintendent of Public Instruction, The Washington Commission for the Humanities and the WSBA. Instruction in our own state constitution is included.

WSTLA salutes its members who have volunteered to be an additional resource in this project. They will be working with teachers in the classroom, helping students appreciate the vitality of this 200-year-old document and the ideals upon which it is based.

* * * *

Bob Dawson's *Trial Lawyer's Form Book,* published by WSTLA, is selling fast. Already more than 400 copies of this detailed and informative book have been sold. The two-volume set includes sample letters, pleadings and motions from all levels of a civil case, as well as all the forms recorded on computer disk. For order information contact the WSTLA office at (206) 464-1011 or toll-free (800) 732-9251.

IN MEMORIAM

Ernest H. Campbell, 80, died in September, 1991. Born in Seattle, he attended school there before gaining undergraduate and law degrees from the University of Washington. He later recevied a Ph.D. in government and public law from Harvard.

"A lawyer and scholar by profession and a servant of God by choice" was how *Seattle Times* reporter **Ronald Fitten** described Thompson, who was active in the Presbyterian Church for decades. Survivors include nine nieces and nephews.

John Kelleher, 91, died August 15, 1991. Born in Seattle, Kelleher graduated from Broadway High School, the University of Washington and its School of Law. He practiced law for almost 60 years, 52 of them as a sole practitioner. He moved to Olympia in 1975 and retained a reduced practice until the early 1980s.

Gerald Shucklin, 83, died September 8, 1991. Born in Seattle, Shucklin grew up there and in Alaska. A 1923 graduate of Broadway High School, Shucklin graduated from the University of Washington School of Law in 1929.

Active in Democratic Party politics all of his adult life, Shucklin was a co-founder of Washington State Young Democrats in the early '30s with his law school classmate and friend **Warren G. Magnuson**. President Roosevelt appointed him to the U.S. Attorney's Office, Western District of Washington, in 1934; he had been appointed chief assistant U.S. Attorney when the war broke out in 1941. Shucklin served in the Navy Judge Advocate General's Corps as a lieutenant commander, stationed in Bremerton; he also served as an aide to Admiral **Christie**.

In 1946 Shucklin returned to civilian life and became a principal in the law firm of Hile, Hoof & Shucklin, later known as Hoof, Shucklin & Harris. His son Philip joined the firm as a partner in 1980.

Gerald Shucklin practiced law for some 60 years, 43 in the Dexter Horton Building. Well-known in the legal and civic community of Seattle, he served on the Washington State Judicial Council in the 1970s, and retired from practice in 1989.

PROFESSIONAL

FOREMAN & ARCH, P.S.
is pleased to announce that
ALEJANDRO SAHAGÚN CUEVA

has joined the firm as a bilingual Law Clerk in our Wenatchee office. Sr. Sahagún has his law degree and an advanced degree in tax law from the Universidad Antonoma de Mexico.

We are also pleased to announce that we have established affiliations with reputable law firms in the major industrial and financial centers of Mexico.

For more information, contact Ronaldo P. Delgado or Teresa Arceo at our Wenatchee office.

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701 N. Chelan Street
Wenatchee, Washington 98801
Telephone: (509) 662-9602
Facsimile: (509) 662-9606

Offices and affiliates in Moses Lake, Brewster, Spokane and Seattle, Washington; Pasadena, California; Guadalajara, Mexico City and Monterrey, Republic of Mexico.

Knies, Robinson & McMullen
Attorneys at Law
are pleased to announce that

LYLE O. HANSON

formerly Chief Mediation Judge,
Board of Industrial Insurance Appeals,

has joined the firm
effective October 1, 1991

He will emphasize Workers' Compensation
and Social Security Disability claims.

Bellingham Office
911 Dupont, 98225
(206) 671-2313/671-1971 fax

Sedro-Woolley Office
P.O. Box 152, 98284
(206) 855-1045/855-0432 fax

Robert M. Knies David W. Robinson
Patrick R. (Pat) McMullen
Martha V. Gross Lyle O. Hanson

Appeals

Douglass A. North announces his availability for referral, consultation, or association on appellate arguments and briefs.

Douglass A. North

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former clerk to
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Margaret K. Dore

Lanz and Danielson
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Janis K. Stanich
Gail N. Wahrenberger
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Of Counsel
Robert R. Mackin

Of Counsel
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Family Law

Morris H. Rosenberg is available for association, consultation or referral of complex marital dissolution cases. He is also available to mediate or arbitrate family law disputes.

Co-author: "Debts," Chapter, *WSBA Family Law Deskbook*, 1989. "Interstate Custody Disputes," *WSBA Bar News*, Vol. 41, No. 11, November 1987.

Morris H. Rosenberg

Mussehl & Rosenberg
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WILL SEARCH

Elbert D. Lakey: Anyone having copy or knowledge of will of codicil of Elbert D. Lakey, resident of Ferry County, Washington, who died on June 2, 1991, please contact Gary L. Pounder; (509) 684-5276.

Warren E. Hess: Anyone having information regarding will of Warren E. Hess who died in Seattle on January 24, 1991, please contact Beresford, Booth, Baronsky and Trompeter, 1210 Third Avenue, Suite 1400, Seattle, WA 98101-3017; (206) 682-4000.

Selma E. Herren: Anyone having knowledge of a will executed by Selma E. Herren of Seattle, WA, deceased 3/29/91, please call Debi Beyerlin at (206) 228-1880.

MISCELLANEOUS

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