Washington State Bar News
Vol. 45, No. 3, March 1991

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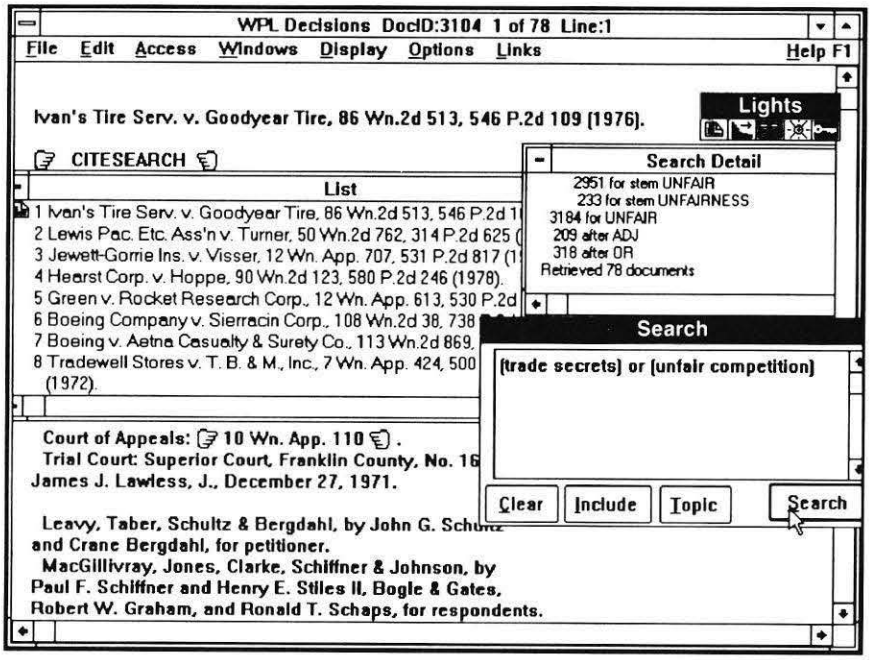

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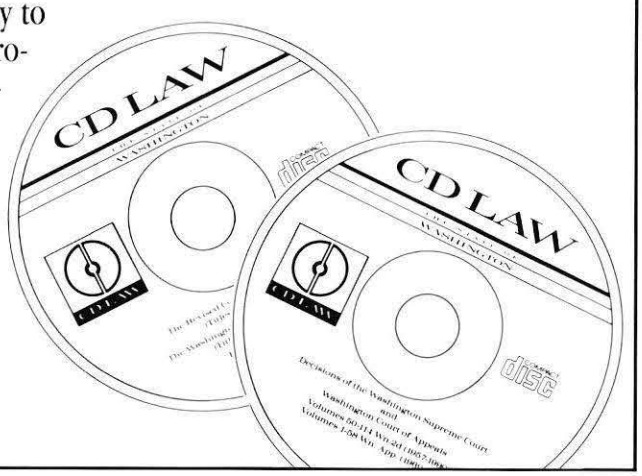

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FEATURES

DEPARTMENTS

ART CREDITS

This 1861 wood engraving from a *Harper's Weekly* cover shows "Willard's Hotel, Washington, Saved by the New York Fire Zouaves." (See "Fire and Property Subrogation in Washington," page 23 of this issue.)

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TAKE A CHANCE ON CHANGE

Let's talk about things no one wants to talk about!

Just Say NO to Maui Wowie

(a drug term referring to cannabis sativa grown on the island of Maui.)

The issue:

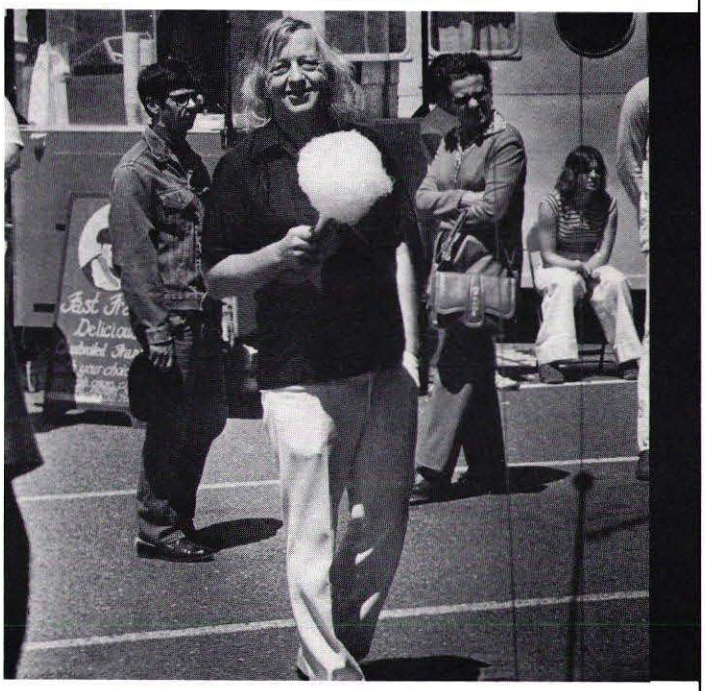
Shall the decision of the Board of Governors for the Washington State Bar Association selecting Maui, Hawaii as the 1995 convention site be reversed?

GAWD
yes

Pricey - Exotic - Tax-Free?

We lost $50,000 in 1986, probably another $50,000 in 1980, on Hawaiian conventions.

Who paid the bill? Our dues were raised. Tradition normally sucks, but particularly when costly.



This Board of Governors can't control 1995 costs,

YOU CAN!

Reverse our 7-2 decision.

Tell us who the majority is. Now is the time to make your position known to us.

Alva C. Long
Governor at Large, WSBA King County

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.

Confessions of a Wasted Life

Editor:

In her article in the December *Bar News*, Kathy Severson reveals a key force in the development of chemical addictions. It is oppression by white males.

As a white male, I should have been gratified by her revelation. If in the order of nature there is an oppressor class of persons, one should be grateful to have been born into it.

Instead, her revelation leaves me feeling depressed. For 58 years I have had the powers of an oppressor, but have not used them. I am a failed oppressor.

MORTON M. TYTLER
Olympia

About That Elephant

Editor:

Kathy Severson (December 1990 *Bar News*) puts forth a simple explanation for addiction: it is caused by oppression (the elephant in the house; the herd of elephants in American culture); and oppression is caused by white male patriarchy.

Not long ago all American psychic problems were attributed to Mom, who smothered us, spoiled us and dumped guilt on us.

Anyone out there think both explanations are a bit simplistic?

By the way, if the *Bar News* wants to expand its coverage beyond law to behavior, shouldn't you include other fields of interest, such as economics and history, and say enough to pop psychology?

MARYALICE NORMAN
Seattle

Unsubstantiated, But Politically Correct, Thinking in the *Bar News*

Editor:

From time to time it seems that certain institutions are chosen to be the whipping boys for society's ills. Attacks on these institutions are often offered without any form of reasoned support. Credibility is given to the argument only because of the frequency of its repetition. The arguments used in these attacks are often couched so as to poison the well. Anyone with a differing point of view is cast as a bigot or chauvinist, vainly grasping to past, unenlightened ideals. Finally, the proponents of these attacks often use emotive words which conjure up grotesque images rarely conforming to anything real.

Recently, the *Bar News* published an article titled: "The Elephant Revisited: Substance Abuse, Denial and Social Norms" (December 1990). That article was replete with the unreasoned types of arguments discussed above. In the article, the author attacked what she termed to be "patriarchy" or more specifically "hundreds of years of white male dominated thought." She implied that "patriarchy" was the fountainhead of all society's problems. Without one shred of reason or support, the author baldly asserts: "Patriarchy must be acknowledged as a key force in the development of addictive problems in our society." The author then goes on to suggest that even poverty can be blamed on "patriarchy." In an effort to be fair, the author tells us that men alone are not to blame. "Both men and women participate in the dance." ("Dance" is a fad word in sociological circles meaning that another participates as both a partner and a follower.) Women, we are told, transmit (unwittingly, I am sure) the authority of the "patriarchy" to the next generation.

While I do not condone authoritarianism or inequality, I must state that the author's assertions are nonsensical. "Hundreds of years of white male dominated thought" can no more be blamed for the ills of society than can it be credited as the "key" source of the beauties found therein. It is the individual operating within the institution and not the institution itself that causes society's problems and creates its benefits. Until accountability for pain is laid at the feet of the *individual* perpetrator, rather than at the feet of an amorphous institution, the ills will not change.

What the author attacks is not "patriarchy"—although she styles it as such. What she really is after is the traditional family. The author indicates

that a fundamental change must take place in that family structure. (What that change is she does not say.") Any reflection at all will lead one to the conclusion that societal problems have multiplied as traditional family values have been lost, not the other way around. What the author suggests would only accelerate the loss of those values.

If we wish to cure addiction, or the "distortions of power" transmitted from generation to generation, we must seek [to] infuse morals and proper conduct into the individual. The traditional family is the best means of doing that. Thus, we must seek to strengthen the family, not destroy it.

Before we dismantle the family, let us be very sure that what we replace it with will be better, not only in preventing societal problems, but also in developing societal good. It appears the author's approach is simply to destroy the family and see what evolves thereafter. It is a recipe for disaster.

The example of Galileo notwithstanding, it is rather presumptuous for one individual to consider himself or herself more wise than the collective wisdom of countless generations. The author presumes such wisdom. At least Galileo could prove his theories with mathematical certainty.

BRAD L. ENGLUND
Salt Lake City

I'm Not the Other One

Editor:

The Washington State Bar Association Disciplinary Committee contacted me last week to inform me of the suspension of an attorney (see "Digest," this issue, page 32) with my same name, who had been practicing in my neighboring town. Her name is Kimberlee A. McDonald, and she most recently had an office in Seattle. My name is Kimberly A. McDonald, and my office is in Renton.

I have routinely been confused with the other Kim McDonald, receiving her mail, her phone calls and even her pleadings during the last two years. I am very worried by the possible damage to my reputation and to my firm's business should a distinction not be clear in your publication of the news of her suspension and pending disbarment proceedings.

KIMBERLY A. McDONALD
Renton

Alcohol Article Neither Straight Nor Sober

Editor:

Several errors poured forth from "How Alcoholics Anonymous Can Help" (*Bar News*, December 1990), which beg to be wiped clean. In the subsection, "Is Alcoholism a Handicap?," the elements of "alcoholism as handicap" in *Phillips v. Seattle*, 51 Wn. App. 415, 754 P.2d 116 (1988), were blended into a cloudy potion that can't be swallowed.

The author bombed again, making it a double mistake. In *Phillips v. Seattle*, 111 Wn. 2d 903, 766 P.2d 1099 (1989), the Washington Supremes overturned the appellate court's bottling of "alcoholism as handicap" for unfair practices purposes. *Phillips* '89 dryly adopts the handicap discrimination definition in WAC 162-22-040; *Phillips*, 111 Wn. 2d at 906-907 (I trust that your readers can chase down the citations themselves). Whether a person is "handicapped" by any condition is a question of fact, not law. *Phillips*, 111 Wn. 2d at 909.

What and when "reasonable accommodations" must be made for any handicapped employee (including alcoholics determined to be "handicapped," no pun intended) , can be found in the readily accessible WAC 162-22-080. *See also Phillips*, 111 Wn.2d at 910-911. After considerable stirring and sifting, "reasonable accommodations" usually boil down to balancing an employee's needs against how much an employer can bear before its burden becomes undue. Many handicapped people, however, could be accommodated if employers simply added a few pinches of kindness and

imagination.

It's really (I want to use the word "unconscionable," but because I'm not sure how it's spelled, I'll just say) hard to swallow that a subsection entitled "Is Alcoholism a Handicap?" ignored the pivotal *Americans With Disabilities Act* (ADA), which begins to go into effect in 1992.[1] I'm sure that the *Bar News* will publish many fine articles about the ADA; in the meantime, just keep in mind that reasonable accommodations requirements and definitions of handicap under the ADA are not so different from Washington's as to cause employers—or their attorneys—sleepless nights.

MERRY A. KOGUT
Tacoma

[1]I think that the author's implication that alcoholism is considered a per se handicap under the Federal Rehabilitation Act of 1973, 29 U.S.C 706(8) is incorrect, but I'm too loaded with work right now to look that up.

About Your Timing

Editor:

You are to be congratulated on circulating the survey of the membership relative to computers and their usage (*Bar News*, November 1990). Hopefully you will receive a good response.

I first saw the survey on November 17 in the possession of someone else. I received my copy of the November issue of the *Bar News* on December 3. By that date, the November calendar of events and many of the time-critical announcements or deadlines contained in this issue were obviously past history.

For the "remote" attorney (i.e., not in downtown Seattle), the *Bar News* serves a valuable and helpful function. It would be even more so if it were timely received.

GEORGE F. HANIGAN
Cathlamet

(Editor's note: the survey arrived late and not in a format suitable for use as an insert. We had to design and produce the form, which held things up about a week. Then there was an inexplicable ten-day delay at the mailing outfit we use. We regret the delay, and apologize to all subscribers.)

If You'd Only Looked...

Editor:

I applaud your effort to devote an issue of the *Bar News* to the important matter of delivery of legal services to the poor (November 1990). However, I was disappointed that in your effort to cover legal service activity across the state you did not contact the East King County Bar Association or the Eastside Legal Assistance Program.

If you had made inquiry, you would have learned of a unique legal service project put together by the Eastside Legal Assistance Program, a nonprofit corporation formed by the East King County Bar Association. ELAP has forged a partnership of local governments and a local bar association to provide legal services to low-income residents of the Eastside. It has received human service grants from the cities of Redmond, Kirkland, Bothell, Mercer Island and also from King County. It has raised nearly $30,000 in private donations of cash and equipment from bar members and has organized a panel of volunteer lawyers. With these resources it has opened five legal clinics which are coordinated with other human service providers. For example, the clinic in Redmond is held at the Evergreen Care Network office; in Bothell the clinic is held at the Northshore Youth and Family Services Center and in Kirkland it is held at the Kirkland Senior Center. Family law clinics are coordinated with the Eastside Domestic Violence program. ELAP has a part-time executive director who is an attorney and will be hiring a paralegal to assist the attorney in providing emergency legal representation, particularly in the area of domestic violence cases. The 1991 budget for ELAP exceeds $90,000. So, this is an important and significant legal service program you omitted.

Had you contacted EKCBA or ELAP you would have also learned of over 40 Eastside attorneys that could have been added to your listing of volunteer attorneys, since they contribute their time to the operating of the five legal

clinics on the Eastside. Several Eastside attorneys, after reading the *Bar News*, asked me why ELAP was not included.

I hope you and others at the Washington State Bar Association will come to recognize the "King County Report" is not simply the Seattle report. Only one third of the population of King County lives in Seattle. EKCBA is a very active local bar association with over 500 members. The South King County Bar Association has nearly 300 members. I suggest that you attend their membership meetings or speak with their leadership to learn more about what is going on in King County.

KENNETH H. DAVIDSON
Past President,
East King County Bar Association,
Kirkland

(Editor's note: We contacted all county pro bono programs about the November 1990 issue of the Bar News. *We ran material about every program that responded.)*

Pro Bono and Prosecution

Editor:

The issue on pro bono services (*Bar News*, November 1990) and the Bar's interest in promoting same are commendable. Is it possible, however, to ask that people employed in prosecution, some of whom serve ex officio as coroners or deputy coroners, be recognized as contributing pro bono services through their regular employment when they accept, without complaint, ongoing requirements to spend 60 or more hours a week dealing with their public responsibilities without regard to compensation for this recurring, routine overload?

The issue arose, in the most unpleasant form imaginable, when a former president of the bar spoke to a meeting of prosecutors and reproached them for failure to support the bar's endeavor. The response from the one elected prosecutor/coroner, supervising four deputies and earning $44,000 a year, made a couple of good points in a form that was embarrassing to his peers but which could be relevant to the question. First, his deputies work for salaries that are grossly inadequate. (It took him 14 months to recruit a chief criminal deputy given the duties and compensation for the position!) Second, they do not have the luxury of counting on departure from the office at five, particularly when they're trying cases back-to-back, and the coroner's call can come at any hour of the day or night. Third, they can't block time during the week for pro bono with any certainty, given the emergent nature of calls that may come in. Fourth, they lack any civil experience whatsoever in many cases.

My perspective on the issue, as a former associate in a large Seattle firm who was encouraged to do pro bono and who did it in his own practice and while serving as part-time prosecutor, is that members of the private bar fail to understand the problem in most prosecutors' offices and fail to acknowledge in any way that many lawyers engaged in public service expend prodigious effort and log incredible hours for the same reasons their private counterparts engage in pro bono work—why should the latter contribution be recognized and not the former?

Recently I sought and obtained permission to do some pro bono work and was educated on some practical problems which had been discussed, on a theoretical basis, when prosecutors had considered the problems engendered by recent legislation authorizing prosecutors and deputies to undertake this work. First, I could not control the time required to do it or the times when I needed to work the problem. Second, my trial skills were sadly rusted (I was lucky enough to go up against an adversary who was "professional" in what is now an archaic use of the term. Third, after a disillusioning experience with administrative "justice," I was unable to take the appeal further and my client couldn't afford to go to superior court. I did not begrudge the effort, but I seriously question the value of it.

There is at least one prosecutor's office where staff have the ability to engage in pro bono work through a bar program and do so. In most offices, it's simply not practical and, in many of those offices, some very hard-working members of our profession are indeed giving of themselves for the public benefit without material remuneration. Their endeavors deserve recognition.

MICHAEL C. REDMAN
Lacey

About the Pro Bono Issue

Editor:

As a member of the Washington State Bar Association, I receive the *Bar News* on a regular basis. While I commend you on the quality of the articles generally found within your publication, the November 1990 issue providing a special report regarding "Access to Justice" was less than complete.

While the November issue addressed various programs which exist that provide legal representation to certain segments of society, you failed to mention The Rutherford Institute of Washington. We are a legal defense organization specializing in the defense of religious liberties in this state. Formed in February 1990 as a Washington nonprofit corporation, we are only one of approximately 35 state chapters nationwide which are affiliated with The Rutherford Institute.

Established in 1982, The Rutherford Institute is a well-recognized constitutional organization providing legal representation to religious minorities nationwide. The Rutherford Institute currently has over 100 constitutional cases pending.

The Rutherford Institute of Washington presently is representing a dozen different clients statewide in various constitutional matters. These range from defending a pro-life demonstrator from a RICO lawsuit brought against her, assisting clients in upholding their legal rights to form and hold Bible clubs and prayer groups in public schools, representing members of a church who distribute religious pamphlets to those it serves meals to in a municipal building, and protesting the use of the *Impressions* curriculum in an eastern Washington school district.

Because the membership of every attorney licensed to practice in the state of Washington in the Washington State Bar Association is mandatory, I believe that we are entitled to equal media exposure in the *Washington State Bar News*. We are certain that you appreciate that the Washington State Bar Association should not be discriminatory in its selection of which legal programs it decides to report upon.

If you are so inclined, I am willing to conduct an interview with your organization to facilitate the publication of an article. I look forward to hearing from you.

W. THEODORE VANDER WEL,
President,
The Rutherford Institute of Washington,
Everett

(Editor's note: The focus of the November issue was on what law firms and local bar associations are doing in the pro bono field. There was not discriminatory intent. However, as a practical matter, it would be a difficult thing—and would require vastly more space than the Bar News *has—to fully cover every organization with which Washington lawyers are involved.)*

Loved the Photo, Too

Editor:

I was delighted to read "The President's Corner" in the January 1991 *Bar News*. Of particular interest was reference to our expanding Alternative Dispute Resolution Program in Wahkiakum County.

The Wahkiakum Bar Association (formally associated with the Cowlitz-Wahkiakum Bar Association) has for years been a leader in dispute resolution, lacking only a meeting place in which to carry out our program.

The ten percent seed money from the Legal Foundation of Washington was just the push our county commissioners needed to adequately fund construction of our service center. Overlooking the Columbia River and our beautiful Elochoman Slough Marina, the complex is an idyllic retreat from the sometimes burdensome activities of a busy work schedule. It is a place where the entire bar association, i.e, George, Fred and Bill can catch a few restful moments after a hard day of legal conflict.

With our newly formed YMCA, located in an adjoining structure, the entire community benefits from our program. Funded by the town of Cathlamet and an IAC grant, the Y includes physical activities like basketball, weightlifting, swimming, tennis and racquetball. Complete with an outdoor pool and natural wood trails to the east, it is a constant reminder of what can be accomplished when people pull together.

Business has been a little slow, which anyone with a new enterprise can attest is normal. We are actively soliciting our next alternative dispute resolution case and are thinking of offering premiums to the participants to help expand our service. As everyone knows, if our statistics don't justify our program, it may be cut from county funding, and we don't want to lose our new YMCA.

WILLIAM J. FAUBION
Cathlamet

More on AIDS, the Law and Morality

Editor:

I am writing in response to the letter of John W. Kydd entitled, "AIDS, Miscegenation and S & Ls" in the November 1990 edition. Although I agree with Mr. Kydd that AIDS, as a deadly disease, should be combated with any reasonable method that would inhibit its further spreading among our community, I have to disagree with a number of things he stated in his letter.

He criticizes Mr. Spurgedis and Mr. Carpenter ("Letters," *Bar News*, March 1990) for blaming the spread of AIDS on homosexuals. I thinks it's high time that the homosexual community accept the responsibility for their involvement with this disease. They were the first community to contract this disease, and because of their promiscuity, they spread it among themselves and to their loved ones and, through their donations of blood, to many innocent individuals. The homosexuals have also organized themselves and lobbied various governmental entities to force the treatment of AIDS patients differently from other sexually transmitted disease. Anyone who even dared to mention quarantine of AIDS patients was immediately labeled homophobic. The homosexual lobby, therefore, is responsible for further infiltration of the AIDS virus throughout the American community.

The government, however, I feel is ultimately responsible for surrendering to the homosexual lobby, and decriminalizing the act of sodomy. Somehow, the legislators were convinced that, as long as individuals consented, that immoral acts were legal. They have miserably failed us. It's no longer just the camel's nose that's within the tent, but he's trying to crawl into bed with us. The next thing, I suppose, is that we'll be trying to decriminalize other immoral acts such as sex with animals, sex with children, or sex with the dead. I hope the majority of the Bar Association still feels those acts to be immoral.

Mr. Kydd has analogized sodomy with sex between the races. I find no similarity between the two acts other than that they are both sexual and both were once against the law. Sexual relations between a man and a woman of different races is normal, whereas the other is immoral in that it is sex between the same gender. The fact that Mr. Kydd has not met any biblical scholar that can understand the English language does not justify sodomy. I totally disagree that the story of Sodom and Gomorrah had nothing to do with homosexual acts. It is because of the homosexual acts that God rained fire and brimstone upon Sodom and Gomorrah to the extent that it cannot even be found to this day. Genesis, Chapter 19, clearly shows that God's wrath was against Sodom and Gomorrah for the men's attempt to have homosexual acts with the angels of the Lord sent to remove any righteous people they found in those cities. I further contend that Mr. Kydd is wrong when he says there were not laws against sodomy in existence at the time of Christ in either Greece or Rome. It surely was against the law in Israel, which was part of the Roman Empire, since, according to Leviticus 18:22, the law given by

Moses unto the children of Israel, "Thou shalt not lie with mankind as with womankind. It is an abomination." In Leviticus 20:13 it states, "If a man also lie with mankind as he lieth with a woman, both of them have committed an abomination. They shall surely be put to death. Their blood shall be upon them."

In Paul's letter to the Romans, in the first chapter, he rightly describes the homosexual community and their attitude toward God, which has caused suffering and grief among the homosexual community, including AIDS. In verses 24-32 it states, "Wherefore God also gave them up to uncleanness through the lusts of their own hearts to dishonor their own bodies between themselves, who exchange the truth of God for a lie, and worshipped and served the creature more than the Creator, Who is blessed forever. Amen. For this cause God gave them up unto vile affections; for even their women did exchange the natural use for that which is against nature; and likewise also the men, leaving the natural use of the woman, burned in their lust one toward another, men with men working that which is unseemly, and receiving in themselves that recompense of their error which was fitting. And even as they did not like to retain God in their knowledge, God gave them over to a reprobate mind, to do those things which are not seemly, being filled with all unrighteousness, fornication, wickedness, covetousness, maliciousness; full of envy, murder, strife, deceit, malignity; whisperers, back-biters, haters of God, insolent, proud, boasters, inventors of evil things, disobedient to parents; without understanding, covenant breakers, without natural affection, implacable, unmerciful; who, knowing the judgment of God, that they who commit such things are worthy of death, not only do the same, but have pleasure in them that do them."

It is for the above clear teaching of God's word that I contest Mr. Kydd's letter. I myself do not condemn him, but leave that up to God. My prayer is that he and any homosexuals who read this letter would repent of their evil ways and follow the teachings of God.

THOMAS S. OLMSTEAD
Bellevue

East is East, and West is West. But North is Unsettled.

Editor:

SOS.! Someone please file a brief *amicus curiae* with the U.S. Court of Appeals in *U.S. v. North,* (DC, 1990) 910 F2d. 843 in order to rescue Lt. Colonel North and Admiral Poindexter from being illegally convicted and punished by a U.S. District Court which acted beyond its jurisdiction. Since it is the duty of the U.S. Court of Appeals as a matter of law to examine at all times, *sua sponte* its own subject matter jurisdiction and that of the court below, it becomes the duty of the bar, in its discretion and in appropriate cases, to call to the attention of the court any probable lack of jurisdiction. For some unknown reason jurisdiction has not been questioned by any party in *U.S. v. North.* Until that is done it becomes the duty of a true *amicus curiae* to do so.

Jurisdiction in *U.S. v. North*, supra, is lacking because of an unusual situation and long-forgotten law. The Joint Committees of Congress in a 40-day televised hearing and a 610-page report on the Iran-Contra affair legislatively tried, convicted and punished Lt. Col. North and Admiral Poindexter by producing an infamous bill of attainder prohibited by Article I, Section 9, Clause 3 of the Constitution. The consequence of this congressional mistake is that everything done is voided, including the U.S. District Court judgments against the colonel and admiral. See: *Watkins v. United States*, 354 U.S. 178 (1956).

The U.S. Navy has traditionally done its duty by having its ships and men when needed to "stand in mutual support" of each other. The U.S. Attorney

General has the exclusive prerogative to represent the Navy before all federal courts. 28 U.S.C. 516. So, as politically awkward as it might be, the U.S. Attorney General, on behalf of the Navy as well as on behalf of himself as the prime member of the bar, should forthwith challenge the jurisdiction of the U.S. Court of Appeals unless someone such as the ACLU does so. The charm of the bar doing its duty is that it can, in an impartial way, give the U.S. Court of Appeals an opportunity to dispose of this long, protracted judicial quagmire on the basis of sound Constitutional reason.

WILLIAM F. WHITE
Commander, USNR (Ret.)
Lake Oswego, Oregon

Muddling Through

Editor:

I read with great interest the "In the LAP" article in the September 1990 issue, "Mr. Mom, J.D." This article was written by a man who has obviously become sensitive to the pressures and obligations on parents who take responsibility both for their children and their jobs, and the incredible amount of work and professional conflict that [it] can involve as well as its rewards. He also states that such an arrangement requires a full-time working spouse capable of generating income and benefits.

He has come close to enlightenment, but he doesn't quite get it. There are, of course, literally millions of single, working parents—and yes, that does include fathers—who struggle alone without spouses or benefits to maintain their families with significantly less income than I suspect the author makes as a lawyer. The author has poignantly described their struggle. He has really *felt* what it is like to be in charge and responsible *all* the time. Still, his vision only encompasses his own situation with its comfortable second income and spousal emotional support. There are so many facing the same struggle who have neither.

DOUGLAS G. ANDERSON
Seattle

A New Section and Some New Ideas

Lowell K. Halverson

Four months ago the courts in Kansas City, Missouri, required all lawyers to notify their clients in civil cases of the availability of alternative dispute resolution (ADR) options. Plaintiff and defense counsel must furnish the client with a notice of dispute resolution services, which explains various ADR procedures and tells clients where they can call to find persons qualified to assist in resolving the dispute if they wish to forego a lawsuit. A Colorado Bar committee is drafting a provision for that state's Code of Professional Responsibility that would require lawyers to advise their clients of ADR options or face disciplinary sanctions. The provision is similar to a physician's ethical duty to inform a patient of less-intrusive methods of treatment. If adopted by Colorado's Supreme Court, Canon 6 ("competent representation") and Canon 7 ("zealous representation") would be amended to require advising the client of ADR options to litigation.

Our state is no stranger to the phenomenal rise in this emerging area of law practice. The Legislature currently has about 40 bills pending which, if enacted,. will build mediation alter-natives into disputes between state agencies and between citizens and state agencies.

The attorney general's office proposes to create a statewide consumer mediation network based in our ten largest cities. These offices would be staffed by a small cadre of professional administrators and a host of mediator volunteers especially trained to resolve consumer issues without turning to the courts. Several months ago, Wallace Loh, the new dean at the UW's School of Law announced his intention to develop a regional ADR academic research center. A symposium is planned for this September at the law school.

In short, ADR is a hot topic for the '90s. Not to be left behind, the board of governors recently suspended our six-month "waiting" rule in order to expedite the creation of the Alternative Dispute Resolution Section. The section has been flooded with new-member applications, even many from nonlawyers currently administering ADR (mostly mediation) programs. The section's agenda is full of "exploding edge of the law" ideas, reports its current chair, Tacoma attorney Claude Pearson. The section is studying topics such as the establishment of dispute resolution centers around the state, amendments to our ethical code similar to the Colorado provision, inter-lawyer arbitration panels, immunity legislation for lawyer-providers of ADR services, victim/offender mediation services and the recommendation of mandatory ADR training in the law schools. If you want to learn more about this "exploding edge" of the law, join the section for $20, or call Claude in Tacoma. His enthusiasm for ADR is definitely of the Johnny Appleseed variety. Members are joining from all over the state and from every type of law practice.

Which brings me to the next topic, our future:

Every five years or so an opportunity comes to each member of the WSBA to significantly influence the direction and content of bar programs for the next five to ten years. That time has arrived. Over the next five months your board of governors will be studying and debating what we, as an organized bar, shall become in this last decade of the twentieth century. At the conclusion of that debate, probably this July, the board will adopt a long-range plan that will have persuasive, if not binding, impact on future boards.

Developing a plan is no small task. We have almost 17,000 members, a staff of 65 dedicated professionals and a budget of over $6 million. We try to represent the interests of at least 20 diverse constituencies. In such a pluralist setting, planning for the '90s has consequences of strategic proportions. Without a long-range goal, we would be like a backlot quarterback playing in the Superbowl—the survival rate is low.

Two months ago, the board appointed the special Long-Range Planning Committee, ably headed by former WSBA president Bill Gates. We asked constituent organizations representing some of the incredible diversity within our bar to nominate "long rangers," lawyers they believe are futurists, who can help chart our way.

They are listed below because I hope to persuade you that your ideas are so important to them that you will call or write one of them now, *today*, before you finishing reading this *Bar News*.

They are:

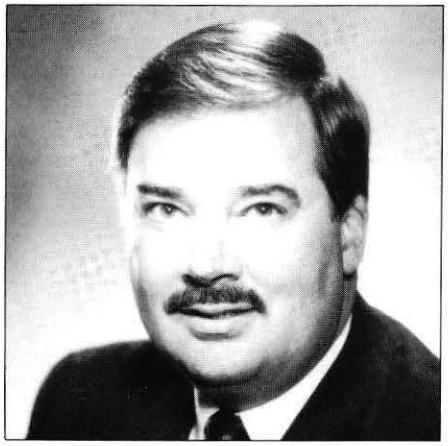
Chair	William H. Gates	Seattle
Current Governor	Alva C. Long	Auburn
Former Governor	Paul Stritmatter	Hoquiam
Former Governor	Julie Weston	Seattle
Seattle-King County Bar	Geoff Revelle	Bellevue
Government Lawyers Bar	Shirley Battan	Olympia
Wa Women Lawyers Bar	Karen Sayre	Spokane
WSBA Young Lawyers Div.	Robb Bakemeier	Seattle
Evergreen Legal Svces.	Teresa Kulik	Yakima
Wa State Trial Lawyers	Charles R. Jones	Seattle
Asian Bar Assn	Gary Maehara	Seattle
Wa Assn./Crml. Def Lwyrs.	Richard Hansen	Seattle
Loren Miller Bar	William A. Garling	Seattle
Superior Ct. Judges Assn.	Richard Pitt	San Juan Islands
Wa Assn./Prscting Attnys.	Andrew K. Miller	Kennewick
Fourth Congressional Dist.	Linda M. Waite	Richland
Fifth Congressional Dist.	Jean M. Conger	Colfax

Who we are, where we are headed as an organized bar, and why, are all fundamental questions that are up for grabs as we plan for this last decade. Regard each of these lawyers as your personal suggestion box. We picked them not just because they are knowledgeable but because they are accessible and want to hear from YOU. If you think the Colorado ethics proposal for ADR is crazy, then write and tell us why. If you have ideas on how the organized bar can serve your professional needs through the end of this decade then tell us how. But *tell us*. Or write me care of the bar office. I guarantee that your letters and opinions will be circulated and considered by the Long-Range Planning Committee.

Give us a chance to plan with you.

Russell K. Nelson

"What to Expect"



Dennis P. Harwick

As the new (relatively speaking) executive director of the WSBA, I'm often asked what my "agenda" is for the bar. Frankly, I don't have an agenda in the usual sense of the word. I don't have a political agenda. I don't have a programming agenda. But I do have a management agenda. If good management is good politics (and I believe it is), then that's my agenda for the WSBA.

It's not that I don't have some personal opinions about the goals for the legal profession. Under the veneer of a fiscally conservative old bank lawyer is something of a liberal who believes that lawyers must protect and improve our legal system, including access to justice for all, including the poor. Individual results won't matter much if the system doesn't work.

Back to what to expect from me. Assuming that the role of the WSBA is to serve the bar and protect the public—a delicate balancing act on occasion, *my job is to provide the best vehicle possible to implement policies and priorities established by the board of governors, serve the needs of the legal profession, and protect the interests of the public.*

I have set two principal goals this first year:

1. to emphasize the customer service role of WSBA staff, and
2. to convert the budgeting and reporting of the WSBA to a "functional" basis, i.e., so that each "function" (such as discipline or admissions) has an identifiable budget that includes both direct and indirect costs.

Customer Service:

One of my management philosophies is that "attitudes run downhill." I intend to preach a customer service philosophy ad nauseam to the staff.

Phones:

We have made a couple of changes already. *The switchboard at the WSBA has extended its hours to 8:00 a.m. to 5:15 p.m.* In order to expedite calls and avoid the occasional pileup at the switchboard (when no one seems to be answering), I hope to install direct phone numbers for staff members rather than routing calls through a switchboard.

We are also looking at a modified voice mail system (trying to avoid the labyrinth feeling some systems give) in order to expand the hours people can call the WSBA and leave messages.

Forms:

We are reviewing all of the forms that we use with an eye towards shortening, clarifying, using plain English (hard to believe, coming from a lawyer), and designing them from the user's point of view rather than the technical needs of the staff.

Expense Reimbursements:

Finally, we are modifying the expense reimbursement process to speed up the payment of expense vouchers. I received complaints about the length of time it took to reimburse volunteers even before I got here. It is my goal to turn around a reimbursement within ten days of receipt. Let me know how we do.

Financial Management:

My first major decision was hiring a new director of administration to replace the irreplaceable Serni. I took the opportunity to enhance the position by making it "director of administration/controller." Seem like an impossible job to fill?

125 applicants, all CPAs—many MBAs—didn't think so.

Pat Dieken has joined the staff in that capacity. Pat has had six years of experience with one of the Big ? accounting firms (by the time this reaches print, who knows how many will be left?). She comes to us from one of the banks where she was senior vice president and manager of staff services the past three years. Before that she was senior vice president and chief internal auditor for several years, so she brings a remarkable combination of administrative and financial skills to the job.

Functional Budgeting/Reporting:

Over the course of the next year, we will convert the budgeting and financial reporting process from a "line item" system (where certain kinds of expenses, such as salaries, rent, insurance, etc., are lumped together), to a "functional" system where each function, be it discipline, admissions, lawyer referral, CLE, convention, etc. will have a separate budget.

In order to make this kind of system work, WSBA staff will keep time sheets to determine a formula for allocating indirect expenses, such as rent, to each function. The main value of such a system is to allow the board and me to make meaningful decisions on how the WSBA spends its moneys vis `a vis its priorities.

My "ultimate goal" as executive director of the WSBA? To provide a competent, talented, well-motivated, hard-working, efficient staff that can carry out the policies of the board, serve the needs of the members quickly and efficiently, and protect the interests of the public.

In my spare time, I plan to play a little tennis.

OUR 10 MOST WANTED

Valuing a closely held business is a complex task requiring a thorough investigation of the facts, informed judgment, experience, and common sense. Obviously, one must have all the relevant facts. But knowing ***which*** facts are relevant and ***where*** and ***how*** to find them can be challenging—particularly in today's complicated legal proceedings.

Over the years we have designed comprehensive procedures to discover relevant valuation facts. These include a series of requests for documents leading from general to specific items. The initial request usually identifies a number of ***standard business documents*** with which appraisers and lawyers should be familiar, including . . .

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

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The Immigration Act of 1990—A New World of Possibilities

by **Pamela S. Cowan** *and* **Steven S. Miller**

On November 29, 1990, President Bush signed into law the Immigration Act of 1990 ("the Act"), containing the most sweeping revisions to American immigration law in 40 years. The Act, most provisions of which go into effect on October 1, 1991, significantly raises legal immigration from 540,000 to 700,000 immigrant visas per year and recasts much of the preference system for admission. Perhaps most important, Congress has recognized that immigration can serve the economic as well as humanitarian interests of the United States. The Act more than doubles the number of immigrant visas for people with special talents, skills, training or resources needed in our economy. It opens up significant new opportunities for unsponsored individuals and foreign investors. It also slightly increases family-based immigration, establishes stricter and less-protective deportation guidelines, and eliminates Cold War-inspired exclusion of individuals based on either political beliefs or sexual orientation.

Immigration Politics and Policy

Congress has struggled with shaping a national immigration policy that reflects the competing interests, values and visions of America's future for a decade. Groups from the AFL/CIO to the Chamber of Commerce to the U.S. Catholic Conference lobbied the Washington, D.C. lawmakers on this new act.

Immigration has often been a turbulent issue in American politics. The United States had open immigration until the late 19th century, when convicts and prostitutes were banned and the Chinese were excluded. In 1924 a national quota system was instituted which was drawn to favor immigrants from western and northern Europe. Today's immigration framework is built on the Immigration and Nationality Act of 1952, which maintained the National Origin Quota System over President Truman's veto. Such discrimination continued as U.S. policy until 1965. Four years ago, Congress attempted to stem the flow of undocumented workers to the United States with the Immigration Reform and Control Act of 1986 ("IRCA") which gave amnesty to millions of illegal aliens and tried to deter future illegal immigrants by imposing sanctions on businesses who hire undocumented workers.

In the debate on the Act, almost no one defended the current system. Illinois Senator Paul Simon, who helped salvage a compromise bill in the dying hours of the session, called it "rusty and unresponsive." Permanent residents have had long waits to bring spouses or children to join them. International business organizations competing in a world market place have found that U.S. immigration rules bear little resemblance to contemporary business needs or practices. Europeans who formed the bulk of immigration only a generation ago were shut out of most visas which went to those with immediate family in the United States. While this article briefly discusses family-related and other immigration issues, the focus is on the change in business categories where the Act has made the most significant changes.

Family Unification

Family reunification remains a central part of the new immigration scheme: 465,000 visas are available in each of the next three years; 480,000 visas will be issued annually thereafter. The basic family-related visa categories remain intact. Immediate family members of U.S. citizens (spouses, minor children and parents) are not subject to numerical limits. But each visa issued to an immediate family member will be counted against the family visas available in other family categories for each of the next three years, down to a minimum floor of 226,000. A major increase is made in the availability of visas for the badly backlogged category of spouses and minor children of permanent residents. Congress also gives relief to immediate family members of aliens who were legalized under IRCA by suspending deportations which would have split families, granting work authorization to family members, and providing 55,000 additional immigrant visas for this class for the next three years.

Immigration as a Boost to Business

Much more dramatic changes are made in the employment-related permanent visa categories. The number of visas is substantially increased, and categories

have been redefined and expanded. Immigrant visas give an individual a right to live in the United States on a permanent basis (compared to nonimmigrant visas which give the applicant rights to stay in the United States for specifically defined periods of time). Under the Act there are 140,000 "employment-related" immigrant visas. Currently only 54,000 visas are available annually for workers needed to fill permanent jobs. Under present law, these employer-sponsored immigrant categories are divided into Third Preference visas for "members of the professions" or persons with "exceptional ability" and Sixth Preference visas for all other skilled or unskilled workers. Both visa categories are typically backlogged. It now takes almost two years for a Third Preference visa and four years for a Sixth Preference visa to be available for a sponsored employee.

Employer-sponsored Immigrants

Under the Act, there are 40,000 visas for each of three employer-sponsored categories. The first group is termed "priority workers" and includes workers of "extraordinary abilities" in sciences, arts, education, business or athletics. These are individuals who have achieved sustained acclaim and recognition in their fields. There are no specific educational degree requirements. These individuals do not have to have a specific job offer and may file their own petitions through the Immigration Service rather than through an employer. "Priority workers" also includes outstanding professors and researchers who are recognized internationally. A private employer can qualify as a sponsor for researchers if it employs at least three full-time researchers and has achieved some documented accomplishments. These two visa groups will help Washington's high-tech and biotech firms hire world class talent to supplement their scientific ranks.

Intercompany transferees are also included in the priority worker category. Executives and managers of multi-national companies will now receive this priority without having to prove they are professionals based on the attainment of a degree. Further, the transferred individual need only have worked for the sponsoring company or affiliate one year out of the preceding three years. A labor certification need not be conducted for any alien who qualifies for a priority worker visa.

The second visa category is for professionals with advanced degrees or the equivalent and aliens of "exceptional abilities" who will benefit the national economy, cultural or educational interests. Exceptional ability is not defined but must be less than extraordinary ability, and more than the mere possession of a degree or license to practice. This group is important to American employers needing workers with advanced technical degrees for which there is a chronic shortage of U.S. citizens. The new definition also expressly adds business to the fields of arts and sciences for which "exceptional abilities" can qualify an individual for permanent visa issuance. The Congressional Conference Committee Report on the Act indicates the equivalency for an advanced degree requires a Bachelor's degree and five years' "progressively sophisticated" experience in the profession. Some aliens of "exceptional ability" will probably not be required to have a labor certification in this category, and the federal attorney general has the discretion to waive the requirement of a job offer from an American employer "in the national interest."

The third employer-sponsored visa category is for professionals with basic degrees, skilled workers and other workers. Most observers believe that because of the substantial increase in numbers, lumping professionals together with skilled and other labor will not cause a visa crunch in the near future. Congress, however, limits workers with less than two years of experience in their profession to 10,000 visas per year under the Act. This may result in their visa waiting time actually increasing. This category will require a labor certification demonstrating that there are not qualified-and-willing U.S. workers for the job.

For the first time since 1977, a category of immigrant visas is available for investors: 10,000 visas are available

annually for immigrants who are willing to invest $1,000,000 in new job-creating ventures, and filings to reserve priorities for these visas can be made immediately: 3,000 of the visas are reserved for investments in "targeted areas" located in rural or economically distressed communities. The investment must be for a new commercial enterprise which the alien has established and which employs at least ten full-time U.S. workers. The actual amount of the investment could range from $500,000 to $3,000,000 according to adjustments the U.S. Attorney General is authorized to make to encourage investment in targeted locations. This provision allows the United States to compete with Canada as a haven for some of the wealthy entrepreneurs seeking to leave Hong Kong and other troubled areas of the world.

The concept of allocating special visas for the wealthy was controversial. Proponents insisted it was an effective way to create jobs for U.S. workers, while others saw it as a repudiation of America's values of opportunity based on merit and effort. To address concerns about abuse of these unprecedented opportunities, special conditions and procedures are laid out in the law to deter "immigration-related entrepreneurship fraud."

Senators Kennedy and Moynihan were successful in securing additional immigrant visas for countries which have been disadvantaged under current law. Ireland, in particular, and other west European countries will be the primary beneficiaries of 40,000 visas per year for the next three years for aliens who have a firm commitment for employment in the United States for at least one year. After these three transition years, a permanent "diversity" category of 55,000 visas annually will be established for people from countries which have had relatively few immigrants in the recent past.

The labor certification process was not substantially changed, although a pilot program is to be set up under which ten occupations will be designated as "shortage or surplus" job categories. If a job occupation falls within one of these categories, individual labor certification procedures will generally not be conducted. The transition from the existing immigrant visa categories to the new ones is not perfectly clear. While old visa petitions can preserve priority dates with a filing under the employment-related categories, it is not clear what will happen to pending labor certifications.

Temporary Visas

For business-related temporary employment, the Act presents some problems, although several of the worst features in the earlier versions (high fees and highly restrictive lids) have been deleted. While a cap on nonimmigrant visas is established, the caps of 65,000 visas for professionals (H-1Bs) and 66,000 visas for lesser-skilled workers are set fairly high, and they should not bar anyone for several years. A new labor attestation provision, however, which appeared for the first time out of conference committee, will complicate the use of H-1B visas as an expedient means of meeting professional labor needs for temporary positions. Now employers will be required to document wages as meeting prevailing standards, the absence of adverse effects of working conditions and that there is no strike or lockout at the work place. Bargaining units must be notified if applicable and, if not, conspicuous posting of the job opportunity at the place of work is required. Even worse, the wage attestation must be approved by the Department of Labor, and a process will be established to allow persons to challenge the filing. What used to be one of the simplest processes for quickly bringing professional staff to the United States may be dramatically changed.

For the L-1 intra-company transferee the news is better. There are longer stays for qualifying executives and managers and a broadened definition of employees who qualify under the "specialized knowledge" category. For both H-1B and L nonimmigrants, the option of pursuing an immigrant petition while on a temporary visa is made less risky, and nonimmigrants no longer have a foreign-residency requirement.

"Trade" for purposes of the Treaty

Trader E-1 category is redefined to include services or trade in technology and Australia and Sweden are added as countries from which aliens can apply for E-1 Treaty Trader status.

New temporary categories are created for nonimmigrants with extraordinary abilities. A new O-1 category has been created for those in sciences, arts, education, business or athletics who will "substantially benefit the United States prospectively" and O-2 visas for those "who are necessary for assisting in a performance" of a candidate admitted under the above 0-1 category. A peer group consultation process is to be set up by the U.S. Attorney General to make these determinations. Athletes and entertainers are given the new visa category designation of "P," under which visas may be issued for periods of up to five years with an additional five-year extension.

Meeting Hardships

The Act also contains other wide-ranging provisions. Congress increased the number of visas available to natives of Hong Kong up to 10,000 visas annually, as well as provided an additional 12,000 visas for managers and executives and their families from U.S. businesses in Hong Kong. An additional 1,000 visas are available for Tibetans residing in India or Nepal. El Salvadorans in the United States are given special, temporary, protected status, and the issuance of family-sponsored visas for Lebanese nationals is expedited. The U.S. Attorney General is granted broad power to provide nationals from designated countries with temporary protected status due to ongoing conflicts or natural disasters which make their return unsafe.

The Act ameliorates the hardships that were created by the Immigration Marriage Fraud Act. Under that law, immigrant benefits were made conditional for a two-year period, pending the continuing success of the marriage. Now that period of successful marriage can be waived for a battered spouse or child who was not at fault in failing to meet the requirements. A bona fide marriage which was entered into during the pendency of deportation can now be used to secure permanent residency for the spouse without the requirement that the spouse live abroad for two years to qualify for entry.

Deportation and Exclusion

The Act provides for a comprehensive revision of the existing grounds for exclusion and deportation. Some of the most criticized and outmoded grounds have been repealed or modified. The bans based on ideology and sexual orientation are gone. No longer can aliens be excluded on the basis of past, current or expected beliefs or statements which are lawful in the United States, although the Secretary of State still has the power to exclude any alien on the basis of "compelling" foreign policy interests.

The enlightened approval on cold-war remnants contrast to hard-line treatment of drug and criminal offenders. Appeal deadlines are shortened; some discretionary relief and all judicial recommendations against deportations are eliminated; and "in absentia" hearings are made easier. The U.S. Attorney General is required to establish a definition of frivolous behavior including appeals for which attorneys may be sanctioned, including suspension and disbarment.

Conclusion

On the whole, the Act is a compromise. It will definitely serve the nation's economic needs better than the existing system. Most business-related provisions of the Act go into effect on October 1, 1991, but it is not too soon for businesses to begin corporate planning based on these new possibilities. In the Pacific Northwest the Act should help employers ease their chronic shortage of personnel in engineering, software technology and scientific research fields. The international movement of business personnel should be encouraged, and it will be helpful to Washington—the most trade-dependent state in the nation.

The United States' attraction for the world's best and brightest, and employers' increased opportunities to sponsor these individuals, should enhance America's future in the world market place. The debate over our country's choice of whom we invite to stay will continue to be a mirror of our values, strengths and aspirations as a nation. □

***Pamela S. Cowan** is the principal of a law firm devoted exclusively to immigration and naturalization law emphasizing the needs of business. She has served on the boards of the Washington Chapter of the American Immigration Lawyers Association and the WSBA International Law Section. She was active in the national task force which lobbied on the Act.*

***Steven S. Miller**, former counsel to the King County Council, now practices with the firm.*

Fire and Property Subrogation in Washington

Beware on what may seem a simple fire claim. Here is an introduction to a complex area of law in Washington.

by **Thomas A. Wolfe**

Probably the most overlooked and underestimated claim is that of the subrogated carrier which has paid a substantial loss and which then seeks to recover from the third-party tort-feasor. Not uncommonly, those against whom the claim is made do not view the subrogation action in the same manner as an injured party's bringing of a claim, thinking, for example, that the subrogation claim will not be pursued with the same vigor and intensity.

Caution is recommended with this view. As a general rule, the carrier, to the extent of payment, steps into the shoes of its insured with respect to the insured's rights against the third-party tort-feasor, and the fact of first-party insurance is not communicated to the jury. Therefore, with the exception of the rare circumstance where the court has precluded an insurer's subrogated right, there is slight difference between a subrogated and nonsubrogated claim, except that the carrier is often in a much better position to finance the litigation.

The source of subrogation comes from both the language in the policy and equitable principles. In theory, the effect of subrogation, besides the bringing of direct dollars back into the insurance company, is to place the risk of loss where it belongs, thereby, in the overall scheme, reducing the rates paid by the subrogating carrier's insureds.

Investigation

In property claims, the most common subrogation scenario seems to be that of fire, water or other damage caused either by a defective product or someone's negligence. A substantial number of these involve fire. In contrast to an automobile claim, the investigation and determination of cause is difficult in a fire because of the considerable destruction which often occurs and the frequent lack of eyewitnesses to the initiating event.

In most cases, an independent "cause and origin" investigation is made by both a private investigator and the public fire marshal. If a product is involved, a forensic engineer may be engaged, not only to examine the product in the laboratory, but also to view the product and the scene before its removal or change. As the facts unfold, other experts may be engaged to examine the possibility of liability against a particular third party.

An optimal investigation is one that is conducted as soon as practicable after the loss so that the scene is untouched and the evidence preserved. However, this can become burdensome on the adjuster, whose primary concern is to adjust the claim in a timely manner.

The carrier's right of subrogation does not arise until payment has been made. Hence, pursuit of the subrogation is typically initiated after the claim has been concluded, although the third-party tort-feasor or its carrier may be put on notice of the claim at a much earlier time.

Prefiling Considerations

In addition to evaluating the usual liability and causation issues in a tort case, there are several other prefiling considerations inherent in property and product liability subrogation cases.

Statutes of Repose

If the claim relates to alleged defective or improper construction on real property, the builder's six-year statute of repose under RCW 4.16.300-320 must be examined in order to determine the viability of any claim against the contractor, engineer, architect, and the like. If the claim involves a product defect, RCW 7.72.060 should be considered. That statute creates a rebuttable presumption that a product more than twelve years old is beyond its "useful safe life," as that term is defined in the statute, and hence the manufacturer may not be subject to a claim for harm it causes.

Insured's Uninsured Interest

Some additional questions need to be addressed. Does the insured have damages in excess of the deductible which were not compensated by insurance? For example, the limits under one or more coverages may have been reached. In a commercial loss, lost profits may not be covered, or, if they are, there may be a noncompensated additional claim for business interruption.

A homeowner's property case may involve the insured's damages for emotional distress. There may also be a claim for the intrinsic value of sentimental property under *Mieske vs Bartell Drug*, 92 Wn.2d 40, 593 P.2d 1308 (1979), and this type of damage is not covered by homeowner's insurance.

In 1979, the insurance commissioner set forth the requirement that all policies written in Washington contain an

amendatory endorsement to satisfy the court's holding in *Thiringer v American Motors*, 91 Wn.2d 215, 588 P.2d 191 (1978), that the insurance company's right to recover from a third-party tort-feasor comes only after the insured has been made fully whole for the loss. Insurance Commissioner's Bulletin 79-4. *Thiringer* involved a situation where the third-party tort-feasor had very limited insurance coverage and no other assets.

Most often, the uncompensated damages of the insured are not as great as the amounts paid by the carrier with respect to the claim. However, situations can arise where the insured recovers but the insurance company does not, even though the third-party tort-feasor has sufficient assets and/or insurance to pay the entire claim, and notwithstanding the fact that the carrier has paid the costs of the litigation.

As an example, assume a total claim of $120,000, $100,000 of which represents the actual dollars paid by the carrier, and $20,000 of which is reflective of the uncompensated damages of the insured. Assume further that the settlement value of the case is no more than $20,000 and it settles for that amount because the insured was substantially comparatively negligent, or because the issues of liability involving the defendant were thin. Under a strict *Thiringer* construction, the insured would be entitled to all of the settlement funds even though the carrier has been fully paying the costs of the litigation.

The foregoing, of course, presumes that the subrogating carrier did not object to the settlement as sanctioned in *Leader National Insurance Company v Torres*, 13 Wn.2d 366 (1989). In that case, the Washington Supreme Court held that an insured's release of a third-party tort-feasor over the objection of the carrier did not extinguish the carrier's right of subrogation where the tort-feasor was on notice of the subrogation claim and the settlement did not exhaust the tort-feasor's assets.

Sharing Arrangements

In order to circumvent the issue, the carrier and the insured can enter into a sharing arrangement at the outset of the litigation. The basis for the sharing arrangement is that new consideration is being offered over and above that in the original contract. The carrier offers to pay the costs of the litigation (win or lose) provided that the insured will share the net settlement recovery (after costs) on a basis proportionate to the amounts claimed by both the insured and the insurance company.

Such arrangements provide a commonality of interest between the insured and the insurance carrier, thus fostering cooperation and willingness on the part of the insured (who is usually a key witness) to prove the case. Also, in many instances, because the insured's uncompensated damages are relatively small in relation to the costs of experts and other expenses, such an arrangement provides an avenue for the insured to

recover in a situation where the insured's claim might not otherwise have been pursued at all.

Landlord-Tenant

Also of significance are several cases which often preclude the landlord's insurance carrier from subrogating against the tenant for a fire loss caused by the tenant's negligence: *Rizzuto v Morris*, 22 Wn.App. 951, 597 P.2d 688 (1979); *Cascade Trailer Court v. Beeson*, 51 Wn.App. 678 (1988). In these cases, the court has created the fiction that, because part of the tenant's rent goes to pay the landlord's insurance on the structure, the tenant is an implied coinsured of the landlord and the landlord's carrier may not subrogate against its own insured. These holdings reflect an apparent trend around the country.

Destruction of Product

Because of the substantial devastation which occurs at the fire scene, a product suspected of causing a fire may be damaged to an extent that even the most detailed examination may not reveal what the specific defect was that caused the malfunction. In Washington, the case of *Bombardi v Pochel's Appliance*, 10 Wn.App 243, 518 P.2d 202 (1973) may be helpful. In that case, a defective television set was alleged to have caused the fire, but it was virtually impossible to identify any malfunctioning part as the most probable cause of the fire. Nevertheless, three expert witnesses called by plaintiffs identified the television set as the cause of the fire. The court held that, under these circumstances, the trier of fact was permitted to infer that the product was defective because common experience indicated that this accident would not have occurred in the absence of a defect in the product.

1986 Tort Reform

The Tort Reform Act of 1986 eliminated *negligence per se*, except for a few instances, two of which were in cases involving electrical fire safety and the use of smoke alarms. The act also created the "empty chair" defendant, a concept which serves to reduce the amount recoverable from a target defendant. The complexities and effect of the act deserve treatment in a separate article. Such issues cannot be adequately addressed in this limited space.

Fire and product liability subrogation cases are not a trek for the novice. They present a number of issues over and above those encountered in the typical tort action. Substantial reliance is placed on liability experts of varying types on both sides of the case, especially where fire is involved, as much of the scene is substantially destroyed prior to investigation. □

Thomas A. Wolfe *is a principal in the Seattle law firm of Wolfe & Ormiston. His practice emphasizes the handling of fire, product liability and insurance and tort-related property cases in the state of Washington.*

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AMA3

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

Tacoma, Washington, February 15-16, 1991

Present: President Halverson and all the governors save Donald Curran, absent on other business. Also present: Robert Bakemeier (WSBA/YLD); C.C. Bridgewater (Prosecuting Attorneys' Assn.); Dennis P. Harwick (WSBA executive director); Frank H. Johnson (Legal Foundation of Washington); Judge James McCutcheon (Superior Court Judges' Assn.); Donna McNamara (SKCBA/YLD); Judge Dan Phillips (District Court/Magistrates' Assn.); Kristin Stred (Washington Women Lawyers); Lindsay Thompson (*Bar News* Editor/Clark County Trustees); Morton Tytler (Government Lawyers); and Robert Welden (WSBA general counsel).

Dictated, But Not Read, Department: There is danger in letting a fondness for obscure allusion get out of hand. For one thing, proofreaders, fearful of collapsing an elaborately contrived joke, may leave in what would otherwise leap out as a transcription error. Thus it came to pass that the last episode in this series ("The Board's Work," *Bar News*, February 1991, at 29-31) contained a number of errors arising from the editor having not read his text between its typing and mailing. Herewith some corrections: p. 29, column 2, first full paragraph, second line: the "o" after the dash should be "to." At page 30, column 1, last full paragraph, Governor Alva Long takes the board to task for "fiscal irresponsibility," not "fiscal-year responsibility." At page 31, first column, first full paragraph, Governor Ron Gould was not being flippant in the quote, "Easy come..., as said Ron Gould." The original dictation was, "Easy, comma, said Ron Gould." In the second full paragraph, Governor Steve Tubbs was not considering endorsing a government of either physicians or large, semi-aquatic mammals when he wondered, "Shall I vote for consistency or hippocracy?" It was, in fact, hypocrisy, and Tubbs avoided it. In the next paragraph, Governor Jeff Tolman should have been credited with "continuing his amazing mid-debate conversion," not conversation, from the day before. The editor regrets the errors, and has gone back to typing his own copy.

That out of the way, on with the business at hand.

The governors gathered in Tacoma, there to attend the local bar association's annual Lincoln Day Dinner. They bracketed that event with a wide array of topics considered in sessions closed and open. (Since some readers have thought the editor picks on the board for its habit of not talking about what they did in executive session and then writing about it in their individual newsletters, take note: while practice of listing the topics to be considered in executive session in the meeting agenda seems to have been a one-month experiment with glasnost ("The Board's Work," *Bar News*, February, 1991, at 29), President Halverson still announces what was talked about in summary form.)

And Don't Be Surprised If Sections Have to Start Submitting Loan Applications with Their Budgets: Executive director Dennis Harwick, a former bank lawyer, announced that Pat Dieken, former senior vice president and staff services division manager of Pacific First Bank, has been hired as director of administration/controller for the association.

The Ripple Effect Reaches the Bar: The association has been in touch with the major military bases in Washington to see if legal assistance is needed for armed forces members and their dependents. So far JAG lawyers are able to handle things, it was reported, though the situation will need watching as the war develops. Governor Jeff Tolman reported a conversation with WSBA Armed Services Committee chair John Morgan in which Morgan opined that the real need for lawyers will come after the conflict ends, when the various stays of the Soldiers' and Sailors' Civil Relief Act of 1940 begin to expire and leave people in all kinds of lurches. Some discussion followed of the act itself, and of current legislation to update it.

Yes, Sir, Looks Like You Get, Let's See...A Dollar Forty-Nine Back: *Keller v. State Bar of California*, 110 S.Ct. 2228 (1990) holds that dues paid by lawyers belonging to unified bar associations (like Washington's) may not be used on "ideological or political activities to which they object and which are not germane to the purposes of the bar association." Executive director Dennis Harwick told the board he had received WSBA's first Keller request for a rebate and was trying to sort out a procedure for handling it. The preliminary issue is whether the objecting member has to object to a particular activity of the bar association, or just object to a broad general area, like legislative lobbying. The board kicked the question around a bit, then asked Harwick to bring back a formal plan for dealing with it in March.

It's Like Assembling Christmas Toys; When All Else Fails, Read the Bylaws: Absent governor Don Curran did just that, and in a letter pointed out that Article VI, Section 1 of the WSBA bylaws requires the board to have a regular meeting the day before the opening session of the annual meeting at the place where the annual meeting is held. Because the 1991 bar convention is scheduled to be in San Diego, the annual meeting has been scheduled for September 6, 1991, in Seattle. Did this revelation mean the board would have to meet September 5, in Seattle, instead of San Diego a week later? WSBA general counsel Bob Welden thought so. After some discussion which resolved nothing, Governor Alva Long urged thinking about the matter and the political implications of the governors going to San Diego at WSBA expense if neither their meeting nor the annual meeting had to be held there. He moved to table the matter, and his motion passed 8-1, Governor John Schultz opposed.

The Surplus is Less Plus: The board considered the annual report of the association's auditors, BDO Seidman of Seattle, for fiscal 1990. The main change from the preliminary report by treasurer Ron Gould ("The Board's Work," *Bar News*, February, 1991, at 30) was a reduction in the surplus for obsolescence of inventory. That dropped the year end surplus from $297,522 to $268,297.

Discipline: WSBA disciplinary counsel Lee Ripley reported on the disciplinary process with a bunch of charts and graphs showing annual increase in complaints filed in

his office. The main cause of the increase is the numerical increase of lawyers in Washington. A lengthy Q&A between the board, Ripley, and disciplinary board chair C.C. Bridgewater followed. Then the board recessed for lunch with the leadership of the local bar association and the board of the Washington Women Lawyers, where WWL president Kristin Stred called on the WSBA board to do something about the findings of the State Gender and Justice Task Force.

The Secret Is to Ask for Lots of Money; Sacksful Are Best: The Computerization of Law Committee came to the board with a rehash of a demonstration Pasco lawyer Ed Hiskes did a couple of years ago for his plan to access the Revised Code of Washington and the appellate reports by computer, this time to be attached to a computer "bulletin board" system which has been running on a limited basis in the Seattle area. The plan was to buy some equipment to make it possible to try it on a larger scale: $15,000 worth. Funny, that's just how much the board had budgeted for computerization projects this year. And out went the committee, with the money. What was interesting about the discussion was how much less rigorous was the review of the request than, say, the 100-times-smaller request for funding a committee on literacy last month.

Don't Leave Out Thrifty, Brave, Clean and Reverent: The Alternative Dispute Resolution Section took another tack in trying to get its codes of conduct for arbitrators and mediators adopted. The Zen approach ("Just do it. Just do it.") having failed, this time they took the flying wedge approach, hauling in 14 section leaders to support the proposals.

The board was not impressed. Governor Jeff Tollman wondered what good these proposals would do lawyers. He thought the codes of conduct, which require arbitrators to be things like competent, diligent and impartial, and make failure to be so a disciplinary matter, "just a bunch of new land mines." "This is a map of where they are," one of the ADR phalanx replied. "This tells you where they are." Leaving aside whether that was begging Tolman's question, the board had an extended colloquy with the section members about the proposals. Ever so politely, Governor Ron Gould took them apart, exposing problems in potential application to arbitration and mediation. "These rules aren't perfect," one of the ADRites said. "But if you don't let a child out in the world, (s)he'll never grow into a whole person." That's as may be, Gould replied, but we don't send preliminary drafts of court rules to the Supreme Court. But they're not that preliminary, came the rejoinder. We've spent two years on these drafts. Fine, the board replied, voting 7-1 to refer them out to the sections and other interested parties for comment. Governor Jeff Tolman voted no.

Scrooge Lives: Last fall, after attending a Superior Court Judges' Association meeting, Governor Jeff Tolman wrote the Continuing Legal Education department querying the financial impact of supplying WSBA deskbooks to superior court judges at cost. The CLE department came back with a proposal which didn't answer the question asked, but instead suggested extending a little-used CLE tuition waiver for judges to administrative-law judges and court commissioners, offering CLE deskbooks to judges at a

discount from the full fare, and cutting off the association's free distribution of deskbooks to the state's law schools and county law libraries. They'd get to pay the judges' discount rate.

The board unanimously approved a Lem Howell motion to extend the tuition waiver to full-time judges and commissioners not previously covered but not to the ALJs. A motion by John Schultz to let judges buy CLE deskbooks at cost also passed unanimously. The board also passed a resolution praising the work of UW professor Victor Hanzeli, chair of the CLE board, in light of his recent resignation for health reasons. They ignored the proposal to cut off the law libraries.

Another Check on the List: President Halverson's shopping list of goals for 1990-1991 ("The President's Corner: Fast Forward to Flashback—A Tale for Our Time," *Bar News*, January 1991, at 9) moved ahead as the board unanimously approved the Lawyer-to-Lawyer program and a $3,128 budget. The program will try to match up lawyers admitted to practice in 1991 with lawyers who've been in practice at least five years. The idea first surfaced as part of a long-range report on improving professionalism in the bar by former WSBA governor Steve DeForest, and it will be directed by the Young Lawyers Division. It will be explained in detail in the April 1991 *Bar News*.

While we're at it, Governor Lem Howell commented, the Young Lawyers Division and Lawrance Edwards of Seattle deserve praise for their successful Minority High School Students' Prelaw Conference February 8-9. The event gave about 100 high school students a taste of the law as a professional opportunity and was widely reported in the press. A resolution to that effect passed unanimously.

No, You Still Need a Whistle For That: The Domestic-Relations Task Force, chaired by lawyer Marvin L. Gray, Jr., brought its final report to the board. Its recommendations for action by the board were these: That the board continue to support and encourage pro bono representation of the indigent in family law cases, "but without the illusion that greater efforts will produce sufficient volunteers to meet the need in this area. The board should continue to support the efforts of the legal service agencies to secure adequate funding for their work." The board should encourage sections and committees of the bar to constantly review how the family-law system works and suggest changes and improvements. The board should support public funding for "courthouse facilitators and for investigators and mediators in family-law cases, as a means of ensuring meaningful access to the courts by indigents." Increased ADR methods should be encouraged, but no steps should be taken to endorse or support limited licensure of paralegals in the family law area.

A lengthy discussion followed as the board considered how to implement the report's recommendations. Particularly nettlesome was the question of the qualifications for, and scope of, employment of courthouse facilitators: will they just be traffic cops, directing pro se clients to where they need to get things done and seeing that they have all their forms filled out, or will they, de facto, be practicing law? A motion to require that the facilitators be lawyers passed 7-1-1, Governor Tom Chambers voting no and Governor Alva Long abstaining. A proposal to encourage more trials by affidavit was also deleted; a proposal by Jeff Tollman that

the board go on record opposing limited licensure passed 8-1, Governor Alva Long opposed ("Just Call Me Eight to One Long," he joked). Finally, after going through all the recommendations, the board voted to create an implementing committee, chaired by task force members Kimberly Prochnau and Mary Wechsler, and peopled by as many of the task force as want to stay on and augmented by some presidential appointments, to develop ways to carry out the recommendations.

Well, President Halverson noted at the end of the matter, it only took two former U.S. Supreme Court clerks (Gould for Justice Stewart, 1974-1975; Gray for Justice Harland, 1970-1971) two and a half hours to get through two pages of material. Wow, said Jeff Tolman, of their lofty qualifications, is that like being able to hear things only dogs can hear?

San Diego, Here We May Be Coming: The board unanimously approved some clarified and more-restrictive policies regarding reimbursement of convention and travel expenses of the board, WSBA staff and anchorites like the *Bar News* editor. Governor John Schultz moved that the board members pay their own way to San Diego this fall; after an unedifying discussion, the motion was defeated 2-7, Schultz and Long voting aye.

NOTICES

Reporting Call-ups to the WSBA

Active members of the WSBA who are, or have been, called to active military duty should consider notifying the Office of Disciplinary Counsel of their call-up. Such a notice will permit the WSBA to give anyone making an inquiry that they may not be able to contact the lawyer because the lawyer has been called to active military duty. The Office of Military Council can be reached at (206) 448-0307.

Military Law Panel Being Formed

Seattle's Draft and Military Counseling Center (SDMC) and the National Lawyers' Guild are organizing a panel of attorneys willing to represent or advise persons in the military facing crises because of the war in the Persian Gulf. Attorneys throughout the state are encouraged to participate.

Clients include military personnel who have received orders to report for duty immediately and need legal advice on their options; have already refused to report for duty and are AWOL, or are considering going AWOL; want to file for conscientious-objector status; want to seek other forms of discharge; or need some representation in court martial proceedings.

The SDMC and the Guild are offering training to all attorneys and legal workers interested in working on these cases. There are a number of tasks, ranging from full representation to research on limited issues. Attorneys will be contacted on a rotating basis, and they are offering their services on a sliding fee scale or pro bono. For more information, contact Julia Devin in Seattle at (206) 224-0101, or write to the Military Law Panel, 615 Second Avenue, Suite 100, Seattle, WA 98104.

Notices of Interest to Association Members

Disciplinary Notices

Judicial Censure: By decision dated January 4, 1991, the Commission on Judicial Conduct censured the Hon. **Janice Niemi**, pro tem judge of the Superior Court of King County for serving as a pro tem judge at the same time she was serving as a member of the Washington State Legislature. The Commission found violations of Cannons of Judicial Conduct 1, 2(A), 7(A)(1), 7(A)(3), and 7(a)(4) and ordered Niemi not to serve as a pro tem judge until such time as she is no longer a member of the Legislature. Six members of the Commission voted for censure; four filed a concurring opinion indicating they agreed with the findings and conclusions and the corrective action mandated but thought the sanction should have been a reprimand. They maintained that "respondent's conduct is more than a minor violation of the Conduct of Judicial Conduct, as a reprimand is defined in WAC 292-08-030(19), but that respondent's conduct does not fall to the level of a censure in all its elements as defined in WAC 292-08-030(2)."

Censure: Spokane attorney **William R. Norton** (admitted 1983) was ordered to receive a letter of censure under the terms of a stipulation for discipline approved by a review committee of the disciplinary board. The letter of censure resulted from Norton's willful failure to pay costs and expenses assessed against him as a result of a previous disciplinary proceeding.

Reprimand: Spokane attorney **Arthur H. Toreson, Jr.** (admitted 1974) has been ordered reprimanded pursuant to his stipulation to discipline, based upon his conduct in commingling his funds with client funds in his client trust account; failing to direct his staff to deposit unearned advance-fee deposits into his client trust account; and allowing client funds to be removed from his trust account before they were earned.

Suspension: Seattle attorney **William J. Boyce** (admitted September 22, 1969) has been ordered suspended for 30 days, effective November 15, 1990, based upon his neglect of two client matters. The suspension will be followed by two years of probation, on condition that Boyce obtain counseling in professional

office practice and management, and that his files be reviewed, on a quarterly basis, by an attorney designated by the WSBA, to determine that his files are maintained in a professional manner and that procedures have been established for regular contact with his clients.

Suspension: Lynnwood attorney **Patrick M. Curran** (admitted 1978) has been ordered suspended from the practice of law by order of the Supreme Court entered December 13, 1990. Curran was suspended on an interim basis in January 1989, following a felony conviction. In consideration of Curran's interim suspension, the Court ordered Curran suspended for six additional months from the date of oral argument before the Court. Therefore, Curran was reinstated to active status on December 27, 1990. The discipline was based on a finding that Curran's conduct as evidenced by his conviction on two counts of vehicular homicide constituted conduct reflecting a serious disregard for the rule of law.

Suspension: Tacoma attorney **Robert P. Klavano** (admitted 1972) was suspended from the practice of law for thirty days by order of the Supreme Court entered November 14, 1990. This suspension will be effective after the removal of current suspensions for nonpayment of dues and failure to comply with the continuing legal education requirements of APR 11. The discipline was based on Klavano's failure to diligently represent a client's interests, his failure to advise his client of his withdrawal from the client's representation, his failure to advise his client of his suspension from the practice of law and his failure to cooperate with a disciplinary investigation.

Nondisciplinary Notices

Interim suspension: By Supreme Court order entered December 6, 1990, Seattle attorney **Robert Ager** (admitted 1948) was ordered suspended from the practice of law pending the outcome of disciplinary proceedings effective immediately.

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

Interim suspension: Seattle attorney **Kimberlee Ann McDonald** (admitted 1981, Bar no. 11897) was ordered suspended from the practice of law pending the outcome of disciplinary proceedings against her by order of the Supreme Court entered December 4, 1990.

Please note that this is *not* Renton attorney Kimberly Anne McDonald (Bar no. 17602). See also "Letters," this issue, page 7.

Interim suspension: By Supreme Court order entered December 24, 1990, Montesano attorney **Daniel J. Tighe** (admitted 1975) was ordered suspended from the practice of law pending the outcome of disciplinary proceedings against him based upon his felony convictions.

Note:
Interim suspensions are pursuant to RLD title 3 and are not disciplinary sanctions.

Public Notices

"Usury rate": In re RCW 19.52.120(1): Legal Interest Rates: The average coupon equivalent yield from the first auction of 26-week treasury bills in February 1991 is 6.91%. The maximum allowable interest permissible for **March 1991** is therefore **12.00%**. Compilations of the average coupon equivalent yields from auctions of 26-week treasury bills appear in the *Bar News* on page 39 in October 1987 for 1982-1984; on page 37 in June 1989 for 1984-1985; and on page 51 in June 1990 for 1985-1990.

Connecticut Nonresident Capital Gains Tax: As of January 1, 1990, nonresidents who realize capital gains from the sale or exchange of real property located in Connecticut are subject to the seven percent nonresident capital gains tax. Those who sold real

property in Connecticut during 1990 must file Form 394R if they recognized a capital gain on that sale for federal purposes. If such persons were residents of Connecticut for any part of 1990, they may also be liable for tax on capital gains, dividends, and interest income returned during their period of residency. To obtain a brochure on Form 394R or to obtain more information, contact Elaine M. Leon, Director, Taxpayer Services Division, 92 Farmington Avenue, Hartford, CT 06105; telephone (203) 566-8520.

Nominations sought: The local chapters of the Washington Association of Legal Secretaries will have an annual Bosses' Night on various evenings, the date of which is different for each local chapter. During Bosses' Night, three awards are usually given: Boss of the Year, Member of the Year and Legal Secretary of the Year.

On May 7, 1991, the Greater Seattle Legal Secretaries Association (GSLSA) will hold its annual Bosses' Night. Unfortunately, during the past two years at our Bosses' Night celebrations, while there have been awards for Boss of the Year and Member of the Year, there has been no Legal Secretary of the Year award. This is not due to the fact that there are no legal secretaries worthy of the award, but because of the manner in which the Legal Secretary of the Year is chosen. Each nominee for this award must be nominated by a letter written by his/her boss which states his/her qualifications to be Legal Secretary of the Year. It is our assumption that the lawyer/bosses are not aware of the procedure. We are taking this method to alert all lawyer/bosses who have secretaries who are members of the GSLSA to write a letter of nomination.

Following are the rules:

1) Candidate must be a member in good standing of GSLSA.

2) Candidate must have been a legal secretary for five (5) years.

3) Five years must pass between the date that a member is elected Legal Secretary of the Year and is nominated for this award again.

If you believe that your secretary deserves to be Legal Secretary of the Year, submit a letter listing all of the qualifications and why you believe (s)he deserves this award. The letters should be double-spaced and limited to two pages. Do not mention the secretary by name, but paperclip a separate piece of paper, which contains your and your secretary's name, to the letter. Send the letters to Esther Brown, c/o Perkins Coie, Washington Mutual Tower, 1201 Third Avenue, Seattle, WA 98101-3099. The letters are due by April 12, 1991.

The boss of the winning secretary

will be notified before the meeting so (s)he can be assured of attending Bosses' Night.

By the way, any lawyer/boss who does not have a secretary who belongs to the GSLSA, but would still like to be involved, may contact Esther Brown as three disinterested judges are needed to choose the winning letter.

WSCPA Litigation Resource Bank now available: The Litigation Services Committee of the Washington Society of Certified Public Accountants (WSCPA) has developed a Litigation Resource Bank (LRB), a reference tool for attorneys, CPAs, arbitrators and industry practitioners who need litigation support and expert witness services.

The LRB contains details about the litigation services provided by WSCPA members who choose to participate. Users of the LRB can easily obtain the addresses and phone numbers of CPAs experienced in the subject area and in the industry that the user seeks. LRB data will be kept up-to-date, and new listings will be published annually.

If you want your name and address to be placed in the user distribution list, contact the WSCPA offices at (206) 644-4800 or Jim Erickson at (206) 451-8400.

Evergreen Legal Services, public meetings: 1991 quarterly meetings of the board of directors of Evergreen Legal Services, a 501(c)3 not-for-profit organization which provides civil legal services to eligible low-income clients are scheduled on the following dates: February 23, April 20, July 27 and October 19.

These public meetings commence at 9 a.m. and are usually held in the vicinity of the Seattle-Tacoma Airport for cost economy reasons and to accommodate board member travel.

For specific meeting site information, which may vary from meeting to meeting based on space availability, call Bev Miller, (206) 464-5933 or toll-free at (800) 542-0794.

Contest announced: The American Bar Association's (ABA) Standing Committee on World Order Under Law has announced the topic for the fifth annual Bruno Bitker Essay contest: "What are the limits on the use of force under the United Nations Charter as originally intended by the framers, and to what extent has the practice of member states and the United Nations itself been consistent with those intentions?" The first prize is $1,000, and the second prize is $500.

The contest is in memory of the late Bruno Bitker, a Milwaukee lawyer who served as chairman of the standing committee. Bitker devoted his life to the quest for peace and justice through law, and he was a leader in many human rights issues, including U.S. ratification of the Genocide Convention.

Members of the ABA and students at ABA-accredited law schools are eligible to enter. The contest will be judged by a panel of scholars active in the field of international human rights.

Essays will be judged on the quality and force of the legal and policy analyses, elegance and felicity of expression.

Entries should not exceed 5,000 words, including footnotes. Textual footnotes should be kept to a minimum. Entries should be typed double-spaced (including footnotes) on white paper, must be postmarked no later than June 30, 1991, and sent to Bonita J. Ross, ABA Standing Committee on World Order Under Law, 1800 M Street N.W., S-200, Washington, DC 20036. For further information, contact Ross at (202) 331-2277.

Vietnamese Court Interpreters Certified for State Courts: Vietnamese-speaking litigants in Franklin, King, Spokane and Thurston counties will have a better chance of being understood in court, thanks to recent state certification of nine court interpreters.

Of the 15 candidates who took a special, two-step state exam held last year, six are now fully certified to work in state courts. Another three were awarded provisional certification. They will be retested two years from now. They are: *Franklin:* Minh-Anh Hodge, Pasco; *King:* Joseph Pham, Lynnwood; Cuong Phung, Seattle; Angelique Nguyen Wiegand, Bothell, David C. Williams, Seattle; Ton The Chau, Seattle; *Thurston:* MyKhanh Nguyen, Olympia; Vuong Nguyen, Olympia; *Spokane:* Toi Mulligan, Spokane.

Certification of court interpreters is required by state law passed by the state Legislature in 1989. Passage came after an audit of state courts showed numer-

ous errors by those hired to interpret court proceedings. The findings paralleled results of a similar study in California, where it was discovered that uncertified Vietnamese interpreters were changing and distorting testimony.

At stake is fairness for the state's more than 25,000 Vietnamese residents who, in recent years, have created a population pool that deepens annually. A majority of the 2,500 new refugees who enter the state each year are Vietnamese, according to state Division of Refugee Assistance Services, DSHS figures.

Vietnamese is spoken daily in state courts and administrative hearing offices. Without accurate interpreting, Vietnamese litigants, unable to understand attorney arguments or statements made by witnesses testifying against them, may simply remain silent during their trials. Interpreters who passed the state's oral and written tests proved that they are both skilled in interpreting techniques and fully bilingual in both English and Vietnamese.

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

On January 7, the State Law Library began circulating the video collection of the Office of the Administrator for the Courts (OAC), which has over 150 titles and over 175 videos. A catalog of titles is available from OAC; call Judicial Education at (206) 753-3365, ext. 3248, for a copy.

◦ Agricultural laws and legislation: *Agricultural law: a lawyer's guide to representing farm clients,* by J.W. Looney, et al. Chicago, IL: ABA Section of General Practice in cooperation with the National Center for Agricultural Law Research and Information, Robert A. Leflar Law Center, University of Arkansas School of Law, 1990. Pp. 635. *KF1682.A78 1990.*

◦ Jury selection: *Jury selection: the law, art, and science.* 2d ed., by Jordan, Walter E. and James J. Gobert. Colorado Springs, CO: Shepard's/McGraw-Hill, 1990. Pp. 580. *KF8979.J67 1990.*

◦ Law offices: *The business of law: a handbook on how to manage law firms.* 2d ed. Revised ed. of *The business of law* by Emily Couric. Larry Smith, editor. Englewood Cliffs, NJ: Prentice Hall Law & Business, 1990- . lv. (loose-leaf). *KF318.C67 1990.*

◦ Torts: *Lawyers are killing America: a trial lawyer's appeal for genuine tort reform,* by Wills, Robert V. Santa Barbara: Capra Press, 1990. Pp. 137. *KF1250.W55 1990.*

◦ Trial practice: *The trial lawyer's book: preparing and winning cases,* by Jonathan M. Purver, et al. Rochester, NY: Lawyers Co-operative Pub., 1990. Pp. 748. *KF8915.T7 1990.*

Board of Governors Elections Due

Lawyers residing in the First and Fifth Congressional Districts, as well as in King County, please note:

Members of the Board of Governors of the State Bar to represent those districts, for three-year terms ending in September 1994, are due to be elected this year. Expiring in September 1991 are the current board terms of Jeffrey L. Tolman (First District), J. Donald Curran (Fifth District) and Ronald M. Gould (King County at Large).

Article III of the Association Bylaws provides that any active member in good standing, except a member previously elected to the Board of Governors, may be nominated for the office of governor from the district in which he or she resides upon a petition signed by at least twenty, but not more than thirty, active members also residing in the district.

Nominating petitions may be obtained from the Bar office, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599. The petition must be filed with the executive director at the Bar office by 5 p.m. on Tuesday, April 30, 1991.

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

CALENDAR

March

2 New Visions of Professionalism in Law and Legal Education. *Sponsored by: Gonzaga Law Review.* For information: Michelle Dimond, (509) 328-4220, ext. 3715.

8 Real Estate Foreclosures and Forfeitures, Seattle. *Sponsored by:* SKCBA. *For information:* Monique Gill, (206) 624-9365.

8 Sex, Laws and Videotape, SeaTac. *Sponsored by:* WSBA CLE. *For information:* (206) 448-0433.

9 Introduction to Computer-assisted Legal Research, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

14 The Pacific Rim Federal Tax Conference VI, Scottsdale, AZ. *Sponsored by* WSBA CLE: *For information:* (206) 448-0433.

15 Sex, Laws and Videotape, Richland. *Sponsored by:* WSBA CLE. *For information:* (206) 448-0433.

19 Avoiding Environmental Liability in Washington, Bellevue. *Sponsored by* National Business Instiitute, Inc. *For information:* (715) 835-7909.

21-22 Second Annual International Law Institute, Seattle. *Sponsored by:* WSBA CLE, WSBA and SKCBA International Law Sections. *For information:* (206) 448-0433.

22 Sex, Laws and Videotape, Portland. *Sponsored by:* WSBA CLE. *For information:* (206) 448-0433.

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

27 Workers' Compensation in Washington: "Issues and Answers," Vancouver, WA. *Sponsored by:* National Business Institute, Inc. *For information:* (715) 835-7909.

28 Growth Management, Portland. *Sponsored by:* WSBA CLE and Real Property, Probate & Trust Section. *For information:* (206) 448-0433.

29 Growth Management, Spokane. *Sponsored by:* WSBA CLE and Real Property, Probate & Trust Section. *For information:* (206) 448-0433.

April

4-5 Midyear Environmental Law and Management Conference, Seattle.

5 Growth Management, Seattle. *Sponsored by:* WSBA CLE and Real Property, Probate & Trust Section. *For information:* (206) 448-0433.

6 Washington Association of Legal Secretaries Annual Legal Education Seminar Workshop Series, SeaTac. *For information:* Elizabeth Smith, (206) 223-1313.

13 Advising Clients on Steps Necessary to Comply With the Americans With Disabilities Act , Seattle. *Sponsored by:* UW CLE. *For information:* (206) 735-0059.

13 Land Reform in Third World and Centrally Planned Economies, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 735-0059.

15-18 Association of Legal Administrators (ALA) 20th Anniversary Educational Conference, Nashville. *Sponsored by:* ALA. *For information:* John Marquart or Nancy Guthrie, (708) 816-1212.

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

20 Washington Association of Legal Secretaries Annual Legal Education Seminar Workshop Series, Spokane. *For information:* Elizabeth Smith, (206) 223-1313.

20 Board of Directors' meeting, Evergreen Legal Services. *For information:* Bev Miller, (206) 464-5933 or (800) 542-0794.

20 Law of the Elderly, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 735-0059.

27 Defending DWIs—Winning Strategies for the Nineties, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 735-0059.

May

3 Financial Planning for Lawyers, Accountants and Their Clients, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 735-0059.

11 Fifth Annual Family Law Institute, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 735-0059.

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

18 Securities Regulation for the General Practitioner, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 735-0059.

June

1 Commercial General Liability Insurance—Selected Issues in Primary and Excess Coverage, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 735-0059.

8 Maritime Commerce in the Puget Sound Region, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 735-0059.

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

22 Buying or Selling a House, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 735-0059.

July

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

27 Board of Directors' meeting, Evergreen Legal Services. *For information:* Bev Miller, (206) 464-5933 or (800) 542-0794.

August

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

September

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

October

19 Board of Directors' meeting, Evergreen Legal Services. *For information:* Bev Miller, (206) 464-5933 or (800) 542-0794.

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

LAWYER COMPENSATION

The Big Apple Pays Big Bucks

With an average starting salary of $59,500, New York City leads the nation in starting salaries for attorneys in private practice. Cleveland and Los Angeles tied for the second-highest average starting salaries at $51,000, and Chicago came in third with $48,000, according to an annual salary survey featured in the November issue of the American Bar Association's *Student Lawyer* magazine.

The 16th annual attorney salary survey, conducted by the Chicago-based David J. White & Associates, looked at lawyer salaries in 16 metropolitan areas. White divided the salary levels for attorneys from each major city into low, average and high figures, and calculated an average for each level, eliminating extremes in all categories. The published survey includes ranges for starting lawyers, those with one and two years of experience and partner/general counsel.

The cities reporting the lowest starting average in the 16-city survey were Denver and Detroit: $37,000.

The Kansas City/St. Louis area posted the biggest gain with starting salaries increasing 13.51 percent over last year's, from $37,000 to $42,000; the Dallas/Ft. Worth metropolitan area saw an 11.84 percent increase from $38,000 to $42,000; and in Milwaukee salaries increased over 10 percent from $37,500 to $41,500.

In most cities, White's figures show lawyers in law firms earning at higher levels than those working in corporate legal departments. New York still leads in average starting salaries for in-house corporate counsel at $45,000; Los Angeles and Atlanta follow with average salaries of $44,000 and $41,000 respectively.

White based the survey results on 2,802 responses from questionnaires sent to more than 6,200 law firms, corporations and insurance companies in the U.S. The data were collected from February through June 1990. Participants were asked for their salary projections, without bonus, for July 1, 1990. Bonus amounts are not included in the compensation figures.

Cities included in the *Student Lawyer* survey are: Atlanta, Baltimore, Boston, Chicago, Cleveland, Dallas/Fort Worth, Denver, Detroit, Kansas City/St. Louis, Los Angeles, Milwaukee, Minneapolis/St. Paul, New York City, Philadelphia, San Francisco and Washington, D.C.

Student Lawyer also conducted an informal survey of entry level salaries paid by legal employers. The results show supreme court clerks in Maryland, Illinois and California earning salaries of $30,400, $33,998 and $33,924 respectively. Entry level attorneys working for the National Association of Public Interest Law in Washington, D.C., earn $25,000. The Legal Aid Society in New York City pays law school graduates $29,000 with an increase to $31,500 when they pass the bar. The American Medical Association in Chicago starts experienced staff attorneys at $45,000-$49,000, and the U.S. Department of Justice pays entry level attorneys $29,891.

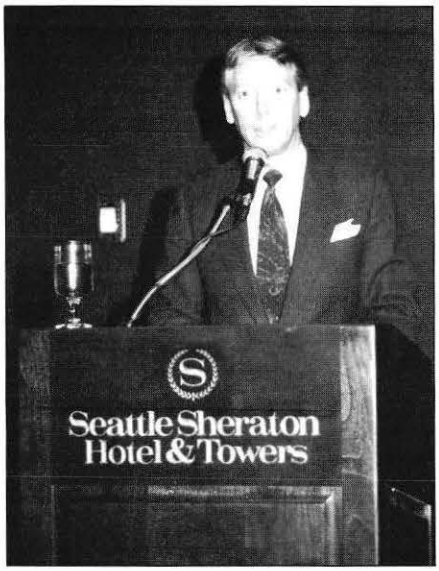
Student Lawyer is published monthly by the ABA Press for members of the ABA Law Student Division.

THE JUDICIARY

Alfred T. Goodwin Steps Down as Chief Judge, Assumes Senior Status

Washington-born Judge Alfred T. Goodwin, 67, of the U.S. Court of Appeals for the Ninth Circuit has stepped down as chief judge of the U.S. Courts for the Ninth Circuit and assumed senior status on February 1. Circuit Judge J. Clifford Wallace of San Diego will succeed him on the basis of seniority.

In his announcement, Goodwin stated, "I became eligible for senior status two and a half years ago, but deferred that action because of the honor and the professional challenge of presiding over this great court...I have been happy with that choice and have enjoyed the honor and privilege of being Chief Judge of the Ninth Circuit as it rounds out its first century as the federal appellate court for the Far West." Goodwin ascended to the position of chief judge on the basis of seniority on June 15, 1988, when Chief Judge Emeritus James R. Browning of San Francisco stepped down. During Goodwin's term, the federal courts in the West saw significant expansion, including an increase of almost a dozen new district court judges and over two dozen new bankruptcy court judges—for a total of more than 325 federal judicial officers and 4,000 judicial employees in nine western states.



***Douglass Boyd**, director of administration of Burnet, Duckworth and Palmer in Calgary Alberta, Canada, and president-elect of the National Association of Legal Administrators (ALA) addressed the Puget Sound ALA Chapter in January. His presentation focused on the legal administration profession and a pending ALA restructure.*

The ALA, with membership representing professional administrators of law firms, corporate legal departments and governmental/judicial legal organizations, promotes the exchange of information regarding the legal-administration profession, offers continuing legal-education programs and acts as an employment referral source to law firms and administrators.

In the past two and a half years, the Ninth Circuit courts have been involved in a wide array of projects and programs to improve the administration of justice. Two new death penalty resource centers—in California and Arizona—have been established to improve the quality of legal representation for prisoners on death row. Ninth Circuit lawyers and judges were actively involved in the successful congressional efforts to improve salaries for federal judicial officers across the country. Others worked closely with Senator Joseph Biden to draft a law to help the courts adopt methods and procedures to reduce costs and delays in civil litigation. Goodwin was a central figure in diverting recent legislative efforts to dilute the decentralized power and authority of circuit judicial councils.

A broad series of other issues was raised, studied and generally resolved during Goodwin's term, including the creation of a model manual for improved jury management, a survey of how Rule 11 sanctions were being applied in the circuit, proposals for allowing access to the courts by the broadcast media, development of solid recommendations for better management of court reporting and the effective use of magistrate judges, the widespread institution of local district conferences to foster more effective communication between the bench and the bar, and extensive installation of computers and automation technology in clerks' offices and judges' chambers.

Two significant issues that occupied much of the chief judge's time over the past two years--leading the court's opposition to attempts by congressmen and senators from the Pacific Northwest to divide the Ninth Circuit, and spearheading the court of appeals' relocation efforts after the October 1989 San Francisco earthquake substantially damaged and closed its historic courthouse headquarters--remain on the agenda for the next chief judge.

At the time of his announcement, Judge Goodwin remarked, "Because of the generous support of the judges and the gallantry and dedication of the staff, the circuit remains strong, united, and efficient in the administration of justice. I feel confident in turning the gavel over to Judge Wallace that the Ninth Circuit will go into its second century in excellent condition under new, strong and energetic leadership."

Born in Bellingham, Washington, Judge Goodwin graduated from Crook County High School in Prineville, Oregon and served in the U.S. Army during World War II, rising in rank from private to captain. He worked for the Eugene, Oregon *Register-Guard* as a reporter while attending the University of Oregon. He received his B.A. in 1947 in journalism, and graduated from the University of Oregon School of Law in 1951, after serving as editor-in-chief of the *Oregon Law Review*. His career has been a steady ascent in the judiciary. Admitted to the Oregon bar in 1951, he was appointed to the Oregon Circuit Court (Lane County), where he served until Governor Mark O. Hatfield appointed him Associate Justice of the Oregon Supreme Court in 1960. In December 1969, President Nixon appointed him to the U.S. District Court for the District of Oregon. On December 17, 1971, Nixon elevated him to the United States Court of Appeals for the Ninth Circuit. He will continue to maintain his chambers in Pasadena, where, he happily reports, "I will go back to doing what I find personally most rewarding after 35 years as a state and federal judge--hearing and deciding cases..."

FINANCIAL MARKETS

Shearson Lehman Hutton Must Repay Washington Investor for Excessive Trading

Shearson Lehman Hutton Inc., a stock brokerage firm, must pay a Renton man $659,181 in damages as the result of a jury award December 13, 1990 in U.S. District Court in Seattle. The nearly $660,00 represents the repayment of commissions, fees and interest the firm earned from excessive trading of securities on behalf of Marlen Melsness.

The civil case pitted Melsness, an 82-year-old with failing eyesight, against one of the largest brokerage firms in the nation. In reaching its verdict, the jury agreed with the argument made by Melsness' attorney, Warren Daheim of Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim. He explained that Shearson had made hundreds of trades that were not in the investor's interest.

"Mr. Melsness started in 1982 with $354,402. Over the next several years, when the Dow Jones Index increased by over 100 percent, my client's account decreased in value to $75,988," Daheim said.

Excessive trading is called "churning," and it is under increasing scrutiny by the courts, raising issues of the obligation of financial consultants to put their clients' interests first.

"The jury foreman said that the jury was incensed at what Shearson did," Daheim said.

The four-day trial was heard in Judge John Coughenour's courtroom in Seattle. Michael Shaffer of Gordon, Thomas assisted in representing Melsness.

Shearson's New York office issued a statement saying it may seek to have the verdict overturned, or it may appeal.

Public Playground Injuries: Products or People—The Conspiracy of Blame

In a followup to last February's article on playground safety, Thom Thompson reports on playground studies showing that injuries can be dramatically reduced by fairly simple actions.

by **Thom Thompson**, *M.S.*

In his article, "Playground Liability—Have the Rules Changed?" (*Bar News*, February 1990), Richard J. Forsell aptly outlined the Consumer Product Safety Commission (CPSC) recommendation for playground surfaces. Forsell pointed out that of the 93,000 playground injuries in 1977, 59 percent occurred due to falls to the surface.[1] In discussing the objective standard of a playground surface, i.e., it does or does not meet a 200g rating, he briefly mentions that in light of such a standard, "...the reasonably prudent person will design, maintain and administer it." It is these three points, mostly ignored to date, that go to the cause of playground injuries.

In a five-year (1984-1989) research project involving an elementary school and a second, like school, my colleagues and I studied the effects of various people management programs v. playground redesigns on the reduction of injuries to children. Site redesign was the common program implemented at both elementary schools.

The findings in brief are:

- Redesign to meet CPSC guidelines reduced equipment fall injuries up to 33 percent for a two-year period.
- The most severe injuries, while down by 44 percent, begin to show rises at about 18 months. (Both sites used the same loose wood chip material for safety surface under equipment.)

It is important to emphasize that increases in injuries at both sites occurred on surfaces redesigned to meet the guidelines set forth in the CPSC Handbook. There is no disagreement as to the objective and definitive nature of surface impact rating, but the rating of a surface material addresses only the danger of the instrument. If a surface is installed, but does not meet existing guidelines, there is an issue of improper design. However, when one originally installs a proper surface but it is allowed to deteriorate over time, there is an issue of improper maintenance. Forsell's suggestion is, in fact, true. Design and proper, ongoing maintenance do have some effect on reduction of injuries on a play site. These are decision-driven factors. It is, at some point, a management decision. While the management of the site includes attention to the original surface recommendations, and as the surface deteriorates, with use, the maintenance being kept up, that does not address the conduct of people on the play site. Of course, what the child was doing that allowed him or her to fall to the surface bears on the issue.

At the research school, programs of student training in safety and staff training in supervision were implemented.

In our injury data for falls from equipment to the surface, the greatest reduction factor was the training and behavior of people.

Those program results were:

- Student safety training programs reduced equipment fall injuries 46 percent.
- Staff supervision training programs reduced equipment fall injuries 82 percent.
- Removal of staff supervision programs increased equipment fall injuries 80 percent.
- Removal of student safety training programs increased student injuries 72 percent.

The emphasis of these programs was on the conduct of people on play sites. Students' behavior needs to be governed. This includes their actions with others and their conduct independent of activities with others. But the most significant program in reducing injuries was the behavior of the supervisors. Trained in play site issues, they began to actively monitor student conduct, interact with the students and stop unsafe behavior.

The conduct of people on a play site is clearly part of the administration of the environment. This, the third of Forsell's suggestions, has a greater impact on injury reduction than attention to the surface. The injury reductions of 46 percent and 82 percent were achieved with a surface that did not meet CPSC recommendations. Herein lies the conspiracy of blame.

The cause of children's injuries has historically been blamed on the products of play sites. "If the equipment were safer / if the surface were softer / deeper...etc." are the usual solutions given. The newer equipment is safer. But the decisions to provide compre-

hensive site safety, the decisions that involve design, maintenance, student training and supervision have not, and are not now, being addressed. These are the administrative decisions within the scope of local agents for schools, parks and other play site providers, the ones often blaming equipment for injuries.

That the conduct on the instruments of play sites ought to be governed in some part by a reasonable and prudent adult was suggested in the same CPSC document that made the surface impact attentuation recommendations. Both recommendations have been ignored by those who, Forsell states, "would be generally expected to be most concerned about the safety of children." Instead of concern, we have been blaming the objects for the past 10 to 15 years. We need to turn attention to the behavior of children on the equipment. We must turn our attention to the type, quality and degree of supervision of children on play sites. We need to turn our attention to the administration responsibilities for play sites.

In the sense that CPSC quantified adequate surfacing, we are attempting to quantify adequate supervision. CPSC did not have specific data on supervision as an injury reduction factor. We are developing that data. As the research continues, we hope to put to rest the conspiracy of blame for play site injuries. The responsibilities for design, maintenance and administration lie with people—not products. People, their conduct, management and supervision, as they relate to the cause of injuries, are where we should turn our attention. □

[1] The new CPSC report, April 1990, "Playground Equipment-Related Injuries and Deaths" by D. Tinsworth and J. Kramer, updates the figures to 119,600 and 58 percent.

***Thom Thompson**, M.S. is a consultant in playground safety and supervision. He serves as co-chair on the National Task Group on Playground Safety, which is a committee of the American Society for Testing and Materials (ASTM). He teaches playground supervision and problem-solving through Portland State University.*

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

Criminal procedure. Police conducted warrantless searches of garbage found in garbage cans at curb outside defendant's residence, finding evidence of drug-related activities. On basis of this evidence, police obtained search warrant to search defendant's residence. Search led to seizure of legend drugs and controlled substances. Trial court suppressed these items as evidence. *Held*, 5-4, reversing court of appeals and affirming trial court, trial court properly suppressed evidence. Search violated Article 2, Section 7, Washington Constitution. Trash and garbage, required by city ordinance to be placed in cans at curb, were part of a person's "private affairs." Majority used criteria set out in *State v. Gunwall*, 106 Wn.2d 54, 720 P.2d 808 (1986). Search warrant was fruit of illegal search. *Compare* with *Greenwood v. California*, 486 U.S. 35 (1988), which holds that, under fourth amendment to United States Constitution, one has no reasonable expectation of privacy in garbage placed at curb for collection. ***State v. Boland***, 115 Wn.2d 571, 800 P.2d 1112 (11/15/90).

—J. M. Junker

Evidence. In prosecution for possession of heroin, trial court properly allowed state to introduce laboratory report pursuant to CrR 6.13, even though laboratory technician was ill and unavailable for cross-examination at trial. Appellate court rejected defense argument that introduction of report violated sixth amendment right to confrontation, saying (1) traditional sixth amendment requirement that witness be unavailable was not violated because the requirement was inapplicable to the kind of evidence offered here; and (2) sixth amendment requirement of reliability was satisfied by fact that report was prepared by skilled, unbiased professionals. ***State v. Sosa***, 59 Wn.App. 678, 800 P.2d 839 (Div. 1, 12/3/90).

—K. B. Tegland

Planning and zoning. Prior appeal was reported as *Victoria Tower Partnership v. Seattle*, 49 Wn.App. 755, 745 P.2d 1328 (1987). In that case it appeared city denied building permit for 16-story building but granted permit on condition that building be limited to eight stories. Denial resulted from disclosures about height, bulk, etc., of building in environmental impact statement (EIS), and was based upon city's multifamily housing policies. In prior appeal, court of appeals remanded on ground that multifamily housing policies had not been adopted when landowner applied for building permit. Upon remand, city again granted building permit on condition that building be limited to eight stories. This time, city's decision was based upon "Seattle's Growth Policies," which had been adopted before owner applied for building permit. Growth Policy 1 said that new residential units should not threaten "the existing character of neighborhoods." *Held*, city's decision affirmed. Standard of review of decision based upon disclosures in EIS is whether, upon whole record, decision is "clearly erroneous." It was true that neighborhood was developed with mix of single-family and multi-family dwellings, but it was not "clearly erroneous" for city to conclude that a new building over eight stories high would threaten neighborhood's existing character. ***Victoria Tower Partnership v. City of Seattle***, 59 Wn.App. 592, 800 P.2d 380 (Div. 1, 11/13/90).

—W. B. Stoebuck

Patterns

I don't remember when I first realized that I drank differently from most other people. In my teens I "held my liquor" better than most. While my friends had two or three drinks and then stopped or got drunk, I could drink more and remain "sober."

In my twenties I noticed that having a drink was more important to me than to others. I remember times when my sister or friend would suggest dinner out and I would steer us to a place with a liquor license. I also recall convincing a friend or relative to begin drinking with me so that I could start the buzz early. And holidays were great—I could start in the early afternoon (or even late morning). I remember waking up after a college party, not recalling what had happened after my third or fourth drink.

In my late '20s and early '30s the patterns changed: I drank on ordinary days. I drank alone, usually at night. I imagined this romantic, like F. Scott and Zelda Fitzgerald's or Eugene O'Neill's alcoholic nights. At social occasions I found myself losing control after the first two drinks. At this point I had begun practicing law, and dinners with senior partners were fraught with anxiety for me—would I do or say something foolish? I tried alternating alcohol with soft drinks, but after the second alcoholic drink I'd lose my resolve.

After the birth of my son, the patterns changed again. I had abstained during the pregnancy, but reverted within months of the baby's birth. I don't know whether the increased stress of being a new mother and a new lawyer conspired to escalate my drinking, or whether the disease of alcoholism progressed on its own. In any event, I drank several nights a week. I tried to wait for Fridays, but invariably found something to celebrate or to bemoan on a weeknight. By the time my son was two, I was drinking every day. On the way home from work, I'd mentally run through the liquor at home and stop at the store if I even suspected my supply was low. I also began shopping at different stores so that the clerks wouldn't guess that I drank as much as I did. I prayed that, when my husband worked nights, nothing would happen to my son—I was too drunk to drive by 7:30 most nights.

My marriage had deteriorated, with the help of nightly arguments fueled by alcohol. Finally, my work began to be affected. I had always entertained a lot of self-doubt, but now I was plagued with it. I had no confidence in my ability to practice law, and I drank at night to still my fears.

Blaming my downward spiral and dark moods on my marriage and on the stresses of practice, I left my husband, taking my son and my daily drinking pattern with me. I don't know what would have happened if my sister had not intervened. She wasn't sure what was going on, but she knew I needed help, and she told me so. I went to a psychologist who, after two sessions, told me that alcohol was my problem. I was one of the fortunate—my denial dissolved immediately, and I fully realized what I had always suspected: I was an alcoholic.

That realization, that jolt to sobriety, happened over five years ago. I'm happily (and confidently, most of the time) practicing law now, and my self-respect grows daily. Although work is stressful, I am never in despair, nor even troubled very often. Most important, I'm a fully functioning mother to my son.

A major aid to my sobriety is the support group I have been a part of since my sixth month of sobriety. I am a member of Women In Recovery (WIR). Although I realize that Alcoholics Anonymous provides effective support for millions of recovering addicts, I find that WIR better fulfills my needs. The fact that it is for women only means that there are no gender politics to divert members from their most important work—their own recoveries. And WIR's principles, that women need to raise their self-esteem and cease dwelling on the past, work for me.

If this fact pattern sounds familiar, or if alcohol, depression, drugs, etc. have become the focus of your life, call us. LAP provides confidential, effective assistance. We are at (206) 448-0605.

Expanding Access to the Legal System Through Group and Prepaid Legal Service Plans

by **O.J. Humphrey, II**
Group and Prepaid Legal Services Committee

According to the National Resource Center for Consumers of Legal Services, the average fee charged by attorneys across the country is $96 an hour. In Seattle and other urban areas, the average is much higher. As attorneys, we must ask ourselves, "Is the legal profession pricing itself beyond the reach of much of the American public? If it is, what can we do about it?"

In 1976, the American Bar Association (ABA) founded the American Prepaid Legal Services Institute (API). This is a nonprofit organization which acts as a clearinghouse of information and as a technical assistance source for attorneys and the public. In short, the API was established to foster the growth of group and prepaid legal service plans in order to reduce the cost of legal services while providing greater access to the legal system.

In Washington state, our bar association has a group and prepaid legal services committee charged with the responsibility to "educate attorneys and the public concerning the development of group and prepaid legal services."

Group and prepaid legal service plans are somewhat akin to insurance in the sense that the member or subscriber pays a monthly fee or premium for certain benefits. There are two basic types of plans: the "access plan" and the "comprehensive plan." Although certain types of matters are excluded from coverage in both types of plans, the benefits of an access plan typically include unlimited telephone access to an attorney on routine matters, a review of and opinion regarding short legal documents, the preparation of a will and a variety of other standard documents at a discount, and representation on more substantial matters on a discounted basis. Access plans are unlike insurance in that, with a few exceptions, indemnity payments are not made by the prepaid plan to the attorney providing the service. If more substantial representation is necessary, the referral attorney and the plan member enter into a standard attorney-client relationship. The attorney, however, simply bills the prepaid member on the agreed discounted basis.

"Comprehensive" prepaid legal plans are more like true legal insurance and offer much broader and personalized coverage. The participating attorneys (like physicians) agree to take referrals in consideration of direct, discounted payments from the insurance company.

Although prepaid legal plans have been very popular in Europe for many years, they only started in this country in the early 1970s. There are many different plans in existence, one or more of which are available in most states. It has been estimated that approximately 50 million people (members, their spouses and dependents) are eligible to receive benefits from some form of legal service plan—up from approximately three million ten years ago. In order of popularity, individuals join a legal plan through their employer, on their own, or through their union.

Prepaid legal service plans are obviously not for everyone, but for a vast majority of the consuming public who could not otherwise afford an attorney, such plans are an attractive alternative to the standard hourly billing by attorneys. Rather than posing a threat to the legal community, legal service plans serve to expand access to and increase the use of the legal profession.

To better fulfill its function, the WSBA Group and Prepaid Legal Services Committee needs input and information from bar members. It would be appreciated if you would complete and return to the bar office the following survey:

TEAR HERE

FOLD LINE

In re:Group and Prepaid Legal Services

_____

_____

_____

_____

AFFIX
29¢
STAMP

John M. Redenbaugh
Washington State Bar Association
500 Westin Building
2001 Sixth Avenue
Seattle, WA 98121-2599

STAPLE

1 Please indicate your level of knowledge/awareness concerning group and prepaid legal service plans:

☐ a) Thorough to moderate
☐ b) Minimum
☐ c) Very limited
☐ d) None at all

2. Do you or does your firm have an interest in serving as a provider for a group or prepaid legal service plan?

☐ a) Yes ☐ b) No ☐ c) Already a provider

(comment)

3. What role would you like the WSBA to take regarding group and prepaid legal services? Please check as many of the following as you feel are appropriate.

☐ a) Promote legislation regulating group and prepaid legal service plans;
☐ b) Provide information to the community;
☐ c) Educate attorneys about the plans;
☐ d) Do nothing;
☐ e) Other (comment below):

4. If you believe the WSBA should educate attorneys about group and prepaid plans, should this be by:

☐ a) Continuing legal education seminars;
☐ b) Articles in the *Bar News* or other legal publications;
☐ c) Presentations before local bar associations;
☐ d) Other (specify below):

5. With respect to your law firm:

a) Do you practice in an ☐ urban setting *or* ☐ rural setting?
b) What local bar association are you a member of?

c) What is the nature of your practice?

6. Any other comments? (Add extra sheet if necessary)

TEAR HERE

SPONSORED BY THE LAW OFFICE ECONOMICS AND MANAGEMENT SECTION

Protecting Your Clients' Property

by **Elliot Johnson**

Most of us are aware that Rule 1.14 of the Rules of Professional Conduct requires that we maintain our clients' money in a readily identifiable trust account separate from our own money. Less are aware that the same rule covers not only money but *all* property you receive for your client, including documents.

Rule 1.14 provides:

(b) A lawyer shall:

1) Promptly notify a client of the receipt of his or her funds, securities, or other properties;

2) identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;

3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his or her client regarding them; and

4) promptly pay or deliver to the client as requested by the client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

Obviously, we must safeguard our clients' papers and other properties. Whether or not we use a safe deposit box or other fireproof repository, it is clear that simply keeping valuable and important papers in our files probably violates this rule.

One way to keep track of papers and other properties is to use an index similar to that used by court clerks. Such an index need not be complex. It should have, at a minimum, the information included in the following example:

No. _____
Date Rcvd _____
Item _____
Date Rtnd _____
Init. _____

As new properties are received they can be simply added to the index, and items returned can be easily marked. Whether or not you use this index or some other method, remember that if a client loses properties because you failed to follow Rule 1.14, a court (and the Bar Association for that matter) is not likely to view your action favorably.

When you close your file at the completion of the case, make sure you review all documents and client possessions, and return any that are no longer needed. Keep a record of what is returned and to whom it was delivered. You should also get a receipt signed by your client. By taking a few minutes to review each file, you will avoid any claims that you lost your client's property, and both you and your clients' property will be protected.

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

THE JUDICIARY

Former Washington Chief Justice **Keith M. Callow** joined Judicial Arbitration & Mediation Services' (J.A.M.S) Washington panel of retired and former trial court judges and appellate justices in January. He will serve as mediator and arbitrator.

Callow said he was "looking forward to being associated with such fine former judges as those on J.A.M.S' panel, and to be active in the settlement of civil disputes."

Callow, who was chief justice from 1989-1991, and who served on the Washington Supreme Court from 1985 to 1991, began hearing cases with J.A.M.S March 1. From 1972 to 1984, Callow served on the Washington State Court of Appeals, Division 1, in Seattle, and he served two years, 1979 to 1981, as chief judge. Before serving on the Court of Appeals, he served on the King County Superior Court, from 1969 to 1971.

For two years of Callow's tenure at the appeals court, he was a designated settlement judge and heard approximately 200 settlement conferences. He also has taught a seminar to appellate court judges on "The Conduct of an Appellate Settlement Conference."

Callow has long worked to improve the workings of the state and federal courts. Recently, he appointed the Commission on Washington Trial Courts, chaired by former WSBA president William Gates, to research operation of the courts. In 1989, Callow was named by Chief Justice **William Rehnquist** as a member of the Federal Courts Study Committee. He was the only Washington member of a state level court on the committee, which worked on methods of expediting the workings of the federal court system.

The Washington State Court of Appeals recently announced the election of Judge **H. Joseph Coleman** as its new state presiding chief judge. serving for a period of one year, commencing January 1.

The court also announces the election of Judge **C. Kenneth Grosse** as chief judge and Judge **Walter E. Webster, Jr.** as acting chief judge of Division I of the Washington State Court of Appeals. These two positions run for a period of two years, commencing January 1.

NEWS FROM HOME

Dave Burman, partner and member of the executive committee, has been named the new head of the litigation department of Perkins Coie. A former U.S. Supreme Court clerk and graduate of Georgetown University Law Center, he focuses his practice in antitrust, public law and other complex litigation.

Peter H. Haller and **Thomas M. Kilbane** are now partners in the Ater Wynne Hewitt Dodson & Skerritt law firm in its Seattle office. Haller's practice emphasizes environmental law and environmental litigation; Kilbane's practice focuses on environmental law, including hazardous waste and petroleum cleanup. Also joining the Seattle office as a senior associate is **Stephen J. Kennedy**, who previously practiced with Garvey, Schubert & Barer. He will continue his practice in commercial litigation.

Ronald E. Bailey of the Portland law firm of Bullivant, Houser, Bailey, Pendergrass & Hoffman, 1400 Pacwest Center, has been elected president of the Oregon Association of Defense Counsel (OADC), whose lawyer-members defend civil cases in state and federal courts. The association provides educational (seminars, newsletter), legislative and other services to its 550 members.

CLARK COUNTY REPORT

by JOHN F. NICHOLS

The Edsel Award: Traditionally, the Beagle Awards are quickly followed by the Edsel Award, which honors that ad that is the first to become obsolete. This year's lucky recipient is **Diane Woolard**, whose ad under the heading of "Rulli & Woolard" proclaimed to be "aggressive & experienced." Diane, following her aggressive tendencies, has vacated Rulli Manor and joined the gray suits of Morse & Bratt.

Replacing Woolard at Rulli's is one **Lynne Hunt**, formerly of Oklahoma and points therefrom. We wish Lynne the best of luck and hope that she also proves to be "aggressive and/or experienced."

Migratory tracks: The first signs of the annual Lawyer Migration to greener

fields have been spotted. In addition to the above, (see above), there has been a flurry of activity at the Blair-Schaefer firm. **Scott Hogan** has gone into solo practice, as has **Chuck Cusack** in apparent defiance over the chopping down of the stately maple tree last winter. **Jeff Meehan**, formerly of Morse & Bratt, is now of Landerholm-Memovich. (Does anyone see a pattern here?) Also, **Phillip Janney** was announced as a new associate in said firm. **Dennis Owens**, formerly of nowhere in particular, has opened up shop as a sole practitioner. News of his joining Blair-Schaefer must be forthcoming. As previously announced somewhere, **Barry Brandenberg** is still a new associate at Pomerville, Stookey & Gratten.

If It Looks Like a Duck... Under the above heading one must ponder the fate of CCBA attorney **Greg M. Gonzales**. Sure, he is an upward mobile attorney for a high-powered Hazel Dell firm, but what of his past? What happens when one's flashy, shark-skin future collides head-on with one's seamy past? Well, it's kinda like deja vu all over again. But such is the situation that occurred when Greg attempted to buy a round for his colleagues during a CLE at Ron's Century House. First, his check was not only dishonored, it was downright insulted and laughed at. Greg was advised that if he wanted to see some more of his checks that the cashier had a fistfull, all of which were initialed "NSF." Finally, Greg was ordered to leave and to turn himself in to the prosecutor's office. Things were eventually cleared up at booking, when it was discovered that the true paper hanger was one **Greg "N." Gonzales.** Strange, though, that none of those lawyers present came to his defense or were even surprised. In fact, one attorney said he knew Greg N. and thought N. to be a nice guy and had a better courtroom appearance.

EAST KING COUNTY REPORT

by **RANDOLPH I. GORDON**

Sir **John Sinclair** propounded more than 100 interrogatories to the clergy in each of 881 Scottish parishes together with 23 supplemental letters to determine the "quantum of happiness" which the inhabitants enjoyed and how their happiness might be improved upon in the future. With inexplicable prescience, the Great Propounder anticipated the United States census and Guide Michelin by 200 years, asking such questions as: Were the people inclined toward kind and humane acts? Did they protect the shipwrecked? Sir John then collated and assembled the data obtained into a 21-volume rural survey entitled *The Statistical Account of Scotland* (1791-99). This, Librarian of Congress **Daniel J. Boorstin** tells us, marked the entry of the word "statistics" into English usage.

In the *Wall Street Journal*, December 28, 1990, page B1, lower left hand corner, we learn the progress made in the intervening centuries. University of Texas finance professor **Stephen P. Magee**, after a statistical study of 34 countries comparing the number of lawyers in each with that country's GNP for the past two decades, concludes that GNP growth is better in countries with fewer lawyers per capita, such as South Korea and Japan, than in those where lawyers proliferate, including India and the United States. According to his calculations, the average lawyer drains $1 million a year from the output of services and maintains that the legal population saps the economy of a half-trillion dollars, or 10% of the GNP. Magee propounded his thesis in a book entitled *Black Hole Tariffs and Endogenous Policy Theory* and intends to elucidate the matter in a future work to be entitled: *The Negative Effect of Lawyers on the U.S. Economy*. Other variables which appear to be overlooked: degree of social homogeneity; due process afforded citizens; defense spending; U.S. foreign aid received. Still, one cannot help but wonder how many lawyers Iraq has.

Theoretically, the 50 states should bear out Magee's hypothesis. Unfortunately, my own statistical comparison reveals that, of the ten states with the highest per capita Gross State Product (GSP), six have the greatest number of lawyers per capita: District of Columbia, New York, Massachusetts, Connecticut, Alaska, and California.

With such a dubious start as a statistician, having failed miserably to confirm the conclusions of an acknowledged scholar, it is with no little reservation that I disclose that the East King County Bar Association, the third-largest local bar association in the state, at the outset of 1991 recorded the

highest number of dues-paying members ever: over 550. New president, **Stephen D. Fisher** of Revelle, Ries & Hawkins, P.S. seeks expansion of attorney participation in the Eastside Legal Assistance Program (ELAP), establishment of an Eastside Superior Court and expanded member services.

EKCBA appears well-positioned for expansion in services and membership under the leadership of: Fisher; vice president/president-elect, Mercer Island city attorney **Ron Dickinson**; new executive director **Shari Perkins**; and its board of trustees, including newly elected or re-elected trustees **Don Gulliford**, of Gulliford and Associates; **Judith Graves**, of Van Eaton, Thomas, Phippard & Gorud; **Valerie Knecht Hoff**, of Revelle, Ries and Hawkins; **David Lawyer,** of Inslee, Best, Doezie & Ryder; and **Marijean Moschetto**, of Moschetto & Koplin; and the continuing contribution of members such as **Glen K. Thorsted**, first-ever recipient of the "Volunteer Attorney of the Year Award" for his hours of service to ELAP during 1990.

Offering membership discounts for Eastside CLE seminars and materials [such as this past December's extremely popular "Real Estate Issues for the General Practitioner" - for materials call **Mark Phelps** at (206) 454-2344], a monthly newsletter with advertising space for members, annual social events (spring cruise, golf party, December holiday party), monthly membership meetings, legal section meetings, membership directory, judicial evaluation committee, formation and support of ELAP, and representation respecting issues important to the Eastside legal community, EKCBA's burgeoning membership statistics speak for themselves. [For Membership Information call Shari Perkins at (206) 822-2228].

KITSAP COUNTY REPORT

by **KATHLEEN M.S. WRIGHT**

Constitutional Issues: Bremerton Municipal Court Judge **Roy Rainey** is locked in a battle with the Bremerton City Council. That august body has decided that the council has sole authority over the hiring and firing of court personnel, which Rainey contends violates the separation of powers of the legislative and judicial branches of the county. The issue arose when the council fired or reassigned most of the judge's staff and implied that the court should increase its parking ticket revenues to fund another position. As a parting shot, former Supreme Court Chief Justice **Keith Callow** gave a written opinion that this act on the part of the council was ultra vires and improper and therefore invalid. The staff is back to work, at least for the time being. Watch where you park your car in Bremerton.

Departure: Long-time Kitsap County practitioner **Myron Freyd** died in December 1990. A memorial service was held at the county courthouse in Judge **Terence Hanley**'s chambers. There were many fond stories circulating, one concerning a trip around the courtroom with American flag in hand, allegedly seeking to impale **Curtis Coons**, and another concerning some scissors and the editor of a local newspaper.

Moves: **Michael Klemetsrud** is leaving the firm of Crawford, McGilliard, et al., to become a sole practitioner in...Devil's Lake, North Dakota. The Crawford firm recently added two new attorneys, **Kevin Anderson** and **Tim Kelly**, the latter of whom won the "Opie from Mayberry" look-alike contest sponsored by the District Court Clerks Association.

The prosecuting attorney's office added four new faces: **Tim Drury**, **Patricia Stuart**, **Ron Sergi** and **Leonard Rolfes**. Bodies to follow.

The Bainbridge office of Sherrard, McGonagle, Green & Johnson added associate **Paul Panther**. The staff had a "pun" time when Paul arrived back from court recently wearing a pink shirt.

Splits: **Eric Lind** and **Joan Case** are no longer in practice together, and the firm of **Bruce Buskirk** and **Nikki Anderson** has likewise dissolved.

Bits and Pieces: **Paula Crane** was recently elected to the executive committee of the State Bar's Family Law Section. Paula's firm of Smith, O'Hare & Crane added **Drake Mesenbrink** as a partner effective January 1. The firm is now affectionately known as "Soc-m."

John Davis and **David Hill** do their part for pro bono and the community by sponsoring Citizenship Merit Badge seminars for the local Boy Scout troops.

Arrivals: A boy, **Daniel Maurice** in November 1990 to court administrator, **Maurice Baker**, and a second son, **Spencer Eric**, in January

to **Kathleen Lappi**.

Extra Terrestrials and other referrals. A local attorney garnered a new corporate client from a unique referral source: a seance. When quizzed further, the new client admitted the referral was from a living participant rather than from the other side. This opens up a whole new area of marketing--"Spirit Law." Think of the effect on prepaid legal plans and the rule against perpetuities.

LOREN MILLER BAR ASSOCIATION

by **RICHARD A. JONES**

For the fifth consecutive year, the Loren Miller Bar Association (LMBA) spearheaded the Legal Thanksgiving Food Drive for local families. In 1990, LMBA, in conjunction with the Washington Women Lawyers, Seattle-King County Chapter, and the Asian Bar Association collected nearly $4,000 in cash contributions from their members.

The Central Area Motivation Program (CAMP) and the Neighborhood House agencies received their funds in Safeway Store food certificates in amounts ranging from $40 to $120, depending upon the size of the respective families, many of which are headed by single mothers. CAMP and Neighborhood House then distributed the food certificates to 48 preselected families with special circumstances in time for the Thanksgiving holiday. In total, these families account for nearly 270 persons that had a better holiday, thanks to the generosity of the giving lawyers.

Richard Jones, coordinator for the food drive, encourages other organizations in the area to create comparable programs and join in the fight against hunger. Jones added, "There are a number of large families in this area that need assistance, particularly during the holidays...[W]ithout our assistance and other similar programs, Thanksgiving and Christmas would merely be two ordinary days on the poverty calendar."

Contributions that were received for the food drive after Thanksgiving were given to the needy families during the Christmas holiday. The Loren Miller Bar Association is a statewide organization of black judges, attorneys and law graduates and is the Washington state affiliate of the National Bar Association.

PIERCE COUNTY REPORT

by **GEORGE S. KELLEY**

Lawyers are featured in the news this month. First, we have a police blotter item in our local newspaper. An unnamed 44-year-old male attorney was arrested by the Tacoma Police Department on an outstanding warrant after being stopped for a defective taillight. Speculation was rampant as to the identity of this individual. A "Guess Who He Is" signup sheet magically appeared on the bar office bulletin board. Many interesting names were submitted including the name of a female judge who was reported to be in drag at the time of the arrest. No one is working too hard to find out the arrestee's name as speculation, conjecture, and rumor-mongering are far more fun than the truth.

Next, we have news from Gordon, Thomas, et al. that **James** "Tiff" **Seeley** and **Sherry Clark** have joined the firm as associates. Clark graduated cum laude from Harvard and received national and international attention as the welfare mother who took top honors at her law school. She wrote a book about her experiences entitled *From Hell to Harvard*, which should be available soon. There may be a sequel in the making called *Bonfire of the Billing Slips*."

Under the heading "Sour Grapes Produce a Bitter Whine," we note a post-judicial election event. To celebrate this new post, the newly elected Gig Harbor District Court Judge, **Tom Farrow**, wanted to use the district courtroom for a short swearing-in ceremony on the Friday before he was to officially take office. A few family members and friends were invited to attend. Unfortunately, the outgoing judge found himself too busy finishing up business to spare the courtroom. Luckily, the Gig Harbor Municipal Courtroom was made available, and the day was saved.

It is reported that a contested divorce trial in Judge **Arthur Verheran**'s court, with opening arguments, direct and cross-examination of each party, closing arguments and the court's decision took all of 19 minutes. **Dave Tuell** and **Ben Bettridge** were the attorneys. It is assumed that they were being paid a flat rate and not by the hour.

Steve Shelton left the prosecutor's office and is now the city attorney in Auburn.

SEATTLE-KING REPORT

by **JAMES VARNELL**

Rose Bowl Revisited. Due to the substantial number of attorneys who apparently followed the Washington Huskies south to Pasadena, this correspondent is currently organizing a seminar to be presented in conjunction with the 1992 Rose Bowl. Thusfar, the seminar will include lectures by speakers discussing their personal experiences regarding the following topics:

- Contesting a denial of workers' compensation coverage for injuries sustained in a Huntington Beach "sidewalk surfing" (aka skateboard) incident, by **Mike Welch.**
- Why a California conviction for drag racing on Colorado Boulevard should not result in revocation of a Washington resident's driver's license, by **Doug Whalley.**
- Choice of law issues to be considered in commencing an action where an inebriated Washington resident has been run over by a California float in the Rose Parade, by **David Ashbaugh.**
- Proving special damages from neck injuries sustained on the Disneyland tea cup ride with your daughter, by **John Cooper.**
- Venue in actions to recover money paid for fake, 50-yard line Rose Bowl tickets, by **Jim Dickens.**
- Administrative hearings with the city of Pasadena to obtain one's motor home which has been impounded for excessive parking tickets issued between Christmas and New Year's Day, by **Charles A.** "Jack" **Burgeson.**
- Arbitration hearings with airlines to recover the purchase price of a non-refundable ticket after oversleeping a flight, while still trying to receive credit for frequent-flyer mileage, by **Noel Shillito.**
- Timeliness of Miranda warnings and voluntariness of a confession after arrest for trying to pass oneself off as the brother of UW Coach **Don James** at a private, post-game reception, by **Richard Stanislaw.**
- Defending in municipal court a citation for creating a public disturbance received for high-diving out of a 10th floor room into the Anaheim Marriott swimming pool, by **Gary R.W. Slater.**
- Husband-and-wife defense of an IRS audit for excessive or invalid business-related deductions incurred in attending a half-day, Article 9 repossession seminar put on by the Pasadena Used Car Dealers Association, by **Deborah** and **Clay Fleck.**
- Constitutional overbreadth challenges to Pasadena's ordinance prohibiting public intoxication, by **Jim Hermsen.**

Office Moves. **Larry J. Smith** has joined Graham & Dunn as a partner, **Joel R. Junker** has become of counsel, and **J. Parker Mason** is a new associate with the firm. New partners at Tousley Brain are: **Cynthia Thomas, Mary Foster VrBanac,** and **Paul Brain. James Wreggelsworth, Joseph Weinstein,** and **Mary Steele** have become partners at Davis Wright Tremaine. New partners at Ater Wynne Hewitt Dodson & Skerritt are: **Peter Haller** and **Thomas Kilbane. Terrence I. Danysh** and **Craig T. Kobayashi** have become principals at Cairncross & Hempelmann. New associates at Foster Pepper & Shefelman are: **Lisa M. Brownlee, Penelope S. Buell, Fara E. Faubus, Steven G. Jones, Alitha E. Leon Jenkins, Kurt R. Walters,** and **Thomas L. Weinberg. James T. Latting** is a new associate at George, Hull & Porter.

Carney, Stephenson, Badley, Smith & Spellman announces: **Stephen A. Saltzburg** has become special counsel; **P. Douglas House** has become of counsel; **Ruth Nielsen** has become a shareholder; and **Mardi J. Boss** joins the firm as an associate. New members at Lane Powell Spears Lubersky are: **Randall P. Beighle, John J. Geary, Jr., Eugene H. Knapp, Jr., Bruce W. Leaverton, Mark M. Loomis, Gail E. Mautner** and **David M. Schoeggl; Russell W. Roten** has become of counsel to the firm; and **Gregory L. Anderson, Neil A. Cable, Terisia K. Cheleborad, Samuel S. Chung, Kimberly R. Cobrain, David P. Hattery, Janet H. Kwuon, Mark J. Lee, Chun Li, Martha M. McBrayer, Brendan R. McDonnell, Michelle M. Michaud, Jane Rakay Nelson, M. Vivienne Popperl, J. Patrick Wuinn, Katherine Riffle Roper, Scott R. Sawyer, Matthew E. Swaya, Diane L. Wendlandt** and **Rando W.H. Wick** have become associates.

New partners at Montgomery, Purdue, Blankinship & Austin are **David B. Hansen** and **Michael W.** ("Mr. Personal Injury") **Babcock; Robert M. Bartlett** is a new associate there. **M. Edward Taylor** has become a member of Misterek & Woo. **Raymond C. McFarland** has joined Stanislaw, Ashbaugh, Chism, Jacobson and Riper. **Yvonne G. Ward** is a new associate at Rogers & Darvas. New additions at Heller, Ehrman, White & McAuliffe are: **Tamara J. Conrad, James D. Troyer** and **Daniel A. Zariski.** Sonkin & Klein have relocated to 1325 Fourth Avenue, Suite 1335. **R. Franklin Wohlford** has joined the firm of Hight Green & Yalowitz as a partner, resulting in the firm's name change to Hight Green Yalowitz & Wohlford. Cairncross, Ragen & Hempelmann has changed its name to Cairncross & Hempelmann.

M&A: Skellenger & Bender has consolidated its practice with the law offices of **Rita L. Bender,** and **Constance D. Gould** with the new firm name being Skellenger, Bender, Mathias & Bender. **John O. Graybeal, Larry A. Jackson, H. Albert Richardson, Jeffrey T. Haley** and **John M. Johnson** have merged their practice and formed Graybeal Jackson Richardson & Haley.

Of Note. **Nia Cottrell** has been elected president of the Loren Miller Bar Association. **Thomas D. Frey** has become a Fellow of the American College of Trial Lawyers. **Peggy Nagae Lum** is currently serving as president-elect of the National Asian Pacific American Bar Association. **Richard A. Edwards** has been named managing partner of Miller, Nash, Wiener, Hager & Carlsen.

Due to an unusual similarity in the spelling of two attorneys' names, we have been requested to report that **Kimberlee Ann McDonald** of Renton, with offices at the Westlake Center Tower, is *not* the subject of disciplinary proceedings by the WSBA.

SOUTH KING COUNTY REPORT

by **BARBARA HEAVEY**

Jennifer Rydberg has some weighty judgments lately, 276 pounds to be exact. That is how much $2,500 in back child support weighs when paid in loose change. Actually, it wasn't exactly loose. It was delivered in several large boxes. Fortunately, the

bank loaned her and partner **Dave Gagley** a change counter and lots of paper money rolls.

Special thanks to **Mike Salazar** for the terrific job organizing the holiday party. Everything was outstanding, from the printed invitations with formal response cards to the food. The turnout was so good that the bar may have even made a profit of the event. Hope to see some of those people at future meetings.

While always informative and friendly, South King County Bar meetings have been particularly educational lately. In separate meetings, the association received the inside scoop on the WSBA board of governors from governor **Alva Long** and *Bar News* editor **Lindsay Thompson**. Thompson confirmed a long-held belief of many members that **Judy Eiler** is indeed one of the "board groupies."

From the Bench: District court judge **Donald A. Eide**, Aukeen Division, has been elected presiding judge by the District Court Judges' Association. Eide can be found in downtown Seattle for the next year, persuading the King County Council to allocate more money, courtrooms and judges to the district court system. Commissioner **Jim Cayce** will be sitting at the Aukeen Division, replacing Eide.

Seattle assistant city attorney **Victoria Seitz** was elected to the Southwest Division of the King County District Court. She replaces retiring judge **Marilyn Jordan**, who reports that she plans to leisurely tour the United States in her new motor home and practice her painting.

South King County District Court judges **E.T. "Woody" Leverette**, Federal Way Division, **Charles Delaurenti**, Renton Division and **Brian Gain**, Bellevue Division have been helping their colleagues on the King County Superior Court bench reduce the backlog. The judges have been using their pro tem budgets to travel to Seattle and hear mostly bench trials. At least one judge was heard expressing his frustration at how long it takes to get anything done at the superior court. One bench trial in superior court takes as long as ten in district court, notes Leverette.

New faces: Tacoma attorney **Marion Leach** has joined **Michael Hanis** and **Gary Olson** at their firm in Renton. Marion will continue her labor law practice.

Tacoma personal injury attorney **Robert I. Deutscher** has opened a branch office in Federal Way at the Federal Way Law Center with **Laird Pisto** and **Carolyn Mayer**. For the time being, it's a quiet place to get away from his Tacoma office to think, but he anticipates future growth in Federal Way. Those of you who have doctors in this area may wish to take note.

YAKIMA COUNTY REPORT
by **PHIL LAMB**

Yakima has been too long absent from these columns. This is in part due to inertia, but also to the problem of finding the proper niche between the intellectual historicism of **Randolph Gordon** from East King County, and Clark County's callous comments by **John Nichols**.

One of the problems is that most of us in Yakima are caught on the horns of **Emmett Watson**'s dilemma: we think this is a great place to live and practice, and want to sing its praises, but we don't really want the rest of you to believe it and come over here. It is bad enough that **Paul Larson** sucked in Bogle & Gates. To read their publicity you would think that the entire firm had been founded here in Yakima, just because one of the founding fathers worked here a hundred years ago long enough to get train fare to make it back to Seattle.

We just lost **Harry Hazel**, who passed away January 20. Harry was 81 and recently had a major stroke. Two weeks previously he had been at the bar lunch in good humor and fine fettle. Harry was a special person for many of us. He sported talents and a resumé which reminds all of us that renaissance people still grace our community. I will remember him as a truly gentle man, who cared about and was interested in young lawyers, and who to the end was always curious about finding out the theory behind something or how to best approach an issue to resolve it.

There are lots of changes on the bench. District court judge **George Mullins** retired effective the first of the year. His spot was taken by former Yakima city prosecutor Rod Fitch, who won it in a spirited contest with Grandview lawyer Mike Everett.

Superior court judge **Bruce Hanson** also retired effective the first of the year,

and superior court commissioner **Susan Hahn** garnered the gubernatorial appointment. The only downside to her appointment is that there is only one year left in the term, so she has to run in the general election this fall for the remaining one year, and then again in the fall of 1992 for a four-year term. But I predict that no one named Johnson will run against her.

The superior court judges hired **Lani-Kai Swanhart** from the local Washington attorney general's office to fill the vacant court commissioner spot. Lani-Kai is married to **Rod Nelson**, who with his partner **Terry Abeyta** help recirculate insurance premiums in the local economy.

Last fall, after receipt of more law and justice money from the Legislature, the judges created another court commissioner spot, which they filled with **Mike Schwab**, who Hahn used to practice with before she became commissioner.

These changes culminate considerable generational transition on the superior court bench within the last four years.

Special mention should go to my friend **Jay Inslee**, who worked his butt off winning re-election to his 14th District legislative seat in the House. Jay ran against **Brad Mellotte**'s father, **Ted**, who owns western stores here. (Brad is another one of the local Bogle guys.) Jay's win disproved the local Republican theory that anyone who sells boots is going to win in Yakima. Maybe there is a lesson here for **John Moore**, too, who is still crying about his supreme court case. Maybe he should have worn shoes instead of his perennial boots.

IN MEMORIAM

(The following information was supplied by James A. Vander Stoep, former WSBA president and law partner of Grant Armstrong.)

Grant Armstrong, 83, died in Chehalis January 15, 1991. Born to pioneer parents, Armstrong attended grade school at Lebam-Frances and graduated from Chehalis High School before entering the University of Washington. Upon graduation there, he returned to Chehalis, where he practiced law for the remainder of his career. During World War II, he spent three years as a U.S. Navy officer.

Armstrong was a long-time member of Epiphany Episcopal Church in Chehalis, a former regent of the University of Washington and a governor and president of the WSBA, as well as a member of the House of Delegates and Board of Governors of the American Bar Association. He was one of fewer than ten lawyers in the history of the WSBA to have been elected to fellowship in both the American College of Trial Lawyers and the American College of Trust and Estate Counsel. He was a former president of the Chehalis Rotary Club and Exalted Ruler of the Chehalis Elks Lodge. At the UW, he was a member of Sigma Nu fraternity. Years later he was aptly described as the small-town lawyer in the Brooks Brothers suit. In a legal career that spanned 60 years, Armstrong was acknowledged to be one of the true giants of his chosen profession.

Armstrong is survived by his dear

friend, **Virginia Turner** of Bellevue, as well as nieces, nephews and a host of friends. He was preceded in death by his wife, **Elbertine Adams Armstrong**, in 1979, and by his sister and two brothers. A memorial service was held January 19.

Melton Boyd, 85, died November 16, 1990 in Seattle. A graduate of Muskingum College and Ohio State University, Boyd was admitted to practice in 1933 and came to Seattle in 1948 as a trial lawyer for the National Labor Relations Board. From the 1960s to his retirement, Boyd was an investigative lawyer for the Securities and Exchange Commission.

Proud of his Scots heritage, Boyd "had a penchant for plaids, and would combine three different plaids in one outfit," *The Seattle Times* reported. A quick wit and an enthusiasm for conversation animated his frequent neighborhood walkabouts during his retirement. The *Times'* report of his death summed him up this way: "His neighbors described Mr. Boyd as a gentleman in the old-fashioned sense of the word. His family praised his thoughtfulness. His colleagues praised his probing legal mind and his ability to strike up a conversation and a friendship with anyone." Survivors include his wife, three children and six grandchildren.

Myron Freyd, 73, died December 3, 1990. Born in Tacoma, Freyd graduated from the University of Washington and spent his career in Kitsap County, where he became a leader of the Jewish community and was noted for his fundamental belief in the goodness of people. From 1966 to 1970, he served as Kitsap County prosecutor, and he also served as a member of the South Kitsap County School Board, president of the Kitsap County Bar Association, the Kitsap County United Way, and the Jewish Community Center of Bremerton. He was a World War II Army veteran.

Cyril Dean Hill, 91, died December 10, 1990 in Seattle. Born in Minnesota, Hill came to Seattle in 1902. After undergraduate work at Harvard, Hill took several degrees from the University of Washington, including one in law. He practiced with his father, Reuben D. Hill, until the latter's death in 1925.

During World War I, Hill joined the Army Reserves and rose to the rank of colonel in the judge advocate corps by his retirement in 1955. He spent 15 years in active duty around the world, and four as chief of the review division examining war crimes in Japan and the Philippines after World War II.

Active in the Methodist Church, Hill spent his spare time in postwar Japan organizing relief efforts for Japanese Methodist congregations, and he was a founder of the Tokyo Free Methodist Church.

Hill was also noted as a philanthropist, chiefly to Seattle Pacific University. Survivors include two sisters, two nieces and two nephews.

Jack F. Jones, 43, died January 3, 1991 in Seattle. Born and raised in Washington, D.C., Jones graduated

from the University of Washington and the University of Puget Sound School of Law. Before entering private practice, he was an assistant city attorney in Seattle.

Jones became active in forming and leading organizations to serve persons with AIDS in the mid-1980s. He was the founder and former president of the Northwest AIDS Foundation, and he served on the board of the Chicken Soup Brigade, which provided errands and chore assistance to people with AIDS.

In those roles, Jones won high praise for negotiation skills which made collaboration possible between widely varying groups. He continued to be involved in service and relief efforts after he was diagnosed as having AIDS, and toward the end of his life, concentrated his legal practice in the area of legal problems of persons with the disease. Survivors include his father, a brother and a sister.

Alfred McBee, 91, died January 9, 1991, ten days short of his 92nd birthday. Born in Rathdrum, Idaho, McBee graduated from Coeur d'Alene High School in 1917 and the University of Washington School of Law in 1924.

McBee practiced in Anacortes from 1924 to 1927, then moved to Mt. Vernon, where he practiced until his retirement in 1983. During a long and distinguished career, McBee was elected to membership in the American College of Trial Lawyers. In 1962-1963, he was president of the WSBA. He was honored in 1974 as a fifty-year member of the Skagit County Bar Association, served as Grand Exalted Ruler of the Elks in Mt. Vernon, and was a stalwart bass drum player in the American Legion Drum and Bugle Corps. Survivors include one son, four nieces and two nephews. His wife, Agnes, died in 1989.

Barbara E. Reardon, 64, died November 14, 1990 in Seattle. Born in Monroe, she attended the University of Washington and distinguished herself at George Washington University School of Law, where she edited the law review and graduated cum laude.

During the '50s, Reardon was house counsel to Allied Stores, concentrating on land acquisition. In 1959 she went into private practice with her brother-in-law, **Harry Wilson**, in Bellevue.

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