

Washington State **Bar
News**

Vol. 45, No. 5, May 1991

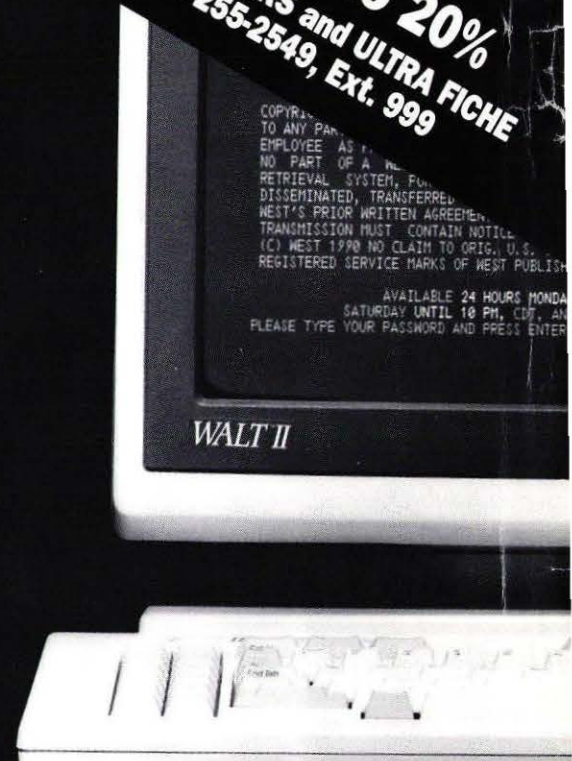
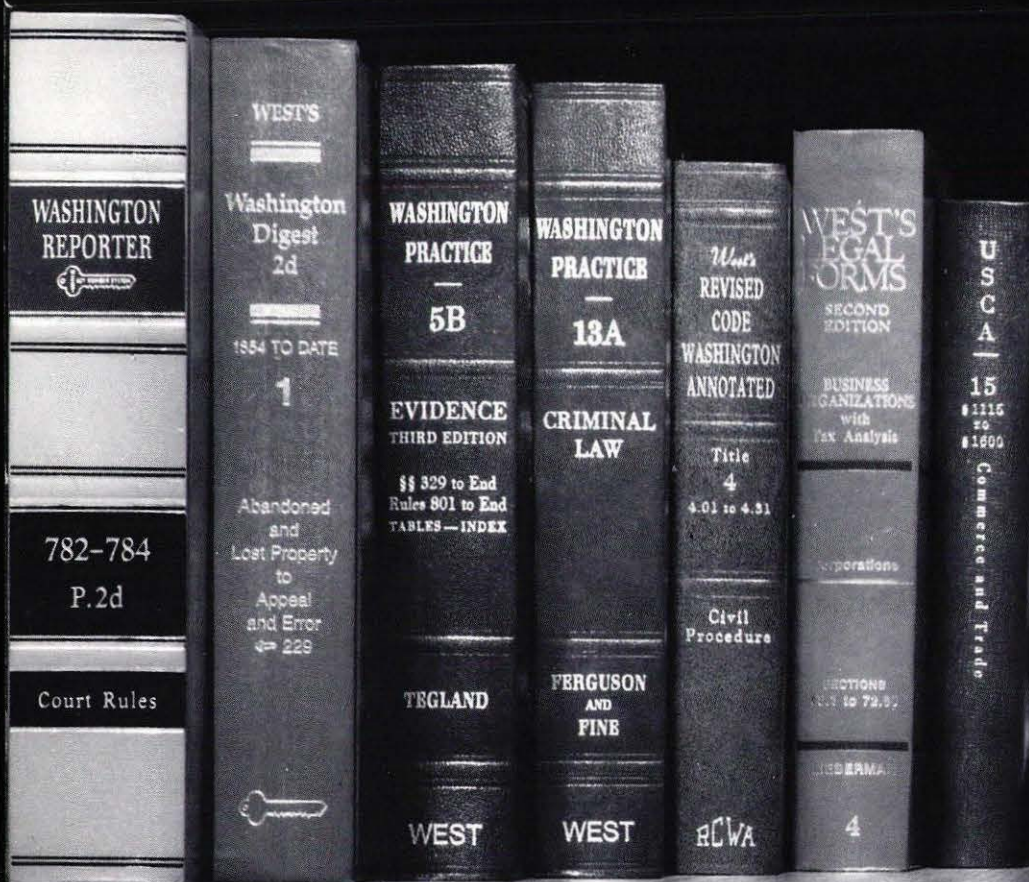
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Washington State Bar News

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FEATURES

- HOW THE BILL OF RIGHTS WAS DEVELOPED, 19
by David V. Stivison
- HAPPY 200TH BIRTHDAY...A CELEBRATION OF THE 25
 BILL OF RIGHTS
- ON ATTORNEYS AND COMPUTER-ASSISTED LEGAL 27
 RESEARCH—A SUMMARY OF THE NOVEMBER
 SURVEY, *by Ray Krontz*
- LAW AND THE HUNGER CRISIS: FIRST ANNUAL 39
 WASHINGTON STATE LAWYERS' CAMPAIGN FOR
 HUNGER RELIEF, *by Robert C. Mussehl and Nicholas A. Stamoulis*

DEPARTMENTS

- Letters: More on playground safety; Mix sex and the Bible 5
 and you'll never run out of letters
- The President's Corner, *by Lowell K. Halverson* 9
 Report Card: What the Bar Is Doing
- Exec's Report, *by Dennis P. Harwick*: WSBA Awards 13
 Financial Report 14
- Editor's Page, *by Lindsay T. Thompson* 17
 Same Hamster, Different Treadmill
- Book Review: *In Our Defense—The Bill of Rights in Action*, 18
reviewed by Jo Rosner
- Office Practice Tips, *by Gregory S. Morrison* 26
 The 3 x 5 Notecard
- The Gray Pages
 • The Board's Work, *by Lindsay T. Thompson* 30
 • Calendar 35
 • Digest 36
- Notes from the Academy, *edited by William B. Stoebuck* 38
- Around the State: News from Home and the counties: Clark, 50
 Cowlitz, East King, Skamania, Seattle-King; The Law Schools;
 Foreign Law Consultants; UPICEL; In Memoriam
- Notices 55
 Classified Advertising Information 55

ART CREDITS

Cover: "A hungry man is not a free man."—Adlai Stevenson.
 Photographer Paul Joseph Brown and the *Seattle Post Intelligencer*
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Letters to the Editor of reasonable length are invited. Such letters should be typed and signed. The Editor reserves the right to select communications or excerpts therefrom for publication, and to edit any letter as may be appropriate.

More on Playground Safety

Editor:

Thank you for publication of my article on public playground injuries (Public Playground Injuries: Products or People—The Conspiracy of Blame, *Bar News*, March, 1991, p. 40). Between submission and publication of that article, a case was settled in Washington using the issues and documentation discussed in the article.

To arrive at a pretrial settlement in *Luke Armstrong v. Snohomish School District #201*, a case involving a serious head injury to a minor child, the plaintiff's attorney, Frank Willson of Bigsby & Willson in Everett, used the issues of improper site management to argue for a failure to provide ordinary care.

Willson cited four areas of negligence: improper design of the site to safely accommodate the proper activity of the child; improper supervision (arguing that a supervisor-to-student ratio of 1 to 120 did not provide the constant and close supervision recommended); that training of both students and supervisors in appropriate activities and appropriate monitoring of activities was lacking; and, finally, that a pro-active injury prevention plan was not in place. These issues were alleged to be the causes of the injury.

Obviously omitted in the issues was the role of the equipment—choosing not to argue whether the equipment was safe and instead using site management responsibilities exclusively. This was, in my opinion, foresighted and counter to most matters of this nature.

This result, and Mr. Willson's aptly managed approach, ought to be noticed by his colleagues. It provides an additional direction in the litigation of play site injury cases. It goes to the core of educational institutions' responsibility to provide for the health and safety of their students. It deals with the function of educational institutions, instruction, evaluation assessment of results, and response to correct deficiencies and management of those processes.

THOM THOMPSON
Beaverton, Oregon

Mix Sex and The Bible and You'll Never Run Out of Letters

Editor:

Aghast, I read Thomas Olmstead's letter on AIDS, the Law and Morality in the March 1991 *Bar News*, in which he claims that AIDS is divine punishment. Though I was shocked by Mr. Olmstead's shameless use of the *Bar*

News as a forum in which to proselytize, I will not—by addressing Mr. Olmstead's hateful, overweening condemnation—legitimize his letter as something worthy of a reasoned response. Instead, I hope it suffices to say that his words made my soul want to vomit.

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Editor:

In the ongoing discussion regarding AIDS, sodomy, miscegenation, the S&Ls, and the wrath of God on these pages (Letters, March and November 1990, and March 1991), our editor has found a topic somewhat more interesting than Japanese trans-national taxation or the Rule Against Perpetuities.

Various writers have written in favor of: the wrath of God (Spurgetis and Carpenter, March 1990); AIDS victims (Kydd, November 1990); and the wrath of God again (Olmstead, March 1991).

I write on behalf of sodomy.

During the late 1960s I undertook an examination of the law of sodomy in America. It was more interesting than due-course holding, although not much more.

While Tom Olmstead does a fine job as a fundamentalist preacher, it is apparent that he lacks both the knowledge and imagination to write about sodomy.

We used to have laws against sodomy. A few backward states still do. It may come as a surprise to Tom, but "the homosexual lobby" (his words) had virtually nothing to do with the repeal of the statutes.

My study covered all reported appellate decisions of all states and the District of Columbia from 1954 to

1968. A majority of decisions in that period were reviewing convictions obtained for the commission of *heterosexual* acts of sodomy, and a small but disturbing number of convictions were of married parties committed in what they thought were private circumstances.

Forty-nine states, the District of Columbia, and the federal courts had, over the years, defined the act the Kinsey Report found to be the third-most common sexual act, and the second-most common form of sexual intercourse (oral sex) to be sodomy. The state of Minnesota, showing perhaps greater imagination or experience of its Supreme Court, had, alone among the states, ruled that oral sex was not sodomy.

Other studies at the time had concluded that the primary use of the sodomy statutes was as a means of extortion, or as a threat in plea-bargaining. In a few notorious cases the laws were used for political purposes.

During the 1970s most states revised their criminal codes and took the opportunity to abolish statutes against bigamy, adultery and sodomy. In part, that was the result of the sad experience of the use of those statutes as vehicles for blackmail. In larger part, however, the changes recognized that the perceived evils of sexual acts had very little to do

with the nature of the act, and a very great deal to do with the power relationships between the participants.

This doesn't have much, if anything, to do with AIDS.

Olmstead, in his March letter, "thinks it's high time that the homosexual community accept this responsibility for their involvement with this disease."

Tragically, the fastest-growing group of AIDS victims are babies. Does Olmstead think they, too, should "accept responsibility for their involvement with this disease"?

The first confirmed AIDS death in the United States was a sixteen-year-old boy in the Midwest in 1967. So far as can be determined, he had never had sexual contact of any kind. What "responsibility" can be ascribed to him?

In Africa, where the disease is most widespread, the victims are equally of both genders. Who should "accept responsibility" for that?

If any group is responsible for the catastrophic spread of AIDS, it is those who have for ten years seen AIDS as someone else's problem.

Finally, one is on very thin ice when basing public policy decisions on the Bible. Olmstead relies on the Genesis version of the destruction of Sodom. Isaiah 1:9 and 3:9 ascribes it to a lack of social justice, Ezekiel 16:46-51 ascribes it to a disregard for the poor, and Jeremiah 23:14 ascribes it to general wickedness. All this makes me wonder, what sort of act is gomorrhamy, and is it a crime?

CHARLES L. SMITH
Seattle

Editor:

I feel compelled to respond to Thomas Olmstead's letter on homosexuality. I shall leave the obvious First Amendment problems with his using the Bible to write laws for someone else and instead focus on his faulty exegesis.

Texas once had a governor, Miriam Ferguson, who vetoed legislation that would have made the Texas schools bilingual. Her reasoning was that when she opened her King James version of the Bible, she read Jesus and the apostles speaking to each other in English, and if English was good enough for Jesus and the apostles it is

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Apparently, Governor Ferguson and Mr. Olmstead attended the same seminary, because his exegesis and hermeneutics are based on the same fundamental error as hers. That error is simply not going beyond the words on the page to look at things like context, culture and the needs of the time. A person using the same method to interpret the First Amendment would come to the conclusion that human sacrifices are protected, since a ban on them violates the plain meaning of the text. A person relying on the clear language of the Old Testament would come to the conclusion that rape victims should be executed, since the legal presumption was that they had failed to cry for help loud enough. I hope Mr. Olmstead's fundamentalism is not so fundamentalist that he thinks that if someone rapes his wife, she should be executed.

Nothing is so screamingly funny as a 20th century American taking a passage written for a specific purpose to meet the needs of ancient Israel and trying to make it into a doctrine for all time. Indeed, there is a sect of Amish that is forbidden to ever be naked—they wear underwear in the shower, make love through their clothes and change their underwear one article at a time—and their Biblical basis is an unfortunate incident involving Noah being naked in his tent shortly after discovering how to make liquor.

There is not enough space in your letters section to do an adequate job of demonstrating, verse by verse, why Mr. Olmstead is incorrect in saying the Bible condemns homosexuality. I know because, as a seminarian, I wrote a thesis on the subject (How could Scripture condemn homosexuality when it gives honor to the relationships between David and Jonathan, and Ruth and Naomi? And of course they had sexual relationships—if the English isn't clear enough, the Hebrew leaves no room for doubt. When Jonathan died, a brokenhearted David used a Hebrew word to describe his love for Jonathan that clearly and unambiguously means passionate erotic love).

Suffice it to say that Mr. Olmstead's ignorance of Middle Eastern culture and the ancient Israeli family structure is

exceeded only by the unwillingness of people who think like him to acknowledge the pain and suffering they cause large numbers of gay people—gay people who, in many cases, are profoundly religious, have well-ingrained moral standards and are contributing members of society.

MEL DAHL
Spokane

Editor:

I am unsure of the basis of Mr. Olmstead's beliefs in his March 1991 letter. Nevertheless, I think it unfair that either Jesus or reason be found responsible. Mr. Olmstead is the third member of the bar kind enough to heap "fire and brimstone" upon me for suggesting that homosexual human beings are just as worthy as other



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human beings.

I wrote the first two gentlemen of the bar kind letters asking for an opportunity to meet and explore the error of my ways. They neither called nor wrote; perhaps Mr. Olmstead is representing them.

Since Mr. Olmstead evidently speaks for more than himself, I think it appropriate that his sincerely held beliefs be honored with a public debate to be set up by SKCBA. We could hold this debate at Seattle University or some other auditorium so students also could have an opportunity to learn from Mr. Olmstead.

At this debate, Mr. Olmstead will have an opportunity to demonstrate the truth of his beliefs that:

1. The homosexual community/ lobby is responsible for the AIDS epidemic in the U.S.
2. They spread it to "innocents" through "promiscuity" and "political lobbying."
3. Quarantine is an appropriate measure.
4. That "attempted homosexual acts" against the angels were re-

sponsible for the desecration of Sodom and Gomorrah.

5. That there is historical proof that adult male citizens of Greece or Rome were prosecuted for making love.

On my side of the debate, I will attempt to demonstrate the following:

1. Mr. Olmstead's beliefs in 1-5 above are historically, factually and scripturally incorrect.
2. That AIDS is being spread more by bigotry, prejudice, ignorance and fear than by any sexual act.
3. That the way in which the Bible and the law were abused to prevent and penalize interracial marriage is quite similar to the way Mr. Olmstead abuses them to penalize love between persons of the same gender.
4. That Mr. Olmstead's beliefs, if implemented, are historically closer to the original meaning of sodomy than homosexual love.
5. That Mr. Olmstead's beliefs about AIDS, gays and scripture clearly illustrate why the U.S. (unlike Britain and Sweden) failed to contain AIDS early on and allowed it to ravage both our people and our healthcare system.
6. That Moritz Goldstein, in his study of another holocaust, was correct in stating the following:

We can easily reduce our detractors to absurdity and show them their hostility is groundless. But what does this prove? That their hatred is *real*. When every slander has been rebutted, every misconception cleared up, every false opinion about us overcome, intolerance itself will remain finally irrefutable.

I am saddened Mr. Olmstead feels a need to have his God declare me evil for expressing my beliefs in writing. My God would prefer to look at the facts before even considering judgment.

Since Mr. Olmstead has access to truths of which I am unaware (or unworthy), I sincerely hope he will come out of the closet for this debate and provide me the opportunity for the repentance I apparently need. I will pray for him, too.

JOHN W. KYDD
Seattle

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Report Card: What the Bar Is Doing

by Lowell K. Halverson

For those of you who may be reading "The President's Corner" for the first time, I would like to introduce myself. I am the bar's 101st president. My term of office concludes in September. We have a president-elect, Joe Delay from Spokane, who will be taking over then. His recent election has caused me to pause and reflect on what I have learned about this bar organization in the nine months I've been its presiding officer.

Who we are: First, I loosely preside over 16,500 lawyers, 11,000 of whom are in private practice and 80 percent of whom practice in firms of five lawyers or fewer. My main job is to preside over the monthly meetings of the Board of Governors. In that regard, I am like Jefferson Davis, presiding over a loose confederacy of very independent states. (N.B. Whatever happened to Jefferson Davis?) Between meetings, I serve as spokesperson for the bar and put out fire fights among the many constituencies we try to represent. Some have likened the job to that of a herder of cats.

A 'New Deal': Normally, about 30 percent of the board turns over every year. This year was different. For one, we had a 40 percent turnover following numerous contested elections. A president was elected (me) who had not participated in board governance activities for more than 10 years. We picked up a new executive director when John Michalik resigned. In short, we started out my year as president with a fresh deck, half a table of brand-new, inexperienced players and not everyone willing to play the same brand of poker. These have been interesting times in which to preside over a highly activist board.

That we have been able to work together as such an able, even collegial,

team is a credit to the public spirit each of the governors brings to the table each month. Our common glue is the relentless capacity for hard work on behalf of the bar. The same is true for our new executive director, Dennis Harwick, who has only taken off three days since he joined us last November. (Gossip: The three days were all Sundays of national televised tennis matches; Dennis is a national tennis referee in his other life.)

Where the board puts its energies:

Our bar association has a budget of slightly over \$6 million, a staff of 65, and about as many programs currently active as there are employees. There are too many good programs to even describe in encapsulated form in this space. If you want a list, see the Directory of Member Services in *Resources*, your attorney directory. So what are we doing with all this money and our many gifted employees? Plenty!

For the public good: Last year, 4,000 of us gave significant pro bono time to clients and programs around the state. The time we gave had an estimated value of \$1.5 million. An honor roll of the pro bono lawyers will appear in next November's *Bar News*. I hope your name will appear on that 1991 list. The bar's pro bono coordinator, Nina Harlan, reports that our contributions will be even higher this year. A random survey of 25 percent of our bar mailed out in March will, we hope, document what we already suspect—that many, many more lawyers are engaged in pro bono activities than are actually reported through our current data collection methods. Keep up the good work.

The Long-Rangers ride again:



Lowell K. Halverson

You, dear reader, were solicited two months ago to give your views on where the bar association should be going over the next five to ten years. Bill Gates and the 20-member Long-Range Planning Committee are sifting through your comments and presently working on *A PLAN*. The activist board you elected can hardly wait to get their hands on the report. It's still not too late to write Bill Gates, me, your local governor or the bar office with your suggestions.

Our public image: Two years ago, a membership survey showed that our relationship to the public and our public image comprised one of the top three concerns to our members. I recently presided over a consortium of public-relations directors and representatives from about twelve of our constituent organizations, including the Washington State Trial Lawyers, the Office of the Administrator for the Courts, the Seattle-King County Bar Association, and the Judges' Association. We discussed ideas such as pooling of our press resources and working on a Law Day project together. The general consensus is that our professional image and our personal image of ourselves will not improve with good press releases, but with good works. The consortium is working on this under the able direction of George Scott.

Lawyers as Mentors: What we do as lawyers has always been of interest to the public. Both the first stone cutter who incised the Code of Hammurabi and the latest neurotic script

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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writer for "LA Law" made a living on the knowledge that each of us is a "public figure." People want to know more about us. Our bar is capitalizing on this by regularly reaching out to special audiences whose futures we can shape.

One such audience is in our high schools. Our nationally recognized high school MENTOR program is alive and well in thirty high schools around the state, each sponsored by a law firm which is regularly toured by students from the high school. This is a terrific public-relations opportunity for the bar, and the success of our efforts has been confirmed by the New York founder of MENTOR, who has asked that the program be transferred to us for national administration. With cooperation from IOLTA funds, we helped put on a traveling musical play for high school seniors called "Whadda 'bout My Legal Rights?" which has now been adapted by the ABA and is available nationally on videotape.

We are also reaching out to our youngest lawyers. Our Lawyer-to-Lawyer program is well underway, guided by Beth Jensen of the Young Lawyers Division. We are pairing up to a thousand new admittees this year with mentors, comprising lawyers who have been out for five years, have leapt tall buildings, and know which jagged spires can be avoided. In helping these new admittees make the transition from classroom to courtroom, we hope to restore the old virtues of collegiality, about the Rambo types and bring out the Atticus Finch that is latent in every lawyer.

Conventions: Planning for the San Diego convention in September is on and bubbling. Our new CLE director, Diane deRyss, has lined up top CLE speakers. Clarence Darrow (in the person of Yakima attorney Adam Moore) has promised to make an appearance as has Harvard Law professor Arthur Miller. The 1995 convention in Maui is off. The referendum attracted ballots from 8,600 lawyers as well as the attention of the *New York Times* and the *ABA Journal*. A resounding 60 percent of the lawyers who voted said, "Hell no, we won't go." The board is now wondering where to put the 3,465 lawyers who voted for Maui. I've heard on the street that the Arizona and Utah

bars are in a bidding war over our low-rate Maui room reservations.

Serving Within

The Lawyers' Assistance Program is surfeited with 200 lawyer clients, reports staff psychologist Andy Benjamin. This is another of the programs in which our bar has assumed national leadership. It also received considerable national press, mainly in the *Wall Street Journal* and the *New York Times*, both of which dutifully reported some sad statistics: About 25 percent of Washington state lawyers have been disabled at some time or other from clinical depression, alcoholism or drugs.

While at first blush this would appear to be just another instance of negative press reporting about lawyers, both articles were very sensitively written. The bar came out a definite winner for owning up to an endemic problem within our profession and doing something constructive about it. Perhaps that is one reason why we received the highest grade of any bar association in the nation from an anti-lawyer group called HALT. They gave us a "C" for our candor, openness and public efforts. All other bars got a "D" or flunked.

Our electronic bulletin board will soon be operational and accessible. If you have a modem, you will be able to call us at (206) 448-6562 and try us out.

A special task force is working on enhancing our data base to include just about everything of interest to lawyers from judicial decisions to the latest lawyer jokes. Right now we are installing the RCWs and readying a free demonstration package.

The 15-hour mandatory CLE requirement that's been around for ten years is now undergoing some changes, again relating to technology. A rule is pending before our Supreme Court permitting five of those CLE hour to be earned in self-instruction through video and audio cassettes. If it is adopted, the bar's considerable inventory of seminar materials now available in video and audio formats should provide a formidable lending library source for lawyers around the state.

One frustration in this job is that there is never enough time or space to adequately describe all the good works that our bar and its members do for each other and for the public we serve..I'm running out of space even this moment, so with what remains, let me say, "Thank you" to the hard-working bar staff and members whose efforts show that we *do* care—for our fellow lawyers and the public we serve.



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WSBA Awards

Each year about this time, the executive director gets a freebie—the content of this column is preordained: *solicitation of nominations for the WSBA Awards*. Having never been present when any of these awards were presented, I feel like a carpet-bagger talking about them. Rest assured, however, that I am shamelessly plagiarizing columns of years past.

Award of Merit:

This is the WSBA's highest honor. It was first given in 1957. In general, the Award of Merit is given for long-term service to the bar and/or the public, although it has also been presented in recognition of a single, extraordinary contribution or project. It is given to individuals only—both lawyers and nonlawyers.

The President's Award:

As the name implies, this award(s) is given for special accomplishment or service to the WSBA during the term of the current president.

Board of Governors' Award for Professionalism:

This honor is awarded to a member of the WSBA who exemplifies the spirit of professionalism in the practice of law. "Professionalism" is defined as the pursuit of a learned profession in the spirit of service to the public and in the sharing of values with other members of the profession.

The Angelo Petrus Award for Lawyers in Public Service:

This award is named in honor of the late Angelo R. Petrus, a Senior

Assistant Attorney General, who passed away during his term of service on the Board of Governors of the WSBA. Selection criteria include a demonstrated significant contribution by a lawyer in government service to the legal profession, the system of justice, and the public.

Outstanding Judge Award:

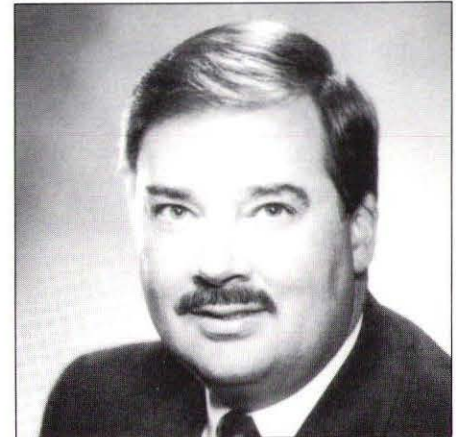
This award may be presented to a judge *from any level of court*. It is presented for outstanding service to the bench and for special contribution to the legal profession.

WSBA Pro Bono Award:

This award is presented to a lawyer, nonlawyer, law firm, or local bar association for outstanding efforts in providing pro bono services to the poor. This award is based on cumulative efforts as opposed to a lawyer's or law firm's pro bono hours or financial contribution.

It is important to note that presentation of any or all of these awards is made only when there are truly deserving recipients. Some years no award is given in some categories.

The *deadline for submitting nominations is June 14, 1991*. Nominations should be sent to the Executive Director, ATTN: Awards, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599. The Board of Governors' Awards Committee will review the nominations and make recommendations to the full Board of Governors, who will announce the recipients and present the awards at the WSBA's 1991 Convention.



Dennis P. Harwick

Speaking of Conventions...

This column wouldn't be complete without a plug for the 1991 WSBA Convention in San Diego. Over the past several months, I have asked dozens of lawyers what is the key issue facing them. With variations on a theme, the answer is most often "*survival*." That's a perfect lead in for the theme of the 1991 WSBA Convention—Tools for the Next Decade—Surviving the '90s. By now you have already received your early registration information and your main packet will be in the mail shortly. Be a survivor of the '90s; go to San Diego.

.....

Executive Director's Financial Report



See following pages

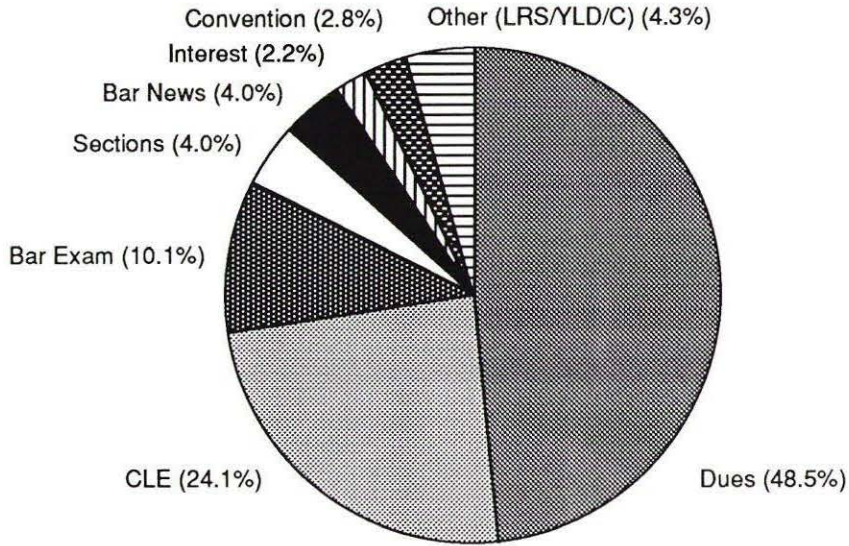
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Executive Director's Notes:

The following financial information is provided in conjunction with the completion of the 1990 year-end audit by the WSBA's outside CPA firm, BDO Seidman. This information is based on audited information provided by BDO Seidman and has been summarized for simplicity of presentation and for purposes of comparison. Complete copies of the BDO Seidman audited financial report for the WSBA fiscal year ending September 30, 1990 are available upon request from the WSBA office. Please ask for Jan Jackson at (206) 448-0441.

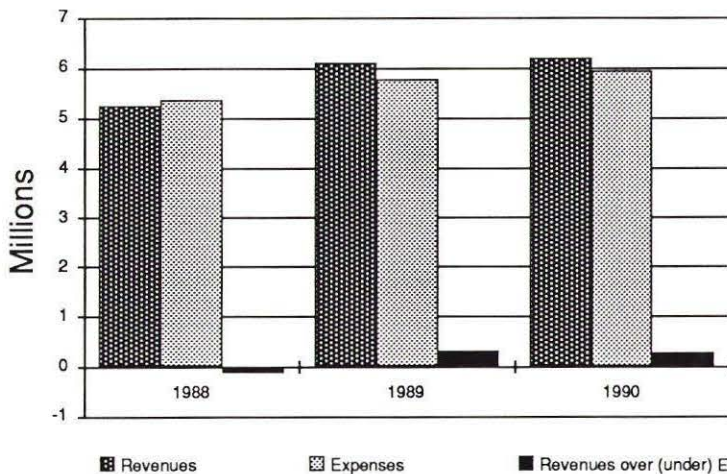
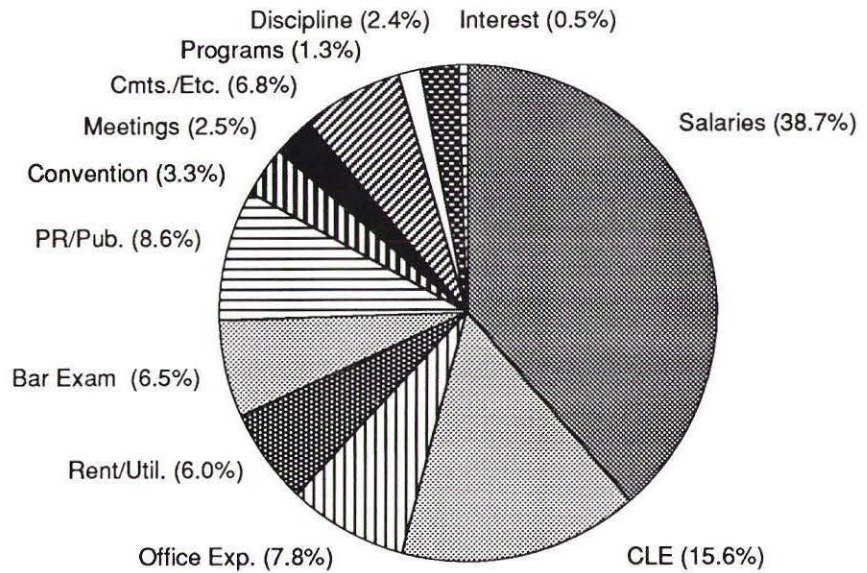
WSBA Revenues/Expenses/Fund Balance (1988, 1989, 1990)

REVENUES	1988	1989	1990
Membership Dues	\$2,644,360	\$2,877,632	\$2,999,637
Continuing Legal Education	1,243,242	1,627,517	1,491,765
Bar Exam Fees	397,550	583,118	621,989
Sections	241,036	270,889	245,896
Bar News	265,572	255,525	246,590
Interest Earned	102,036	127,675	137,796
Convention	125,424	118,194	172,822
Lawyer Referral Service	64,763	51,876	49,415
Resources	52,701	43,914	42,487
Young Lawyers Division	9,899	16,546	18,587
Client Security Program	4,981	7,186	31,410
Other Income	85,299	101,053	121,401
Total Revenues	5,236,863	6,081,125	6,179,795
EXPENSES	1988	1989	1990
Salaries	1,549,192	1,667,464	1,812,584
Continuing Legal Education	795,800	1,054,280	924,801
Payroll Taxes/Benefits	361,011	392,041	476,797
Rent & Utilities	322,975	339,809	355,374
Bar Exam/Admissions	296,121	337,892	386,621
Sections	260,518	300,282	237,765
Bar News	252,719	264,506	257,575
Public Affairs/Public Relations	171,110	216,698	191,038
Postage/Printing/Office Expense	221,964	195,215	207,065
Convention	232,916	163,817	192,590
Conferences and Meetings	164,861	139,802	146,367
Equipment: Rent & Maintenance	97,466	120,828	127,050
Committees	107,104	84,429	80,766
Resources	77,345	77,706	60,384
Young Lawyers Division	77,247	71,145	83,045
Depreciation/Amortization	58,728	63,784	67,100
Client Security Program Payments	25,747	51,748	35,920
Professional Fees	59,221	38,645	49,366
Discipline	55,736	38,239	58,021
Interest	40,463	34,637	27,161
Insurance	38,235	33,138	30,371
Legislative Activities	38,793	32,119	32,619
Lawyer Referral Service	34,210	24,713	19,991
Lawyers' Assistance Program	17,620	21,805	21,902
Provision for Inventory Obsolescence	0	0	29,225
Total Expenses	5,357,102	5,764,742	5,911,498
Revenues Over Expenses	(120,239)	316,383	268,297
FUND BALANCE (beginning)	(43,796)	(164,035)	152,348
(ending)	(164,035)	152,348	420,645



1990 Revenues

1990 Expenses



Revenues/Expenses
1988-1990

Let's Talk About Things No One Wants to Talk About!

The Governors are Running
The Governors are Running
The Governors are Running

Why—What's their program?
How do they stand on the issues?
Do they have any issues?
What's their platform?
How do they stand other than "I'm a nicer person than my opponent" (if any)?
And "I've been on a lot of committees."
Remember: It's your money we spend.



Some issues for your, and possibly their, consideration:

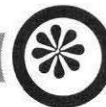
1. CLE tapes—audio and visual—available for checkout at low cost and for credit—without a monitor—from any county courthouse.
2. Cheap computer access to all WA Reports, WACS and RCWs on a WSBA bulletin board, regardless of either quiet resistance of the Statute Law Committee or the foot-dragging reluctance of the Supreme Court's Commission on Law Reports.
3. Is the WSBA as you want it? How would you want to see it changed, if at all? We're actually a creature of a statute—bylaws and constitution. We're not a creature of an extra tablet left on the mountain for whoever leads. All of this could be changed.
4. Random audits without any grounds to believe a trust account has been compromised...Is that o.k. with you?
5. What about unionization of bar staff?...It's a possibility.
6. What about CLE credit for pro bono work?
7. The rich and the poor have equal access to marriage licenses—and marital problems—but unequal access to the courts; equal access to drugs and alcohol and unequal access to treatment. The poor, the minorities, the mentally ill (based on my observations) go to jail, not treatment. What about it? Anything?

Why not ask your candidates their reaction based on social issues that affect your conscience?

Ask them to take a stand—any stand—any stand at all. It's a good thing to do.

Thanks.
Alva C. Long

Not paid for by the WSBA or any division thereof.



Same Hamster, Different Treadmill

by Lindsay Thompson
Editor, Bar News

I tend to brood in winter. Annually, I ponder the bare ruined choirs of another year drawing to a close in the gloom of December. Dr. Johnson, another year-end brooder, prayed a lot and resolved to be better each year. I just fret. This winter, in quick succession, I marked a series of anniversaries: five years in practice. Ten years since coming down from Oxford (they call it coming down because little in later life ever quite measures up). My thirty-fifth birthday, complete with an outbreak of gray in my beard. I felt restive and dissatisfied.

So I spent several months looking in all the wrong places before stumbling across a job right on my doorstep. This month I have left Weber & Gunn in Vancouver and joined the Cowlitz County Prosecutor's Office.

Reactions have varied, running the gamut of emotion from disbelieving to incredulous. "Do you have family there?" "It's very small there." "Well, at least you'll still be close to Portland." "Where is it? Is that near Chehalis?" "That C.C. Bridgewater sure has a sense of humor." And, the big winner numerically, "I just can't see you as a prosecutor." The discerning, however, see it as a logical extension of what I do in "The Board's Work" every month.

Well, think what you like. I'm off to Kelso. But before I head north, through Ridgefield, La Center, Woodland and Kalama, some thanks are in order.

The lawyers and staff of Weber & Gunn put up with me for five years, enduring regular absences as I played Boswell to the Lords of the Bar, a prickly temperament, an obscure sense of humor, the Southerner's tendency to long, digressive stories ("When you go into his office," one partner once said, "you rarely come out with the answer you were after, but you usually learn something unusual"), dilatory tendencies and an unerring instinct for bizarre, unprofitable cases (I saw them as opportunities to broaden my experience.

They saw them as dumb choices to indulge esoteric legal theories).

Ken Weber, Ernie Nicolson, David Nordeen, Howard Marshack, Paul Henderson, Bill Baumgartner, Marlene Hansen, Curt Shelton, Greg Gonzales, Mike Roe and Larry Holzman, good lawyers all, were my colleagues for some or all of my five years in Vancouver. Carla Albright, Vicki Alexander, Barbara McIninch, Debbie Russell, Linda Metzner, Cathy Coatney and Catherine Zweig braced themselves daily for the next off-the-wall event, tracked me down all over the state for clients, ran interference with clients and puzzled over my dictation. (In a passage in *Winter's Tale*, Seattle author Mark Helprin could have had my assistants in mind: "Their dictionary looked like a sow's ear, because Virginia spent inordinate proportions of their day racing through it, though when Mrs. Gamely was angry a staff of ten could not have kept pace with her, and a dozen linguaphologists would have collapsed from hypercardia."). They gave better than they got, and taught me a lot.

So, too, did several Clark County judges. Presiding Superior Court Judge John Skimas may wish the clerk didn't use a rotating assignment system for cases, because it left him stuck with me for several weeks' worth of my essays in litigation: The Case of the Defective Toupee, The Case of the Chiropractor's Wife, The Case of the Faulty Fire Restoration, and the Case of the Sixteen Tortiously Toppled Trees. Judge James Ladley always had *something* nice to say ("Good margins on your memo, counsel") before ruling against me. He also invented a term, "The Buffalo" for an unconscious trial habit of mine: walking up to the witness box to hand up an exhibit while asking a question in an increasing volume of voice, then turning to return to my table while finishing the increasingly inaudible question. In the district court, judges Fred Stoker, Robert Moilanen and Randall Fritzler kept straight faces

(mostly) watching me crash and burn—over and over and over—in their courtrooms. Others—Dean Morgan, Robert Harris, Barbara Johnson, Roger Bennett and Tom Lodge in superior court, Ken Eiesland and Darwin Zimmerman in district court—gave me a fair hearing when I brought motions before them.

Lawyers taught me things, too. Bill Robison, Karen Feulner, Steve Busick, Mike Hicks, David Meyer, Sarah Stookey, Bob Yoseph, Diane Woolard, Dennis Duggan, Rick Pomerville, Phil Foster, Nancy Miller, Larry Juday, Gideon Caron, Robert Bennett, George Brintnall, Gil Kleweno, Mark Hansen, Jerry Eline, Don English, Mary Kay Gaffney, Jim Gregg, Joe Mercer, Randy Printz, Mark Stoker, Phil Olbrechts, Roger Knapp, Peter Jackson, Ed Kelly, Brian Leahy, Al Schlotfeldt, Greg Stadter, Dale Read, Jr., Lisa Lowe, Jim Mullins, and Portland Senior Deputy City Attorney Tom Williams showed me things about what trying a good case is about, and how to fight hard, sometimes very hard, and still meet on friendly terms the next day.

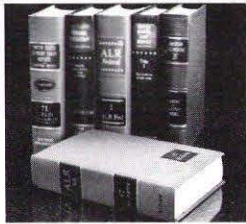
Jo Ann McBride and George Miller and their staffs in the Clark County courts run an exceptional operation with constant good humor and results. The people who invented the Kafkaesque Local Rules for King County should come to Vancouver to see how a good court runs.

Bill Reed, Ed Kelly, Bob Casey, Rick Grant, Greg Call, Joel Junker in Seattle, Jeff Tolman in Poulsbo, Frank Edmondson in Olympia and, in Ashland, Oregon, Art Stevens, have been good friends and advisors whose counsel and patience leave me much in their debt.

These people, and others like them, make Clark County a good place to be a lawyer, and are examples of why a lawyer, or part of the legal system, is a good thing to be. I wish them all well and remind them to take note of the 55 mph zone as they come into Kelso.



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IN OUR DEFENSE— The Bill of Rights in Action

by Jo Rosner

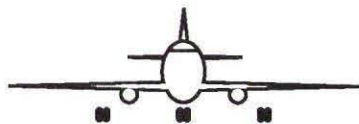
So, what if half the population of the United States doesn't know what the Bill of Rights is? The government will protect the interests of the people, right?

Caroline Kennedy and Ellen Alderman, in their new book, *In Our Defense* (which has made the New York Times Bestseller list), suggest otherwise. It is their view that knowledge of one's individual rights is each person's responsibility. In fact, it was protection *from the government* that the founding fathers had in mind when they framed the Bill of Rights. Sound familiar? Well, the underlying message may have been stated many times, but the delivery is fresh, dramatic and succinct.

In this book commemorating the two-hundredth birthday of the Bill of Rights, the usual paradigmatic cases (*Miranda*, *Gideon*, *Zenger*, et al.) are replaced by current situations which test U.S. Supreme Court interpretations of each of the first ten amendments. No dusty legalese or arcane allusions here - these are straight-forward, lay language accounts of things that can happen to people.

Each case is a page-turner, which probably accounts for its popularity at bookstores across the nation.

What more can be said, other than "Read it!"—a timely, well-constructed book on a topic that could not be more relevant. Those two women left me feeling, "I wish I'd said that..."



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How the Bill of Rights Was Developed

by David V. Stivison

December 15, 1991 will mark the two hundredth anniversary of the adoption of the Bill of Rights, the first ten Amendments to our federal Constitution. Our Bill of Rights did not appear magically from thin air. Those who demanded it, constructed it, and adopted it knew what they were doing. Many of them had served in state constitutional conventions and had created new governments from scratch at the end of the Revolutionary War. What raw materials did they have at hand when they set to work to build a new order, something combining the very best designs from all that had gone on before?

Much of the framework was English. We take that for granted. We shouldn't. The normal rule for new British territories was that they would retain the law in effect when they were "conquered" (which, in America, was believed to be no law), plus what British acts and statutes as were *specifically* made applicable to the new territory. For many areas here, the process was exactly reversed. British law, in its entirety, would apply in the American colonies, and only if there was a *specific* exclusion would we be exempt. That was a bargained-for exchange. It was a concession to proprietors and colonizers to help entice new settlers to move here. They would be living as much under the familiar British law as if they stayed at their homes in England.

The Israeli Experience

To see the "normal" way of proceeding, we can look at Palestine and Israel. When Britain accepted the

mandate to govern "Palestine" in 1917, that territory had formerly been part of the Ottoman Empire. Its law in 1917 was Ottoman law, since entirely replaced by legislation. Section 46 of Provisional Order in Council 1922 established British law and equity as law in Palestine, but only to the extent consistent with the range of English jurisdiction and as modified by the dictates of local necessity.

That basis, plus the laws enacted in Palestine from 1917 to 1948, formed the law at the time of the Declaration of the Establishment of the State of Israel on May 14, 1948. That declaration specified that a constitution be adopted by October 1948, an expectation not fulfilled to this day. It soon became clear that many did not want a written constitution at all. A piecemeal approach was chosen and, by resolution of 13 June 1950, the Israeli Parliament, [Knesset] resolved that a constitution would be built up chapter by chapter. To date, nine such chapters have become basic law, but a bill of rights is not among them. In fact, Basic Law (1980) substituted references to principles of Jewish Traditional Law for the reliance on English principles.

This is a path that America might have trod, if the earliest settlers had not been so insistent on full applicability of English law on the colonies. Thus this storehouse of English law stood open to our leaders in crafting our own structure.

The Magna Carta

Many of the provisions of the Bill of Rights trace their origins to the Magna Carta, the Great Charter forced on a reluctant King John by his barons in 1215. Appeals to the authority of the Magna Carta figured prominently in seventeenth century England during the

struggles between Parliament and the King. Thus the Magna Carta was a living document during the formative years of the American colonies. Colonial charters that guaranteed Magna Carta would follow settlers into the wilderness held important inducement. The Magna Carta concept that individual freedom should be protected, even against the sovereign—and in the sovereign's own courts—underlies the very idea of a bill of rights. One of the four chapters of the Magna Carta still in force in England today sounds familiar to American ears:

"No freeman shall be taken or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any other wise destroyed; nor will we not pass upon him, nor condemn him, but by the lawful judgment of his peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man either justice or right."

—*Halsbury's Statutes of England and Wales*, Magna Carta, Ch. 29, 4th Ed. (1985) pp. 14-17.

England's Bill of Rights of 1689

When William and Mary were invited to take the throne of England after the Glorious Revolution of 1688, it was on condition that they agree to a Declaration of Rights, which became England's Bill of Rights upon adoption by Parliament and signing by the King December 16, 1689.

The 13 declarations of the English Bill of Rights provided the model for similar lists in our new state constitutions following the Revolutionary War and in the federal Bill of Rights. Those declarations were:

1. The pretended power of suspending of Laws or the execution of Laws by Regal Authority without Consent of Parliament is illegal.

2. The pretended power of dispensing with laws or the Execution of laws by regal authority as it has been assumed and exercised of late is illegal.

3. The Commission for erecting the late Court of Commissioners for Ecclesiastical Causes and all other Commissions and Courts of like nature are illegal and pernicious.

4. Levying of money for or to the use of the Crown by pretence of Prerogative without Grant of Parliament for longer time or in other manner, than the same is or shall be granted in illegal.

5. It is the right of the subjects to petition the King and all Commitments and prosecutions for such petitioning are illegal.

6. The raising or keeping a Standing Army within the Kingdom in time of Peace unless it be with consent of Parliament is against Law.

7. The Subjects which are Protestants may have Arms for their defence Suitable to their Condition and as allowed by Law.

8. Elections of Members of Parliament ought to be free.

9. The freedom of Speech and debates or proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament.

10. Excessive Bail ought not to be required nor excessive fines imposed nor cruel and unusual Punishments inflicted.

11. Jurors ought to be duly impanelled and returned and Jurors which passe upon men in trials for high Treason ought to be freeholders.

12. All grants and promises of fines and forfeitures of particular persons before conviction are illegal and void.

13. For redress of all grievances and for the amending, strengthening and preserving of the Laws, Parliaments ought to be held frequently."

—*The Declaration of Rights, 1689,*

Lois G. Schwoerer,
copyright 1981, pp. 296-297
(spelling modernized).

The English Bill of Rights clearly provides the core and concept of many of our own protections. Here is the grandparent of our Bill of Rights, and the parent is to be found in the state constitutions crafted after the

Revolutionary War.

Pennsylvania, 1787: The First Draft Bill of Rights

Why was a similar list left out of our Constitution? Its inclusion was debated in Philadelphia in 1787. Convention delegate Col. Mason "wished the [Constitution] had been prefaced with a Bill of Rights & would second a Motion if made for the purpose. It would give great quiet to the people; and with the aid of the State declarations, a bill might be prepared in a few hours."

But most Convention delegates disagreed: The federal government was conceived as a body of limited power and the protection for individual rights was contained in the various state constitutions. Repetition in the federal document was unneeded. The writers of the Constitution soon found just how wrong they were. Without an agreement to promptly enact a Bill of Rights, the Constitution would probably not have been ratified. During the Constitutional ratification fight in Pennsylvania, the anti-Federalists proposed articles which "might either be taken collectively as a bill of rights or separately as amendments," and moved that no vote be taken by the State Convention on the Constitution until such amendments had been made. This attempt to derail ratification failed, but the fifteen articles so proposed were widely circulated as the "Dissent of the Minority of the Convention" of Pennsylvania. They provided:

1. That the rights of conscience shall be held inviolable, and neither the legislative, executive, nor judicial powers of the United States shall have authority to alter, abrogate, or infringe any part of the constitutions of the several states, which provide for the preservation of liberty in matters of religion.

2. That in controversies respecting property, and in suits between man and man, trial by jury shall remain as heretofore, as well in the federal courts, as in those of the several states.

3. That in all capital and criminal prosecutions, a man has a right to demand the cause and nature of his accusation, as well in the

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federal courts, as in those of the several states; to be heard by himself or his counsel; to be confronted with the accusers and witnesses; to call for evidence in his favor, and a speedy trial, by an impartial jury of the vicinage, without whose unanimous consent, he cannot be found guilty, nor can he be compelled to give evidence against himself; that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.

4. That excessive bail ought not to be required nor excessive fines imposed, nor cruel or unusual punishments inflicted.

5. That warrants unsupported by evidence, whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his or their property, not particularly described, are grievous and oppressive, and shall not be granted either by the magistrates of the federal government or others.

6. That the people have a right to the freedom of speech, of writing, and of publishing their sentiments; therefore, the freedom of the press shall not be restrained by any law of the United States.

7. That the people have a right to bear arms for the defense of themselves and their own state, or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them, unless for crimes committed, or real danger of public injury from individuals; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up; and that the military shall be kept under strict subordination to and be governed by the civil power.

8. That the inhabitants of the several states shall have liberty to fowl and hunt in seasonable times, on the lands they hold, and on all other lands in the United States not enclosed, and in like manner to fish in all navigable waters, and others

not private property, without being restrained therein by any laws to be passed by the legislature of the United States.

9. That no law shall be passed to restrain the legislatures of the several states, from enacting laws for imposing taxes, except imposts and duties on goods exported and imported, and that no taxes, except imposts and duties upon goods imported and exported, and postage on letters shall be levied by the authority of Congress.

10. That elections shall remain free, that the House of Representatives be properly increased in number and that the several states shall have power to regulate the elections for Senators and Representatives, without being controlled either directly or indirectly by any interference on the part of Congress, and that elections of Representatives be annual.

11. That the power of organizing, arming, and disciplining the militia (the manner of disciplining



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the militia to be prescribed by Congress) remain with the individual states, and that Congress shall not have authority to call or march any of the militia out of their own state, without the consent of such state and for such length of time only as such state shall agree.

12. That the legislative, executive, and judicial powers be kept separate, and to this end, that a constitutional council be appointed to advise and assist the President, who shall be responsible for the advice they give (hereby, the Senators would be relieved from almost constant attendance); and also that the judges be made completely independent.

13. That no treaties which shall be directly opposed to the existing laws of the United States in Congress assembled shall be valid until such laws shall be repealed or made conformable to such treaty, neither shall any treaties be valid which are contradictory to the Constitution of the United States, or the constitutions of the individual states.

14. That the judiciary power of the United States shall be confined to cases affecting ambassadors, other public ministers and consuls, to cases of admiralty and maritime jurisdiction, to controversies to

which the United States shall be a party, to controversies between two or more states—between citizens claiming lands under grants of different states, and between a state or the citizens thereof and foreign states, and in criminal cases, to such only as are expressly enumerated in the Constitution, and that the United States in Congress assembled shall not have power to enact laws, which shall alter the laws of descents and distributions of the effects of deceased persons, the title of lands or goods, or the regulation of contracts in the individual states.

15. That the sovereignty, freedom, and independency of the several states shall be retained, and every power, jurisdiction and right which is not by this Constitution expressly delegated to the United States in Congress assembled.

—*Ratification of the Constitution by the States: Pennsylvania*, Ed. by Merrill Jensen, 1976, pp. 597-599; 623-625.

This was the first draft of the Bill of Rights.

The Work Is Finished

On August 24, 1789, a series of seventeen articles were sent by the House of Representatives to the Senate

for concurrence and distribution to the states. This marked a further stage in the evolution of our Bill of Rights. A much pruned down list of twelve articles was submitted to the states. The first two Amendments submitted to the states concerned the numbers and apportionment of Congress and the compensation of Representatives and Senators. These were out of place in a series of guarantees of individual rights, and attention focused on the remaining ten.

The decision had long before been made that we must have a series of Amendments protecting these rights. Their adoption was widely taken for granted and few seemed to be particularly interested in the actual process of adoption. It took a leisurely two years: On December 15, 1791, adoption by Virginia actually made the Bill of Rights effective for the entire nation.

After their adoption was a reality, they played little part in the actual litigation before the Courts until the Civil Rights movement of the 1950s. We who see cases involving the Bill of Rights in every morning's newspaper can hardly understand this long sleep. When George S. Boutwell wrote his compendium on *The Constitution of the United States at the End of the First Century* (1891), he could fill 354 pages with case summaries on the Articles of the Constitution but could only record twenty-five pages for the entire Bill of Rights. This quiescence, though, is not unprecedented: The Magna Carta had been almost ignored for two centuries before becoming the center of debate in the early 1600s.

As we watch the imposing edifice that has become the Bill of Rights today, and see various decisions changing its moldings, trimming or extending this room or that, we can still discern the hidden beams and rafters that both link the Bill of Rights with ages past and give it strength to face the ages yet to come. □

David V. Stivison is a Philadelphia sole practitioner concentrating in public utility, administrative and nuclear power law. Admitted to practice in both Ohio and Pennsylvania, his a member of the Selden society and the American Society of Legal History.

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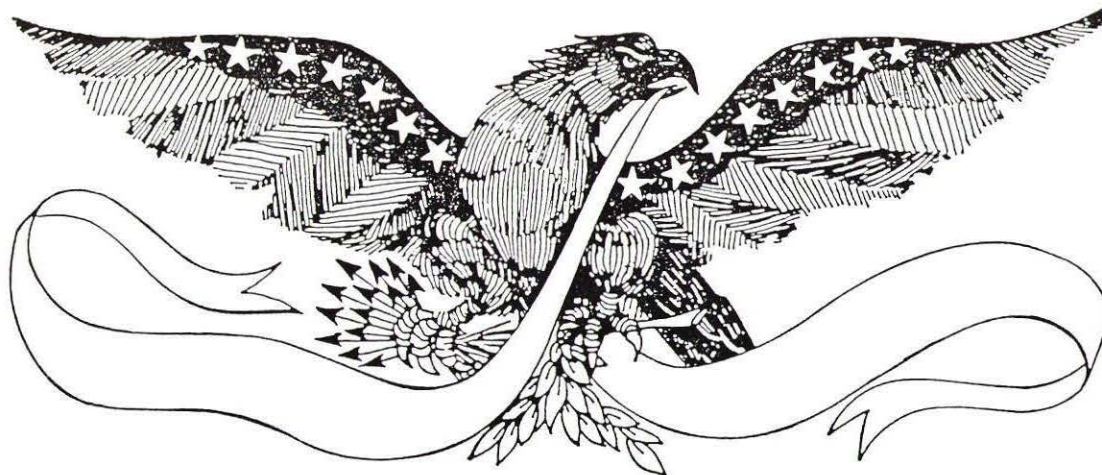
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Happy 200th Birthday . . .

A Celebration of the Bill of Rights

Imagine: "When you woke up this morning it was the year 1791.

You are a major writer of the Bill of Rights and today you will meet with the other writers to finish it up. Knowing what you know today in the 20th century, what would you say to the others? What, if anything, would you try to change? What might you warn them concerning future interpretation of the Bill of Rights?"

This is an example of an activity for students from the Bicentennial of the Bill of Rights booklet that will be sent to every school in Washington state. Through funding from the Washington Commission for the Humanities (WCH), the Washington State Bar Association (WSBA), and the Office of the Superintendent of Public Instruction (OSPI), these booklets will help teachers and students say "Happy Birthday" to the document that protects our rights as individuals in the United States.

This funding also made possible three one-day workshops that were held in April of this year in Seattle, Wenatchee and Spokane. Lawyers, judges, educators and community leaders met to hear presentations on First Amendment issues of free speech and freedom of religion; rights of the criminally accused; and due process, equal protection and other rights guaranteed "beyond the Bill of Rights" by the Thirteenth, Fourteenth, Fifteenth, Nineteenth and Twenty-fourth Amendments. The goal of the workshops was to create a network among the attendees so that they would bring ideas for celebrating the Bicentennial of the Bill of Rights to their respective

communities.

Dr. Isadore Starr, widely recognized as the "Father of Law-Related Education," was the keynote speaker for the Seattle area workshop. He is the author of many books and articles on constitutional issues.

Other speakers on the Seattle scene were: Cliff Rowe, director of the School of Communications at Pacific Lutheran University in Tacoma; and Wallace Loh, dean of the University of Washington School of Law.

In Spokane, James Vaché, dean of Gonzaga School of Law, delivered the keynote address. Professor James Wallace of Eastern Washington University's Department of Government addressed issues of criminal justice, and Court of Appeals Judge George Shields spoke about media and the law.

Wenatchee's keynote speaker was Larry Lowther of Central Washington University's Department of History. Gary Riesen, a Wenatchee prosecuting attorney, presented criminal justice issues, and a representative of the *Wenatchee World* addressed free speech and the courts.

One of the high points of the Wenatchee workshop was a presentation by eighth grade students of Orchard

Middle School, under the direction of their teacher, Mary Jean Poirier. The young people gave a 'rap' musical on the Bill of Rights that was entertaining as well as informative.

As a follow-up of the three workshops, a \$100 award will be presented in each of the three geographic areas for the most successful community effort to come out of the ideas generated by the workshops. Since the real Bill of Rights birthdate is December 15, that date will be used for the three award presentations.

The success of the project was primarily due to the efforts of an advisory committee that generated the concept and carried out the details. The members were: Hidde Van Duym, executive director of WCH; Marianne Jones, assistant director, WCH; James Vaché, dean of Gonzaga School of Law; Larry Strickland, supervisor of social studies, OSPI; Douglas Honig, ACLU; Margaret Colony, League of Women Voters; and Steve Miletich, *Seattle Post-Intelligencer*. The author of the Bill of Rights booklet was Cathy Ross, and the director of the "Happy Birthday, Bill of Rights" project was Jo Rosner, WSBA. □



SPONSORED BY THE LAW OFFICE ECONOMICS AND MANAGEMENT SECTION

The 3 x 5 Notecard

by Gregory S. Morrison

Over the past several years I have given numerous lectures on law office management. The underlying thesis for all of these lectures has always been how to increase productivity while minimizing stress. This thesis is then expanded upon by a discussion of generally accepted principles of time management. And, although there are countless ideas and tools to better manage your time, I have found a tool that is (1) user friendly, (2) portable, (3) lightweight, (4) durable, (5) infinitely programmable and (6) really cheap!

The tool I'm referring to is the super-practical 3 x 5 notecard. Just a few cents will purchase a packet of 100 of these mighty little gems. I suggest white cards that are ruled on one side. Use white because they are less conspicuous than the colored variety if

you put them in the front pocket of your shirt or blouse. Having ruled cards just makes for more organized notes. Lines on both sides would be ideal, but I haven't found them yet.

Now, assuming that you have the cards, what do you do with them? First, determine what you need to take care of this week. Limit this list to the really important things that you just can't overlook. A good rule of thumb is that if an oversight could result in death or disbarment, e.g., trial dates, anniversaries, etc., it probably belongs on this list. Now, transpose this list onto one of your notecards and put it in your pocket. You are now in possession of a convenient reminder of the week's significant events.

The next step is to outline your day. Although this list doesn't need to be

completely comprehensive, it's a good idea to include any project that must not be overlooked as well as routine tasks that might otherwise be forgotten. It can also be a great help to prioritize your list in order of importance. Also, recall that the least desirable projects should always be accomplished first so that you don't waste the day away agonizing over them.

Notecards may also be used as prompters for specific projects. A good example of this would be for trips to the courthouse. Anyone who has ever gotten back to his or her office only to realize that something was overlooked will certainly appreciate this. The time saved on such a project could possibly buy enough notecards to last a lifetime!

Be sure to keep a stack of notecards handy where you live. The same tips outlined above apply to your domestic life as well. You can also use notecards to easily shuttle notes and reminders back and forth between your home and your office.

When you have completed a project be sure to take a moment and cross it off your list. I know you will feel a tremendous sense of accomplishment as you strike off these tasks. It's also very satisfying to see how much you've done over the course of a day or week. You should also notice that you are more productive.

The 3 x 5 notecard is one of the most helpful and inexpensive tools available for lawyers (or anyone else). It allows you to unclutter your mind so that you can fully concentrate on the task at hand. It will also facilitate a more organized approach to your law practice. Finally, it will allow you the satisfaction of knowing that you outsmarted both IBM and Macintosh!

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

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On Attorneys and Computer-Assisted Legal Research

A Summary of the November Survey

by Ray Krantz

Where Do Attorneys Stand?

Simplicity and cost. If there is one theme that permeates the responses received on the computer use survey that appeared in the November issue of the *Bar News*, it is that any system for computer-assisted legal research, if it has any hope of being widely used, must be easy to use and cost as little as possible.

As one sole practitioner noted in a comment to the survey, "Any system must be very simple to operate. It should also be inexpensive so the Washington State Bar Association as a whole can make it work."

The cost factor, while always an important consideration in the purchase of new resources, also exposed what might be characterized as a certain degree of class consciousness among some of the respondents. One sole practitioner noted that it is "time to get out of the Stone Age and level the playing field for sole practitioners." Another stated that the whole effort "sounds like just one more thing for the big city/big firms." In the same vein, a partner in a six-attorney firm commented, "You are getting beyond the average user. What you are doing is fine for the large firms. If that's what the bar association is for, then have at it."

Based on the many comments to the survey, attorneys in Washington can be grouped into four broad categories. The first category is the "hurry-up-and-do-it" crowd that is eager to have a system for computer-assisted legal research established as soon as possible. One shareholder in a three-attorney firm said, "Making publications available by electronic means is very important! I hope something comes of this, and

soon." Another attorney, a partner in a six-attorney firm indicated an eagerness for CD-ROM-based research: "A CD-ROM library should be created without delay." Ditto for a partner in a four-attorney firm who urged the bar, "Get with it now!! Who wants to have to dial up a database when we can store it in our desk drawer??"

The second, and clearly largest, category is the "I'm interested, but what will it cost?" bunch. These respondents are best exemplified by the comment, "We need to computerize and get enough people involved to make it cost-effective. CD-ROM is too expensive now but as demand grows, hopefully prices will drop." One sole practitioner said, "The availability of Washington law on CD-ROM would be a substantial benefit, if it could be provided at less expense than the bound volumes." Another sole practitioner expressed the widely felt sentiment of being "very interested in seeing some effort to establish a computerized legal-research system. Cost has been a factor in the past which has kept me from going to a system like Westlaw or Lexis."

The third category includes those who say "my interest is slight, and I'm hesitant." Attorneys in this group usually preface their comments by stating that they lack knowledge about computers, and they express a good deal of uncertainty about making the leap into technological enhancements of tasks they are comfortable doing manually. A shareholder in a four-attorney firm put it this way: "I am computer illiterate. I would need to devote the time to learn how to use the equipment. I recognize, however, that this is necessary for the future, and I know that the bar association must be involved." A sole practitioner commented, "Washington law [in computerized form] would have to be very inexpensive or have special needed

features to convince me to switch from regular book research."

The fourth and final category is best described as the "no chance" attorneys who have not the slightest interest in computer-assisted legal research. Comments such as "The traditional law library serves our need just fine, thank you," and "I like books—don't give me a computer screen," sum up the feelings of attorneys in this category. One sole practitioner was very pointed: "The inference with this survey is an obsession with computers. It is not the panacea for effective law practice. As incomprehensible as it sounds, some attorneys actually prefer books!" Yet another attorney was even more succinct—"I think computers are the curse of all mankind."

What Do The Numbers Tell?

The overall response rate to the survey was not all that great; only 711 responses were returned by the December 31 deadline, representing approximately 4.4 percent of total bar membership. It being a generalized survey of total membership rather than of a scientifically-determined sample, it is difficult to know the degree to which the survey results can be extrapolated to the entire bar. It helps that the geographic distribution of responses was very wide; they were received from many rural communities as well as urban communities, and many responses were received from eastern, central and southwestern Washington. It also helps that many small-firm members and sole practitioners responded to the survey. If anything, their responses predominated.

Only 38 percent of the respondents indicated that the computer has become a tool by which they perform legal research. Of the 26 percent who use Westlaw and the 19 percent who use Lexis, only 19 percent of them consider

their Westlaw or Lexis access to be very important to their legal research.

Of those using Westlaw, 49 percent spend less than \$500 per month on Westlaw charges. While 65 percent use four hours or less of Westlaw time each month, less than half are spending more than 50 percent of that time researching just Washington law. Similar statistics are borne out for Lexis usage.

Of those who use Westlaw and/or Lexis, the most important features, in rank order, are: speed, the ability to search a national database, currentness of cases, cite checking, the ability to search for key words, the ability to Shepardize and the ability to search using West Publishing Company's key number system.

When asked whether they would seriously consider making a purchase of Washington law by means of their most-preferred electronic medium, 69 percent of the respondents said yes. But what is their most-preferred medium? The most-preferred medium seems to be CD-ROM, which earned 44 percent of those indicating a preference; floppy disk, with 30 percent, came in second. Dial-up systems brought up the rear with 26 percent.

What is interesting about CD-ROM as the apparent most-preferred electronic medium is that only three percent of the respondents own a CD-ROM reader

device. This would suggest that the respondents' desire for CD-ROM is based not on actual experience but on what they have read about the promises and capabilities of CD-ROM technology.

On the other hand, 42 percent own telephone modems (although only 25 percent of them have modems at their desks). Indeed, only 57 percent of the respondents owning personal computers have their PCs at their desks.

What features or capabilities would most attorneys wish to see in a computer assisted-legal research system? Among the seven capabilities listed in the survey question, clearly the most-important characteristic is ease of use. Fully 54 percent of those responding noted it as the most-important capability. Ability to search for combinations of words came in second, followed by speed, the ability to search analogous terms, sophistication, the ability to quickly switch to other databases and portability. Cost was not a specifically enumerated item, but it was a write-in concern of many respondents and ranked highly as an important feature.

And, speaking of databases, what materials would attorneys most want available in an electronic medium? The most eagerly sought database is the Revised Code of Washington. Fully 76 percent of those responding indicated a

desire to have the RCW available for computerized legal research. Not far behind, at 69 percent, is the Second Series of Washington Reports, followed by the Washington Appellate Reports (at 65 percent), the Washington Administrative Code (at 63 percent), local rules of the Superior Courts (41 percent), statewide rules of court (39 percent), Washington Reports First Series (37 percent), Superior Court Management Information System (SCOMIS) (34 percent), U.S. Code (33 percent), WSBA Deskbooks (30 percent), Code of Federal Regulations (29 percent), UCC filings (27 percent), corporation, trademark, and limited partnership records (21 percent), SKCBA-YLD Washington Lawyer Practice Manual (20 percent), Appellate Court Records and Data System (ACORDS) (15 percent), catalog of State Law Library holdings (15 percent) and District Court Information Management System (DISCIS) (12 percent).

Certain questions in the survey pertained directly to the publication of official court reports in an electronic medium. A bare majority, 50.32 percent, indicated that they would be interested in purchasing a computer-searchable database of the reports dating back only to 1977. Of those who went on to answer the second part of the question (How many years back should an electronic version of the reports go?) 63 percent, by far the largest percentage, replied that the reports should go back all the way to 1939, the beginning of the second series of Washington Reports. Only 27 percent of those replying indicated an interest in the first series of Washington Reports.

Who will be making the decisions to take the computer-assisted legal research plunge? At 42 percent of those responding, it would appear that law office-managing attorneys (frequently sole practitioners) are making most decisions relating to the selection and acquisition of software. Committees of attorneys account for 17 percent of the decisions, while single computer expert attorneys account for another 17 percent of the decisions made. Expected users make 11 percent of the decisions. One attorney indicated that his wife makes his software choices.



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Most system training is provided either in-house or by the vendor of the products purchased. No specific training is provided 35 percent of the time, with one attorney responding, "I wing it." A significant amount of training is gained through workshops and seminars or at community colleges and vocational-technical schools.

To What Purpose?

Under the authority of the Commission on Supreme Court Reports, a task force has been convened composed of the State Law Librarian, representatives from the Reporter of Decisions office and representatives of the state bar. In furtherance of the Commission's desire to publish the official reports of the Supreme Court and Court of Appeals of Washington in an electronic/computer-searchable medium, the task force will analyze the survey results with the aim of determining which electronic medium should first be pursued, identifying the most important requirements and capabilities any such system should have and setting qualitative standards for data collection and conversion. Upon evaluation of competing systems, the task force will then recommend the optimum system in terms of capability and cost. The overall goal is to have some portion of the reports published electronically by next winter.

Epilogue

What can be deduced from these survey responses? There appears to be a significant interest level, at least among some attorneys in this state, for computer-assisted legal research. The interest is not overwhelming, but if a system is developed that can be easily learned, easily used, is cost effective, is relatively speedy, and nets satisfactory results, who knows? As one partner in a seven-attorney firm admonished, "The price will be critical. Don't bother with an effort which has not been first tested and prescreened, not once, but several times—by users—not programmers or other computer technicians."

Although one respondent, a partner in a two-attorney firm, said, "Although the process of [traditional book] research may be more time-consuming, I seem to gain more aesthetically as well as materially. Computers have my admira-

tion; books have my heart", many more respondents echoed the following comment: "Please get us an inexpensive, easy-to-use research system accessible to small-firm practitioners ASAP." □

Ray Krontz is active in the WSBA Computerization of Law Division. He is the Reporter of Decisions for the Supreme Court and the Court of Appeals for the State of Washington.

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Winthrop, Washington
April 19-20, 1991

by **Lindsay Thompson**

Present: president Halverson, president-elect Joe Delay, and the governors.

Also present: Robert Bakemeier (WSBA/YLD); C.C.Bridgewater (Prosecuting Attorneys' Assn.); Frank Edmondson (Government Lawyers); Sheryl Garland (Washington Women Lawyers); Nancy Gibbs (Legal Foundation of Washington, Friday); Judge James Thomas (Superior Court Judges' Assn.); Dennis P. Harwick (WSBA executive director); Donna McNamara (SKCBA/YLD); Judge David Edwards (Magistrates/District Court Judges' Assn.); Judith Eiler (SKCBA Trustees); Lindsay Thompson (*Bar News* editor/ Clark County Trustees); and Robert Welden (WSBA general counsel).

Sun Mountain Lodge is a long way from everywhere. Arriving, we found a mostly unoccupied hotel atop a mountain, surrounded by picturesque valleys ringed by still higher snow-covered peaks. Hmm...This could be the set for "Lost Horizon." Or "Ten Little Indians."

Cinematic reveries aside, it was worth the trip. Among other things, in marked contrast to more populous areas visited by the governors each year, a number of local lawyers—and Okanogan County's superior and district court judges—attended all or part of the two-day meeting. The scenery was spectacular and the weather warm and sunny.

For the board and observers, however, the action was inside (with the exception of a spirited set of volleyball matches late Friday afternoon). The board met in executive session first, dealing with the disciplinary proceeding docket, and, apparently at some length, with personnel matters, including the recent move by WSBA staff to unionize.

In public session, the board heard a report from the president on various activities of his, past and prospective. He's visited some more local bar associations, testified before the Legislature on the bill to increase court filing fees for the benefit of legal services for the poor, and is convening a "computer study club" in the bar association office May 10. This will be an attempt to get all of the players in the public and private projects to computerize the practice of law in Washington in one room and, by the time they leave, singing from one hymnbook as to who's doing what. A lot is going on, but much of it seems to be at cross purposes.

Executive director Dennis Harwick is on the road some, visiting the law schools to tell third-years about the bar exam, and in the office he is working up the first run of the 1991-1992 budget, among other activities. He did a site visit in San Diego to sort out details for the coming convention.

Elections for the board seats held by Don Curran, Ron Gould and Jeff Tolman are underway. The board set June 28 as the deadline for return of ballots in contested races.

WE DID IT AGAIN!

We are pleased to announce the release of the 1991 Supplement of the Washington Lawyers Practice Manual:

The Washington Lawyers Practice Manual consists of 7 Volumes containing procedures, techniques, checklists and forms for 21 Areas of Law. The 1991 Supplement contains the latest 1990 Legislative changes and their effects in each area of law. In addition, the following chapters have undergone major revisions:

Chapter I	Civil Trial Practice
Chapter IX	Domestic Relations
Chapter X	Probate, Guardianship and Estate Planning
Chapter XI	Tax
Chapter XIII	Business Law Practice
Chapter XIV	Law Office Management
Chapter XVIII	Employment Discrimination
Chapter XX	Administrative Law

The 1991 Washington Lawyers Practice Manual sells for \$534.79 including shipping/handling and tax.

The 1991 WLPM Supplement sells for \$206.08 including shipping/handling and tax.

*For more information please contact Karen Jo Hensley (206) 624-9365
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- Claim Committees
- Scheduled Offers
- Earnings as an Index to General Damages

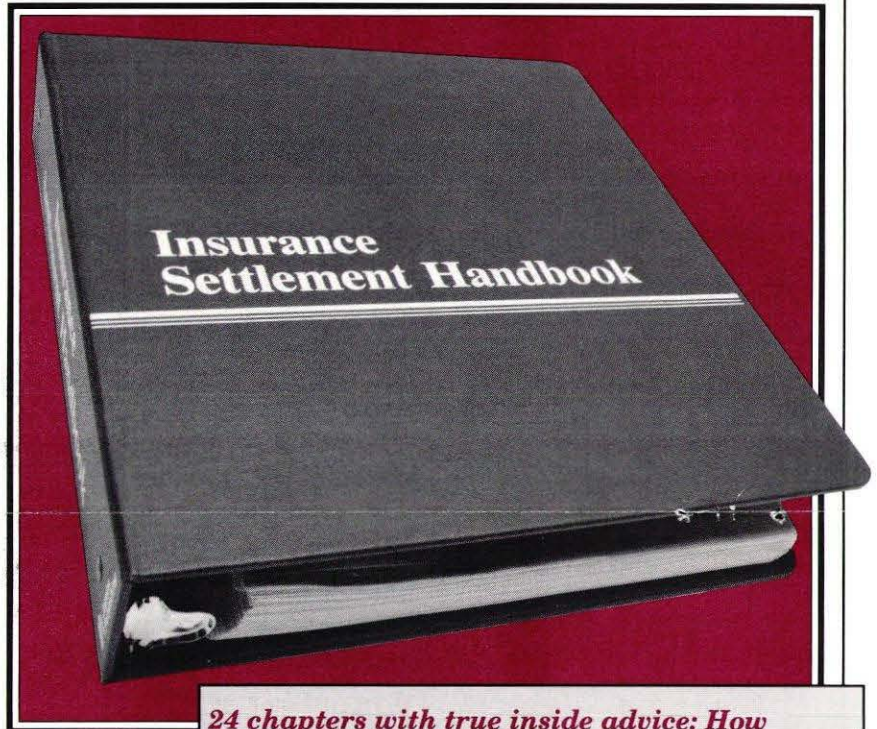
Now you can learn about these and other methods adjusters use to value your P.I. claims as well as how you can help settle your case for top dollar.

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Complete with insider tips from industry veterans with years of experience settling PI claims, **Insurance Settlement Handbook** is a complete guide to...

Damages

Adjusters will pay an extra \$500 to \$1,000 for pain and suffering for every day spent in a hospital (excluding diagnostic time). Most attorneys fail to request this sum. \$230



24 chapters with true inside advice: How Insurance Companies Value Claims, What Adjusters Need to Settle Claims, Evaluating Settlement Offers, Negotiating with Insurance Adjusters, and more.

- Why adjusters commonly deduct a flat 20% from lost earnings amounts submitted. §551
- Which medical expenses adjusters give less weight to. §551
- Checklists for avoiding malpractice for accepting policy limits or structured settlements. 1360
- Insurance companies are more impressed by...

Continued inside

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Free Settlement Tips

Valuation

"For pain and suffering in a case of minor injury, a carrier's evaluation for a person earning \$1,000 weekly should be \$200-300 for each day in the hospital, \$100-200 for each day confined at home, and \$75-100 for each day of restricted activity at home." §571

"Property damage disputes in vehicular claims are frequently settled after much haggling by splitting the difference between what the plaintiff believes is fair market or replacement value and the depreciated values argued by the adjuster." §2612.3

"Though the historic rule of multiplying the medical specials by three to obtain the estimated jury verdict is not very accurate, I use it as a preliminary check of my number. If my evaluation varies greatly, I find out why." §573

Medical examinations

"If the admitting exam is different from that of the independent medical examination, use the unbiased examination to impeach the defense-based IME." §122

"In those cases where the nursing assessment is more complete than the doctor's notes, have a cooperative doctor evaluate the objective findings in the nursing record. Use this technique to overcome the defense-oriented admitting physician." §124

Structured settlements

"The attorney will have professional liability exposure if the damages exceed policy limits and the cost of the structured settlement is less than the limits. Send the following letter to the carrier [to verify cost].

"Do not let the adjuster convince you signing such a letter would void the tax advantages of the structured settlement. This statement, which is a frequent ploy of claims adjusters, is just not true." §1350

Negotiation

"Most adjusters locked into the three-times medical bills mentality will think a counteroffer of ten times medical bills is unreasonable and refuse to negotiate further." §2652

"The two to five times medical damages formula should only be employed in cases with small policy limits and hard to prove damages. This formula assumes a direct correlation between the amount of pain and disability and the total medical expenses." §2652

Documentation

"Most adjusters will pay policy limits if attorneys provide them with sufficient ammunition to withstand a detailed review from local or regional supervisors.

"Think like a claims adjuster instead of an attorney. What do you need in order to prevent a supervisor from challenging your discretion and rejecting your analysis?" §1310

15-3 DRAFTING EFFECTIVE DEMAND LETTERS & SETTLEMENT BROCHURES \$1500

§1550 Where To Start And What To Say

Keep it simple. However, be sure to protect yourself from submitting an admission against interest. You might begin like this:

Sample: Settlement Letter

Dear Adjuster:
We are submitting this letter and the enclosed material in an attempt to present the facts of this claim on behalf of our client, Jack Crash of Happyville, U.S.A., with a view toward amicable settlement of this matter without the necessity of litigation.

We enclose for your review the following documentation:

1. Invoice from Sue Medical Doctor.
2. Office progress notes of Sue Medical Doctor.
3. Inpatient records of Happyville Hospital from 6/3/84 to 6/9/84.

OR

This settlement brochure contains only excerpts of medical reports and records already in your possession. You will recall that Plaintiff's entire medical chart was delivered to you in response to the defendant's Request For Production of documents, together with Plaintiff's Answers to the defendant's Interrogatories.

OR

We have enclosed for your review various records and reports incidental to the evaluation of this case, all of which have been scheduled and marked for you. Inter alia, the comprehensive medical reports of orthopaedic surgeon, John Smith, M.D.; the vocal records of James Doe, M.D.; the vocal and the actuarial analysis of H

Determine when and what to tell the adjuster for maximum impact.

Contents

Claims Handling

1. How Insurance Companies Process Claims

By **Roy N. Trotter**, independent adjuster in Indianapolis, Indiana. Former supervisor, litigation examiner, claims manager and field investigator. Graduate, Army Intelligence School.

2. Successfully Moving Your Case Through the Claims Office

By **L. Robert Fuselier, JD.** National Claims Manager, Forester Indemnity Insurance Co. Owns and operates Frontier Insurance Adjusters of Oceanside/Carlsbad, California.

3. How Insurance Companies Use Index Systems

By **Gordon Gerald Smith.** Worked as adjuster with State Farm, Kemper, and Utica. May be reached at the Gordon Smith Company in Houston, Texas.

4. Reserved

Valuing Claims

5. How Insurance Companies Value Claims

By **Arthur F. Norris, ARM,** of Rowland Heights, California. Provides expert testimony on coverage, claims practices, and good or bad faith. 23 years experience with Wausau & Western Employers. (818) 964-9513.

6. Determining & Proving Economic Damages

By **Julie Schwartz, MS.** Founder, Occupational & Career Services of Phoenix, Arizona. Forensic consultant, rehabilitation case manager, calculations of future damages and present values. (602) 840-9084.

7. How Defense Counsel Value Claims

By **R. Randy Wertz.** Trial attorney specializing in insurance defense. Partner, Dryden, Margoles, Schimaneck, Hartman & Kelly of San Francisco, California. (415) 362-6715.

8. How Reserves Are Established

By **Ed Grant, CPCU.** Litigation examiner for major insurance company. 10 years of property and casualty claims experience.

9. Assessing Non-Economic Damages

By **Ronald R. Gilbert, JD,** of Detroit, Michigan. Founding member, National Coordinating Council on Spinal Cord Injury. Contributor to TRIAL, Michigan State Bar Journal, Practical Lawyer.

10. Handling Pre-Existing Injuries

By **Mary Jo Smerz, JD.** Lowrey & Smerz, Chicago, Illinois. Specializes in personal injury, medical malpractice, and products liability. (312) 332-5433.

11. Proving Hedonic Damages

By **W.B. (Larry) Nelson.** Professor of Economics and Business Administration, University of Texas in Arlington, Texas. 20 years experience in economics consulting for personal injury litigation. (817) 273-3061 or 261-3916, or (214) 248-8436.

12. Reserved

Evaluating Claims

13. Determining Coverage & Obtaining Policy Limits

By **Joseph Fine, JD.** Trial lawyer with Fine & Faure in Albuquerque, New Mexico. Member of the New Mexico Medical Review Committee and New Mexico Trial Lawyers.

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Documenting Claims

15. Preparing Effective Demand Letters & Settlement Brochures

By the late **Marie Elisa Marzani,** formerly a partner with Epstein, Utan, Wilson & Marzani in Scranton, Pennsylvania.

16. What Adjusters Need to Settle Claims

By **Jerry D. White, JD.** Executive VP and CEO of Los Angeles Mutual Insurance Adjusters. Has testified in both plaintiff and defense cases on the customs and practices of insurance claims adjusting.

17. Investigation Checklists

By **Mark Woirhaye.** Litigation paralegal with Knight, Dahood, McLean & Everett in Anaconda, Montana. Licensed private investigator. Former senior claims representative for State Farm Auto Insurance Co.

18. Attorney's Guide to Medical Records

By Alan J. Winters, MD, JD. Medical negligence and personal injury practice in Houston, Texas. Medical-legal consultant. Former physician and teacher in obstetrics and gynecology.

19. Common Mistakes Made By Plaintiff Attorneys in Documenting Claims

By John F. Distel, managing partner, and Roger L. Heaton, associate, Liebman, Reiner & McNeil, San Diego, California. Mr. Distel concentrates on major personal injury litigation and Mr. Heaton on personal injury litigation and civil appellate matters.

20. Reserved

Effective Negotiation

21. Negotiating with Insurance Adjusters

By Robert L. Tuma, JD. Trial lawyer in Brecksville, Ohio, specializing in auto accidents, products liability, and wrongful death. Over 25 years of experience. Has resolved over 2,000 claims.

22. Establishing Bad Faith

By James W. Fritz, JD. Fritz & Childers in Mesa, Arizona. Insurance tort litigation. Board of directors, Phoenix Association of Defense Counsel.

23. How to Negotiate with Insurance Companies & Avoid Settlement Delays

By Lawrence M. Abrams. Owner and operator of Raleigh Farnsworth & Abrams, a multi-line insurance adjusting firm in St. Louis, Missouri. (314) 821-7338.

24 & 25. Reserved

Efficient Settlement

26. Evaluating Settlement Offers

By William K. Berenson. Personal injury lawyer in Fort Worth, Texas.

27. Structured Settlements: Opportunities, Problems & Benefits

By Paul D. DiBlasi and Angeline Nanni of Structured Financial Associates, Columbus, Ohio. Mr. DiBlasi rose from staff field adjuster to regional

claims manager in the 14 years he worked for the casualty insurance industry. Ms. Nanni has handled approximately 4,000 cases involving structured settlements. (614) 460-3693.

28. Appraisal of Insurance Claims

By David E. Young. Independent adjuster. Senior partner, Brown - O'Haver Loss Claims Representatives, Phoenix, Arizona. (602) 952-9188.

29. Reserved

Specific Cases

30. Evaluation of Soft Tissue Injuries

By Charles E. Workman, MD. Orthopedic and hand surgeon. Medical Director, Kansas City Physician's Clinic, Kansas. Professor emeritus, Orthopedics, University of Missouri. Consultant to law firms and insurance companies. (800) 327-7826, (913) 722-1192.

31. Evaluating & Settling Medical Malpractice Claims

By Ronald W. Horgan of Craig & Horgan in Tulsa, Oklahoma. Personal injury and commercial litigator. Chair of State Delegates, ATLA, and member of its Board of Governors and Executive Committee.

Solutions to common settlement problems, from learning policy limits to dealing with novice adjusters.

1990 INSURANCE SETTLEMENT HANDBOOK

Sample: Exact Dollar Amount Settlement Letter

LAW OFFICES OF JONES AND JONES
2156 Avenue of the Stars
Beverly Hills, California

COLLIATE INSURANCE COMPANY
One Wilshire Building, Suite 1210
Los Angeles, California 90017

Attention: Mr. Jack Gruff, Senior Adjuster
Your Insured: City Transit Company
Date of Accident: June 1, 19__
My Client: Mary Lou Sweet
Today's Date: July 20, 1990

SETTLEMENT OFFER BASED ON EXPENSES

My client has incurred the following amounts of actual expenses:

A. Ambulance	\$250.00	
B. Hospital	\$3,200.00	
C. Doctor's bills	\$975.00	\$350.00
D. Pharmacy	\$275.00	
E. Laboratory tests	\$875.00	\$25.00
F. X-rays		
G. Prosthetics	\$5,000.00	
H. Wage loss	\$10,000.00	
I. Subtotal		

My client also anticipates the following future medical expenses:

J. Therapy (24 months) @ \$250.00 per month	\$6,000.00
K. Baby-sitters (24 months) @ \$75.00 per month	\$1,800.00
L. Transportation expenses (24 months) @ \$125.00 per month	\$3,000.00
M. Additional reduced expenses (12 months)	\$5,400.00
N. Sub Total	\$16,200.00
O. Total of Above	\$26,200.00

In addition to the above, my client has sustained substantial pain and suffering for which a precise dollar cannot be shown. In the interest of resolving this claim at this time without litigation, I am extending an invitation to you on behalf of my client to settle this claim within the next thirty (30) days for the sum of \$100,000.00.

Moe Jones, Esq.

(continued)

Negotiations

"The supervisor and adjuster will not be moved because you think this claim is 'different' or you are 'going to file a complaint.' You will either have to bring your demand within the norm or justify more." §230

- What to ask when the case slows down. §222
- How an independent adjuster can help your cause, §222, and when it is better to negotiate directly with the principal. §520.
- The effect of elaborate settlement packages, and some simpler, more effective approaches. §534
- Why a primary settlement motivation is lost in excess cases, and how to work around the problem. §535
- How carriers serving different markets vary in their negotiating strategies. §2301

Bad faith

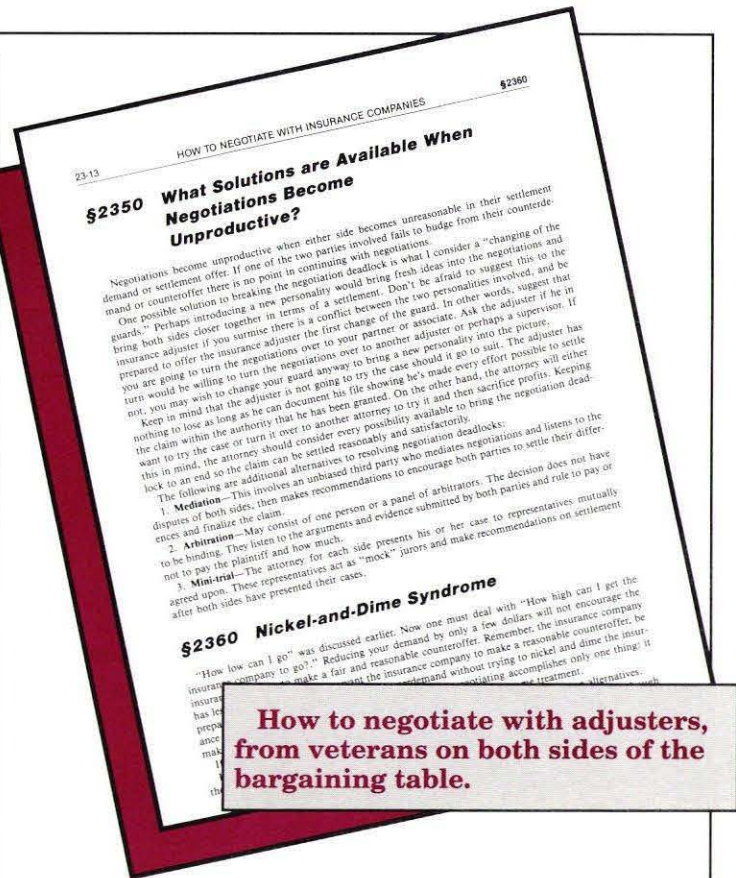
"Often defense counsel will refuse to produce certain documents in the claim file, or other company documents. Insist the defendant provide an itemized list of each document and form in the file along with sufficient description of the document. You will need this information to support a motion to compel production of the documents." §2241.2

- Eleven questions to ask in order to locate documents in the insurance company's files. §2242.2
- The fourteen types of conduct most likely to constitute bad faith, complete with supporting case law. §2242.2
- A list of items to establish when deposing claims personnel. §2242.3

Coverage disputes

"Coverage questions involving only the policy issued by the carrier involved are often troublesome to the plaintiff because the plaintiff will never be notified of the coverage dispute. The plaintiff's notice will probably be by inference, when no settlement offers are forthcoming." §538

- The best approach to take when you have coverage dispute between carriers. §539
- Pitfalls to avoid regarding underinsured motorist coverage. §1304
- Why and how you should conditionally demand policy limits. §1301



Settlement authority

"If exposure exceeds the senior adjuster's authority, he then may petition his superiors for an increase for that file only. The bigger the exposure, the more levels which the request must pass. The person reviewing the file will be judged in part by the quality of the file that is allowed to move upward." §134.4

- Why you should communicate the value of your claim to the adjuster as quickly as possible. §212
- Why you should not equate settlement authority with competence. §212

Evaluation

"In reality, frequently no evaluation at all is done by the carrier until a demand for settlement is made by the plaintiff. The carrier's offer is more a reaction to the demand than an independent evaluation." §533

- The Boston method of claims evaluation, complete with examples for a cervical strain and a forearm fracture. §522
- The key settlement evaluation factors. §530
- How many carriers value general damages. §571

2:22 SUCCESSFULLY MOVING YOUR CASE THROUGH THE CLAIMS OFFICE \$220

\$220 Providing Documentation

Initially you may want to suggest to Dottie what you think the claim justify your position with more than "my client has really suffered." Exp to work. Discuss the doctor's opinion that surgery will be necessary w to graphically set forth the change in life style that has been forced here is not to detail how to prove up your damages, but you should insurance company are going to need substantiation to justify re-valuation your position that the claim has a settlement value of approximately \$30,000, she has to reserve. And we already know how much she wants to do that. Even if you convince her the claim is worth big bucks, she is going to want DOCUMENTATION.

Documentation is the old story of having to prove liability and prove damage. With the insurance company there is another consideration as well: coverage.

If a determination is made that coverage does not exist under Mr. or Mrs. Insured's policy, the insurance company will bow out of the game leaving you and the insured to work out your problems as best you can. The problem of no coverage is First Party in nature and beyond the subject of this chapter. Since we premised this discussion with the understanding that you are representing a third party in a casualty claim against the insurance company in force for your claim.

\$221 Proving Liability

Is there a liability against the insured? Why? You r sister or brother to the insured. Even the most jaded a lawyer up the insured's case because "he simply couldn't have and you are the town bully trying to take advantage of of being first cousin to a snake and a direct descenda fruitful approach. Try DOCUMENTATION. What c this text. The police reports, doctor's reports, photos, evaluations from experts, etc. go on forever. What should provide. If what you have provided is not do then give it to her. Here we only wish to make the poi move the insurance company to settlement.

Have you explained your theory of liability? Or h a train could see that the insured was liable? As exp client; how that duty was BREACHED, the DAM, insured's breach PROXIMATELY CAUSED those second-semester law school stuff, but seldom discuss about the elements of negligence, but seldom discuss

How to help the adjuster sell your client's damages to his superiors.

INSURANCE SETTLEMENT HANDBOOK

\$760 Three Examples of Evaluation of Personal Injury Cases

Below, are some example of how a value is placed on personal injury cases:

Smith v. Black Corporation

In this case, the plaintiff alleged the manufacturer of a large truck which the plaintiff was driving at the time of the accident. The complaint alleged that the braking system had frozen causing the truck to go out of control in the state of Wyoming.

Since the case was filed in San Francisco, I filed a motion to change venue to Contra Costa County where Black Corporation had filed for its principal place of business in California. I concluded that the more conservative jury panels and judges in Contra Costa County would reduce the value of the case by 10% or more.

After reviewing the documents received from Black Corporation and speaking with the design engineer about the subject truck, I concluded that there were no other complaints of similar brake failures caused by the subject freeze-ups and that plaintiff had a very difficult liability case. I hired an out-of-state investigator to take statements including the Highway Patrol officer who investigated the accident and the low-truck operator on the scene shortly after the accident. He also obtained a copy of the accident report, plaintiff's Utah medical records, his own photographs of the scene, and the photographs taken by the Highway Patrol officer on the day of the accident. He also obtained a weather report for the general area on the day of the accident. He could not locate the subject truck or any maintenance records. (It was nearly two years after the accident when the summons and complaint were served.) The fact that the truck and its records were unavailable made it even more doubtful that the plaintiff would be able to prove his allegation of a defective product.

I next sent out a request for statements of damages, interrogatories, and request for production of documents. From the plaintiff's responses, it was obvious that plaintiff had been very seriously injured. He had two surgeries, and his doctors stated that it was unlikely that he would ever return to work as a truck driver. Next, I subpoenaed plaintiff's medical and employment records and learned that the medical specials were approximately \$86,000, that plaintiff had had a laminectomy at L-3, L-4 and L-5 one year before, and that he had been making \$50,000 annually as a truck driver. The records also indicated that plaintiff continued to experience significant pain and had become addicted to his pain medication.

I deposed the plaintiff and his wife and concluded that both who would make good witnesses, but that both were a bit diff average witnesses. Soon after the depositions, I had the r orthopedic surgeon, who specialized in back problems at rehabilitation counselor regarding alternative careers for the 45 year old plaintiff would need significant retraining to become fully employed again and would ne again.

Next, I reviewed California jury verdicts for surgically treated disc rupture injuries, involving ongoing residual pain and motion restriction. I found that the average jury verdict was \$172,224, with a high of \$2,300,000 and a midpoint of \$23,000. I also checked jury verdicts for products liability cases and found that they were higher than for most other cases. The median products' verdict was \$450,000 with an average of \$1,300,000. I reviewed several Bay Area jury verdicts with similar injuries and found two verdicts of \$500,000 and 750,000, respectively.

Based on the numbers on my checklist, my preliminary evaluation, before discounting, was \$500,000 increase, this to \$550,000 based on my review of jury verdicts.

Insurance company valuation approaches, complete with examples.

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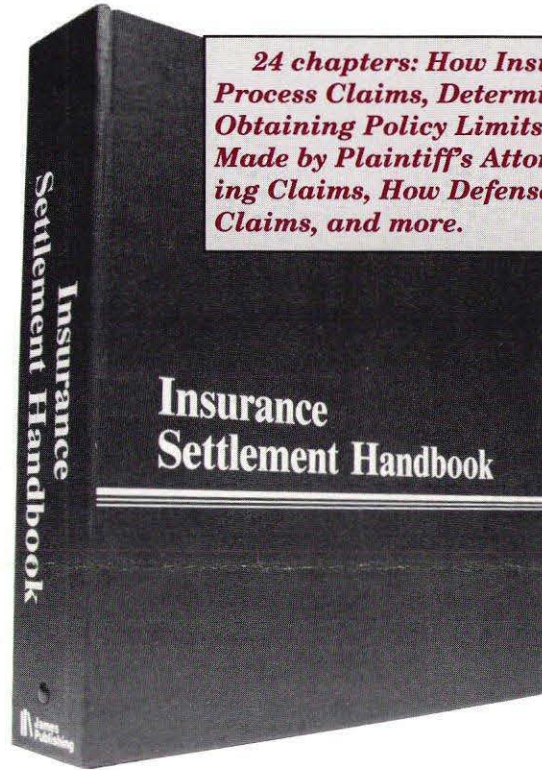
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The board reviewed the 1990-1991 budget to date, and treasurer Ron Gould said what with the cost of the Maui Wowie referendum and additional legal expenses associated with the unionization matter, there's not much left in the contingency budget.

The Budget and Audit Committee will be taking a very conservative look at new appropriations, he said.

WSBA general counsel Bob Welden told the board that the new Trust Account Overdraft Rule, which went into effect March 1, has turned up 41 overdraft notifications. Eighteen have been resolved: mainly bank errors or other minor problems. Two cases involve lawyers already involved in disciplinary proceedings. The rest are still being looked into.

Short, Sharp Shock Department: In the referendum to overturn the selection of Maui for the 1995 WSBA convention, the voters spoke—barely. The referendum cleared the requirement that 50 percent of the members vote for the result to be valid by 1.6 percent: 8,626 of 16,700 WSBA members voted; of those, 59.9 percent voted to overturn the selection.

Governor Alva Long, a leader of the movement not to go, had been quoted in the press as saying the notion of a "vocal minority" might need redefinition, and *The Seattle Times* claimed 60 percent of the WSBA membership voted no on Maui. But governor Lem Howell told the board the minority

was still just that: 59.9 percent of 51.6 percent of the membership, or about a third of the state's lawyers who voted not to go. But governor Tom Chambers praised Long for having made good on a campaign promise to his constituents.

Some discussion followed on whether the WSBA will be held liable for damages by Hyatt Hotels for canceling the contract for 1995. Long told the board that Hyatt wouldn't make a fuss. "There are some people you just don't sue," he said. "I don't think they will have trouble filling the space. They probably ought to pay us for it because they'll get much higher rates when they do re-let it." Governor Jeff Tolman moved to cancel the 1995 contract and try to sort out something with Hyatt. The board approved the motion and directed Dennis Harwick to commence some discussions with Hyatt and come back next month with suggestions for an alternative location for 1995.

Streamlining the Discipline Process: Governor Don Curran has made improving the association's disciplinary system and rules a priority of his term, and he capped a string of noteworthy improvements with a detailed report on what ought to be the role of governors in disciplinary matters; whether they have authority to obtain confidential, nonpublic information from the WSBA disciplinary department; how to get the board more information on the status of disciplinary proceedings each

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month; whether there should be aspirational timelines for processing disciplinary cases to ensure swift resolution; whether the disciplinary staff should be used to investigate and prosecute additional acts of misconduct when they've already got the goods on someone; what the proper role of a governor is in handling an inquiry from a constituent about a pending disciplinary matter; and whether retained outside counsel working to protect clients' interests under RLD 8.6 be invited to resign in favor of volunteer lawyers in order to cap WSBA legal fees, which are now over budget.

All but one of Curran's recommendations were adopted; the one not adopted was carried over a month to allow for consultations with WSBA disciplinary counsel Lee Ripley. The thrust of the recommendations, and of all Curran's work in the field, was to streamline and speed the process to give the bar and the accused alike a speedy, fair resolution of cases, show the Supreme Court and public the bar association is capable of looking after its own, and give the governors a supervisory role sufficient to make sure business is being expeditiously handled, but sufficiently hedged to avoid the appearance of "Keating Five"-type interventions in the process. The board passed a motion commending Curran for his work.

Keller Rebates: The board continued its discussion of how to handle the U.S. Supreme Court's decision in *Keller v. State Bar of California*. That case allows members of integrated bar associations to ask for a rebate of dues attributable to association activities of a political nature.

WSBA general counsel Bob Welden proposed a process of case-by-case review in which the board of governors would determine items subject to Keller rebates, publish them in the *Bar News*, and then rebate their cost to all who request rebates within a set period. Governor Tom Chambers brought up a counterproposal designed to be simpler. Under it, the executive director would figure the cost of political lobbying by the association in the previous year and rebate the per-member share to any member requesting a rebate within 90 days of paying their dues each year. The board talked both proposals around for a while, then decided to table the matter to next month.

The Electronic Swamp, Again: Governor Steve Tubbs gave a nonagenda report on computerization efforts by the bar association. As computer discussions always do, this one turned into a broad, wide-ranging talk about everything from the cost of computer research to the adequacy of the computer programs used by the Office of the Administrator for the Courts. Out of the discussion emerged a vote by the board to spend up to \$1,000 for WSBA staff to put *Resources*, the association directory, on the new WSBA computer bulletin board.

Day Two: The Lite Agenda: Saturday was mainly spent discussing, then tabling, agenda items. The Long-Range Planning Task Force asked for permission to

postpone presenting its final report from August to October. Board members said they'd set the deadline for August so they could consider the meeting at the annual board retreat. In the end, the board agreed to accept a preliminary report in August, with the final report to come in October.

Let Bylaws Be Bylaws: Governor Don Curran had a proposal to appoint a committee to study the bylaws and whether they need revision and updating. But, he said, without elaboration, that he'd been persuaded, over the previous 24 hours, that his motion was premature. He said he wanted to talk with general counsel Bob Welden first, and he moved to table the matter indefinitely. It passed, 9-1, Governor Lem Howell opposed.

Maybe If They Put the Cellular Phones Back in the Plan: The Board considered a report from the Disaster Response Task Force on how to enforce the WSBA rule against in-person solicitation in mass disaster situations involving out-of-state lawyers. After discussions with the ABA, the task force found nothing really workable in prospect, so the board took no action.

Picking Judges: The board next turned to Young Lawyers Division president Robb Bakemeier's proposal, first presented last month, for establishing a process for advising U.S. senators on federal judicial appointments. Governor Ron Gould thought the matter ought to be tabled until the bylaw revision came up, and governor Lem Howell pointed out there was no bylaw revision authorized in light of Curran's motion to table it. So Gould moved to table the matter to November, because Curran said that by then he thought there'd be something for the board to consider on bylaw revision, and because by then the long-range planning report would be in hand as well. The board voted 7-3 to table.

More Tables: An agenda item on the Lawyer-to-Lawyer Program inspired no comment by anyone, and so was passed over.

Prosecuting or Persecuting: Governor John Slater presented the report of an ad hoc committee he'd chaired to consider concerns of prosecutors about receiving confidential information on attorney disciplinary matters. A policy statement was presented which would allow the executive director to deal with requests from prosecutors for nonpublic information as defined in RLD 11.1. In the event of a denial, the prosecutor would be allowed to appeal to the board of governors.

Governor Alva Long thought the proposal enshrined a partnership between prosecutors and the bar association. He wondered if the proposal was necessary. "How often does this come up?" Lem Howell thought the board was imprudently carving out an exception to previously adopted rules and policies regarding privacy and protection of information in disciplinary matters. The policy was adopted, 6-3-1, governors Chambers, Howell and Long voting no and governor Tolman abstaining.

Don't Forget Alva's Favorite Category—Elevator Lawyers: A few months ago some administrative law judges asked if they could adopt honorary membership status in the WSBA, since they weren't really in private practice, but they didn't want to go inactive because to return to active status they'd have to re-sit the bar exam.

Executive director Dennis Harwick proposed a slew of new categories: emeritus lawyers, affiliate lawyers, in-house counsel, foreign law consultants and judicial members. Governor Ron Gould, who chaired a committee to study the ideas, said they liked some, didn't like others. Governor John Schultz moved to direct the committee to keep studying the matter and report back later with something more definite. After a few more items of business, the board adjourned at 11:20 a.m.

Winthrop Wrap-up: In other action, the board heard a legislative status report by conference call with legislative liaison John Fattorini. They voted to increase the membership of the Committee of Law Examiners from 70 to 90; approved governor John Schultz's nomination of Pasco resident Ernest Allen to a citizen position on the CLE Board; elected Vancouver lawyer Jim Hamilton to the Statute Law Committee and, on governor Steve Tubbs's nomination, Vancouver lawyer Bill Dunn to the Committee on Supreme Court Reports; and deferred some other

appointments until board members could seek nominations from constituents. They also deferred acting on a proposal by the president to create an appointment commission to handle all committee appointments for the board up to final approval. The board heard a report from Mary Wechsler of Seattle on her committee to implement the recommendations of the Domestic Relations Task Force, and directed it to continue its work with a view toward making legislative proposals for the 1992 session. They voted to spend up to \$2,500 to cover the cost of Citizen Rights pamphlets to be provided free for distribution by nonprofit, law-related organizations, and voted \$500 for the winning high school team in the state mock trial competition to go to the nationals in Louisiana.

Next meeting: May 17-18, 1991, in Spokane.

PUBLIC NOTICE: REAPPOINTMENT OF U.S. MAGISTRATE JUDGE: The current term of office of U.S. Magistrate Judge Steven J. Mura, serving in Bellingham, is due to expire. The U.S. District Court is required by law to establish a panel of citizens to consider the reappointment of the magistrate judge to a new four-year term. Comments from members of the bar are invited as to whether the incumbent magistrate judge should be recommended by the panel for reappointment by the court and should be directed to Bruce Rifkin, Clerk, U.S. District Court, 1010 Fifth Avenue, Room 308, Seattle, WA 98104. Comments must be received no later than June 15, 1991.

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2 Civil Procedure Before Trial, Seattle. *Sponsored by:* WSTLA. *For information:* (206) 464-1011.

3 Financial Planning for Lawyers, Accountants and Their Clients, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

3 Tacoma-Pierce Co. Bar Assn. reception, Tacoma Sheraton. *For information:* (206) 383-3432.

11 Fifth Annual Family Law Institute, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

17 Workers' Compensation: Mastering the Muddle, SeaTac. *Sponsored by:* Washington State Board of Industrial Insurance Appeals. *For information:* Board of Industrial Insurance Appeals, 410 W. 5th, FN-21, Olympia, WA 98504-3421.

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) 543-0059.

June

1 Commercial General Liability Insurance—Selected Issues in Primary and Excess Coverage, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

8 Maritime Commerce in the Puget Sound Region, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

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

22 24th Annual Pacific Coast Labor Law Conference, Seattle. *Sponsored by:* UW CLE and SKCBA Labor Law Section. *For information:* (206) 543-2310.

22 Buying or Selling a House, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

27-30 WSTLA Annual Meeting and Convention, Whistler, B.C. *For information:* Gerhard Letzing, (206) 464-1011 or (800) 732-9251.

July

19-20 WSBA Board of Governors' meeting, Blaine. *For*

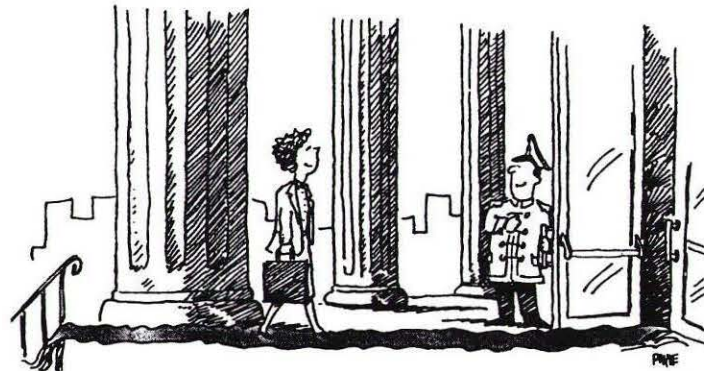
information: (206) 448-0441.

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.

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Nondisciplinary Notices

Reinstatement: By order dated February 4, 1991, the Supreme Court of the State of Washington reinstated Tacoma attorney **John D. Karna** to the active practice of law, effective immediately.

Transferred: On February 27, 1991, **Anthony J. Meyers** (admitted November 10, 1977), became an inactive member of the Association.

Disciplinary Notices

Reprimanded: Lynnwood attorney **John P. World** (admitted 1975) has been ordered reprimanded pursuant to a stipulation to discipline, based upon his neglect of a Labor and Industries matter and his misrepresentation to his client of the status of that matter. Mr. World will be placed on probation for two years on a number of conditions.

Reprimanded: Des Moines attorney **Stephen D. Cramer** (admitted 1979) has been ordered reprimanded pursuant to a Stipulation for Discipline, based upon his failure to follow court rules and statutes with respect to a probate and in making misleading statements in pleadings filed with Superior Court regarding distribution of the estate.

Disbarred: Tacoma attorney **James E. Weger, Jr.** (admitted October 27, 1981) has been disbarred by the Supreme Court March 16, 1991 for his neglect of cases and failure to communicate with his clients in five cases, his failure to inform a client that he had been suspended from the practice of law, his misappropriation of a client's funds, his noncooperation with the Bar Association investigation, and his conduct demonstrating unfitness to practice law.

Disbarred: Spokane attorney **Glen Harlow** (admitted September 1, 1982) has been ordered disbarred by Order of the Supreme Court dated March 7, 1991, approving a Stipulation to Disbarment based on his misappropriation of a client's funds.

Public Notices:

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

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Recent Acquisitions of the

State Law Library: Listed below are some of the new titles recently acquired by the State Law Library, and available for loan by phone at (206) 357-2136, or 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 sending your request to the State Law Library.

On January 7, 1991 the State Law Library began circulating the video collection of the Office of the Administrator for the Courts. The collection 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.

AGED--LEGAL STATUS, LAWS, ETC.: Regan, John J. The aged client and the law. New York: Columbia University Press, 1990. Pp. 143. KF390.A4R42 1990.

CIVIL RIGHTS--HISTORY. Linfield, Michael. Freedom under fire: U.S. civil liberties in times of war. Boston: South End Press, 1990. Pp. 302. KF4749.L56 1990.

DEPOSITIONS: Benson, Robert E. and John C. Tredennick, Jr. How to prepare for, take and use a deposition. Santa Ana, CA: James Pub. Group, 1990-. 2 vol. (loose leaf). KF8900.B39 1990.

DIVORCE: Divorce reform at the crossroads. Stephen D. Sugarman and Herma Hill Kay, editors; foreword by Franklin E. Zimring. New Haven: Yale University Press, 1990. Pp. 294.

KF535.A2D54 1990.

HANDICAPPED: The Americans With Disabilities Act: a practical and legal guide to impact, enforcement and compliance. A BNA Special Report. Washington, D.C.: Bureau of National Affairs, 1990. Pp. 358. KF480.A957 1990.

Guide to Ethnic Groups Available: Contact: A Directory of Ethnic Organizations in Washington State, lists over 1,000 organizations serving ethnic communities in Washington. Entries list names and addresses, organization purposes, services, publications and other offerings. The volume costs \$18.23 (\$15 plus \$1.23 sales tax and \$2 shipping) from either Ethnic Heritage Council, 3123 Eastlake Avenue East, Seattle, WA 98102, (206) 328-9204; or Pacific Pipeline, Inc., 19215 66th Avenue South, Kent, WA 98032, (206) 872-5523.

The Sports Lawyers Association, 2017 Lathrop Avenue, Racine, WI 53405, (414) 632-4040, invites queries about its educational organization from those interested in the common goal of understanding, advancement and ethical practice of sports law.

Limitations on Expert Testimony: (contributed by *the EXPERT*, Maritime & Environmental Consultants, Spring 1991, p. 3)

On December 14, 1990, two separate panels of the fifth Circuit issued separate opinions limiting the use of expert testimony at trial by plaintiffs who seek to get their case to a jury. In an asbestos case, *Slaughter v. Southern Talc Co.*, 919 F.2d 304 (5th Cir. 1990), the plaintiffs attempted to avoid a summary judgement by the use of an affidavit from their expert witness, a medical doctor, which purportedly established that 421 plaintiffs had suffered pulmonary disease as a result of their exposure to asbestos. However, many of the plaintiffs had never been exposed to asbestos in the work place. The Fifth circuit held that summary judgment was properly granted because the expert's testimony was inadmissible. In order for the opinion of an expert to be admissible, the trial judge must examine the reliability of an expert's source in order to prevent the

introduction of expert testimony based upon erroneous data. Although the expert had stated an opinion based upon data from medically accepted diagnostic techniques, the opinions were nothing more than bare conclusions based on erroneous data. In order for the expert to testify at the trial, the expert must have more than credentials and an opinion; the expert's opinion must be derived from reliable facts, and the trial court must make an independent evaluation of the reliability of the facts.

In *Brown v. Parker-Hannifin Corp.*, 919 F.2d 308 (5th Cir. 1990), the Fifth Circuit affirmed the trial court's granting of a directed verdict and affirmed the exclusion of expert testimony in a case brought under the Louisiana Products Liability Act. The plaintiff had retained an expert witness to testify that he was injured by a defective condition in certain oil field equipment. The expert suggested several theories as to why the equipment had failed that would support a finding that the equipment was defective. However, the expert had never seen the equipment in question, knew nothing of its history or manufacturing process, did not test his theories, and did not otherwise determine which one of the many possible theories was the most probable cause of the accident. Therefore, with no explanation as to why the expert's testimony was more likely than other theories, it was held to be too speculative to be admissible and of no assistance to the jury.



Reminder of Court Rule Changes: Effective September 1, 1990, CR 10(d) requires all pleadings, motions and other documents to be drawn on 8 1/2 x 11 inch paper.

Also effective September 1, 1990, APR 13 requires attorneys to put their bar number on all papers filed in state courts, and it gives lawyers ten (10) days to notify the Washington State Bar Association of personal name or address change.



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Civil procedure. Plaintiff sued to collect professional debt. Case went to arbitration, after which defendant requested trial de novo. During this time, defendant changed attorneys several times and requested two continuances, one of which was granted. Two weeks prior to trial, defendant sought to amend answer by adding counterclaim for malpractice. Motion to amend was denied. On appeal, defendant argued that CR 15(a) gave him unqualified right to amend answer. *Held*, denial of motion to amend affirmed. Proper interpretation of CR 15 is that once a matter has been set for trial, as this case was, a pleading may be amended only with leave of court. *Wolfe v. Legg*, 60 Wn.App. 245, 803 P.2d 804 (Div. 1, 1/14/91).

—K. B. Tegland

Community property. (Case 1.) During prior marriage, which ended in divorce, husband had designated first wife as beneficiary of his retirement benefits. Community interest in these benefits was awarded to husband upon divorce, but he never changed beneficiary designation. He then married second wife. Shortly before his death,

he and second wife executed three-pronged community property agreement that purported to convert everything to community property and to give it all to survivor. After his death, first wife conceded that second wife was entitled to one-half of his retirement benefits as her community property share, but claimed other half as named beneficiary under *Aetna Life Insurance v. Wadsworth*, 102 Wn.2d 652, 689 P.2d 46 (1984). However, court of appeals, distinguishing *Wadsworth* and following *Neeley v. Lockton*, 63 Wn.2d 929, 389 P.2d 909 (1964), held that community property agreement preempted beneficiary designation. Therefore, surviving second wife receives all benefits. *Harris v. Harris*, 60 Wn.App. 389, 804 P.2d 1277 (Div. 1, 1/28/91).

(Case 2.) At time of separation, husband had vested retirement benefits, maturing at age 65. Between separation and dissolution, these benefits were rolled over and made to mature at age 60. Upon dissolution, wife claimed benefits were community property that fortuitously increased in value after separation. Both trial court and court of appeals disagreed, holding that value at date of separation should be used to determine community property interest. *In re Marriage of Manry*, 60 Wn.App. 146, 803 P.2d 8 (Div. 3, 1/8/91).

(Case 3.) Upon dissolution of 30-year marriage, trial court awarded wife 60 percent of community assets valued at \$105,829, one-half of husband's vested retirement benefits, and maintenance of \$1,200 per month for 36 months. Wife argued she should have been awarded indefinite maintenance. *Held* by court of appeal, remanded for revision of maintenance award. Court seemed particularly impressed that, by agreement with husband, wife had forfeited her own economic opportunities to care for home and family. *Sheffer v. Sheffer*, 60 Wn.App. 51, 802 P.2d 817 (Div. 1, 12/31/90).

—T. R. Andrews

Evidence. Mother brought paternity action against estate of putative

father. Over objection, mother was allowed to testify that she had engaged in sexual intercourse with putative father near time of conception. *Held* on appeal, mother's testimony was proper and not barred by dead man's act. Appellate court held mother was not a "party in interest," as phrase is used in statute, because she was only nominal party who would not gain directly from final judgment. Court rejected estate's argument that statute expressly bars testimony by any party of record, citing authority that courts "have disregarded the statutory language." *Rabb v. Estate of McDermott*, 60 Wn.App. 334, 803 P.2d 819 (Div. 1, 1/22/91).

—K. B. Tegland

Real property. (Case 1.) Purchaser under executory real estate contract has recordable interest. Even though contract was executed before 1984 amendments to recording act, now codified as RCW 65.08.070, expressly included real estate contracts as "conveyances" entitled to be recorded, that statute should be given retroactive application. *Tomlinson v. Clarke*, 60 Wn.App. 344, 803 P.2d 828 (Div. 1, 1/22/91).

(Case 2.) As provided by Real Estate Contract Forfeiture Act, RCW Chapter 61.30, vendor on real estate contract recorded notice of intent to forfeit. Shortly thereafter, purchaser assigned contract to assignee. Assignment was recorded, but vendor had no actual knowledge of it. Assignee brought this action to set aside declaration of forfeiture. *Held*, assignee has no standing to bring action to set aside declaration. RCW 61.30.040(1) provides that actions to set aside declarations of forfeiture may be brought by persons who, "at the time the notice of intent to forfeit is recorded" are last holders of record of purchaser's interest. *Dissent* takes position that statute did not clearly overcome common-law rule that assignee of a contract steps into shoes of assignor and has rights of assignor. *Schultz v. Werelius*, 60 Wn.App. 450, 803 P.2d 1334 (Div. 2, 2/1/91).

—W. B. Stoebuck



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Law and the Hunger Crisis

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The American legal community is a powerful and influential body, and we, as lawyers, have an obligation to support efforts to improve society. The world hunger crisis is a serious social issue which needs our immediate and continuing support. In recognition of the severity and injustice of the hunger crisis, the American legal community is beginning to build a foundation for a significant and comprehensive response to the hunger crisis.

Principle Causes

A. Poverty: The Root of the Hunger Crisis

The fundamental cause of the hunger crisis throughout the world is poverty. In general, when a country has neither the proper kind of land or technology for growing crops, nor the finances with which to purchase food from other

countries, individuals in that country are left to suffer the inevitable and devastating consequences. In particular, starving people burdened by these conditions are disproportionately located in less-developed countries (LDCs), where economic programs are insufficient and political institutions are unstable. Among those countries or regions most severely affected by insufficient economic programs and political instability are India, Pakistan, Indonesia, Bangladesh, Latin America, the Middle East, parts of Asia, and northern and sub-saharan Africa. Nonetheless, the problems created by poverty and hunger are readily apparent in the United States.

Food supplies and the facilities and conditions for food production are also lacking in many parts of the world, including in the United States. Significantly, food production relies

upon a variety of factors: climate, soil properties, irrigation, seed stocks, fertilizer and technological development. Some of these can be controlled. Others, however, cannot. While certain countries are able to control their own destiny, others are not as fortunate.

Those countries unable to completely maintain their own food production depend upon fully developed and self-sufficient countries, such as the United States and the Western European Community, to provide their basic foodstuffs.

According to the 1980 U.S. Presidential Commission on World Hunger, "the central most intransigent cause of hunger is poverty." Hunger, malnutrition and even famine occur in areas where food is plentiful, but the poor lack sufficient resources to obtain it. Indeed, despite an enormous food surplus in the United States, there are an

estimated 14 million malnourished individuals in this country. In the underdeveloped countries, the lack of agricultural training opportunities and the inequitable and inefficient distribution of land are the two principal factors contributing to poverty and hunger.

Many hunger experts maintain that, currently, the number of starving individuals has reached record levels and continues to increase. At present, an estimated 750 million people throughout the world live in absolute poverty. These people are living on less than \$100 per year, and their basic needs for food, shelter, education and health are not being met. The hunger crisis leads not only to millions of deaths, but also to criminal behavior by many living in poverty.

Malnutrition: A Precursor to Starvation and Hunger-Related Death

As millions of people around the world go hungry every day, few of us either understand or acknowledge the

tragedy of starvation. At first glance, it appears that the world population is simply growing faster than agricultural production, and accordingly, there is not enough food for distribution. This oversimplifies the issue, however, because it focuses on overpopulation and food production rather than the real issue—poverty.

The world currently produces two pounds of grain every day for every man, woman and child on earth. Yet every year, 20 million people suffer hunger-related deaths. Millions more experience the irreversible effects of childhood malnutrition.

Chronic malnutrition is one of the most serious food-related problems that people face today. Vitamin and mineral D-deficiencies are one of the primary causes of human developmental problems. The amount and type of nutrition available to individuals through their everyday diet is what determines their ability to develop physically and mentally. The available nutrition is also a crucial factor in determining their level of energy and

their ability to survive.

Estimates of the number of individuals plagued by malnutrition are close to one billion. Malnutrition is a fact of life for millions, particularly poor children and the elderly. Women and children are especially vulnerable to disease when trying to subsist on severely deficient diets. Their malnourished immune systems are defenseless. Estimates show that as much as half of the world population suffers from diets deficient of protein and other essential nutrients, even though these diets include sufficient caloric intake. These numbers will only increase if efforts are not made to assist those suffering the consequences of malnutrition.

The Magnitude of the Hunger Crisis

Statistics concerning the hunger crisis internationally, are overwhelming. Recent studies indicate that one out of every four persons in the world is hungry. It has been estimated that approximately 15 million children die

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each year from hunger and hunger-related causes. Every day, 14 thousand hunger-stricken children die in Africa alone. Twenty-five percent of all children under the age of six are now living in poverty. More importantly, studies indicate that the problem will continue to grow if left unaddressed.

In Ethiopia, for instance, approximately 4.5 million people may die this year unless adequate food is made available in the immediate future. Likewise, in the Sudan, it is estimated that nearly 3 million people will die of hunger by 1995. And starvation is a horrible death. It turns formerly healthy bodies into helpless skeletons, too weak to help themselves, too sick to know how. If we do not help the helpless, they will continue to die.

The Hunger Crisis In The United States

It has been estimated that the number of Americans who live in poverty has increased markedly from approximately 24.5 million in 1978 to roughly 35.3 million in 1983. (Research conducted

by the U.S. Department of Commerce.) In 1985, the Physicians' Task Force on Hunger in America estimated that nearly 20 million Americans felt the pains of hunger for several days in any given month in that year. According to the U.S. Commerce Department, a poverty-stricken family of four is strapped to a food budget of less than \$10 per day. One in eight children under the age of 12 is hungry, and nearly one-fourth of all children under six years of age are poverty-stricken. For Afro-American and Hispanic children in this age bracket, the numbers are much higher. These children are from families whose salaries are 25% below the poverty level.

The statistics on state and federal food assistance are equally as disturbing. In 1983, roughly 900,000 Detroit citizens were hungry. In Texas, about 25% of the population needed food assistance. Four million Texans were eligible for federal food stamps in 1984, but only 1.3 million actually received benefits. In Los Angeles County, approximately 1.3 million people were impoverished

in 1984, and only 638,000 of them received food stamps. Although the numbers receiving food stamps in Los Angeles County increased by 10% from 1983 to 1984, throughout California, the number of people requesting assistance skyrocketed by a factor of four. In 1984, Mississippi state officials reported that 33 percent of all Mississippians were impoverished and that only 19% received food stamps.

United States food banks and soup kitchens have also felt the impact of the nation's hunger problem. In 1983, the Cass United Methodist Church's soup kitchen in Detroit served 2,000 people per week—a ten-fold increase from two years previous. The same year, soup kitchens in Cleveland served 18,000 of its citizens daily, and New York City was serving 600,000 meals daily to children and the elderly. The Central Denver Episcopal Community Services provided to the needy over a ton of food weekly in 1984, and the Greater Chicago Food Depository supplied 9 million pounds of food in 1983.

The elderly and the homeless are,

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undoubtedly, also in desperate need of food. For example, in Washington, D.C., facilities are available for the homeless, including those who are mentally and physically incapacitated. In California, many immobile senior citizens receive home-delivered meals.

The consequences of hunger are devastating here, too. Hungry children are more vulnerable to infectious

diseases and stunted growth than those adequately fed. Low birth weight and increased infant mortality are the greatest risks for this nation's infant population. In commenting on the nation's hunger problem, business executive William S. Woodside put it best when he said, "Hunger in America is not the crime of the poor, it is the shame of the affluent."

The Hunger Crisis in Washington State

Approximately 10,000 school-aged children of impoverished families live in Seattle. Every day, more than 213,000 children in Washington go to bed hungry and enter the classroom without an adequate supply of nutrients required for effective learning and proper growth.

The primary means for fighting hunger in Washington is through public food assistance programs. At present, however, these programs are failing to accomplish their intended goals. Inadequate funding, eligibility restrictions, administrative barriers, and the failure to fully utilize federal food funding are just some of the reasons for the current shortcomings. Additional funding is needed to enhance the availability of services in some of these programs. While in others, a more-efficient utilization of federal food funding, a revision of administrative processes and coordination between state and local public food assistance agencies is crucial.

Within the past decade another means of fighting hunger has emerged with great intensity; namely, *private* food assistance programs, primarily food banks and feeding programs. The sudden and dramatic increase in these programs has come as a result of the failure of *public* food assistance programs to adequately satisfy the needs of this state's impoverished. These private food assistance programs, usually operated by nonprofit agencies or churches, currently number well over 300. These programs usually obtain donations of food and funding from the community, from larger agencies and various public food and funding programs. Donations from individuals, corporations, and foundations comprise the source of the private financial base of food banks.

The Washington State Department of Community Development has reported that over 14 million pounds of food were distributed by food banks and food distribution centers from July 1, 1986, to June 30, 1987. In addition, needy individuals visited these facilities over three million times during this period. An additional 9.5 million pounds of food were distributed by EMM Northwest Harvest during this period.

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These facilities, which were originally established to assist persons temporarily without food, have become a permanent fixture to this state's growing hunger problem.

The Governor's Task Force on Hunger affirms that Washington state food assistance programs are failing to adequately meet current demands for food assistance. A staff member at El Centro de la Raza Food Bank in Seattle said, "We have people lining up at 7 a.m. to get food bags at 1 p.m., and we are out of food by 2:30 p.m." A member of the Southeast Community Center Food Bank in Yakima has identified the problem this way: "The line forms before we open our doors, and by noon we have served 50 families." A volunteer at the Wapato Train Depot Food Bank says, "We need more money to operate. We have three freezers but we cannot plug them in because the wiring is insufficient. We could store much more food, though, if we had those freezers."

In 1987, approximately 61% of lower-income families living in Seattle with children under the age of 12 relied on food banks, 74 percent of them visited a food bank at least once a month, and 86 percent of these families experiencing the greatest food shortages used food banks. In Yakima County, 45 percent of lower-income families relied on food banks and 23 percent of them visited a food bank at least once a month. In Spokane, 50 percent of food bank recipients were children, 23 percent were five years of age or younger. Approximately 2.4 percent were over 60 years of age, and the number of recipients aged 30 to 59 increased from 1986 to 1987. Nearly 44 percent of food bank recipients came from single-parent families and about 80 percent of the recipients earned less than \$7,000 annually.

One Seattle resident survey respondent said, "The food is a good service but some of the items are old and not usable. I always have to add other ingredients. There is never enough for a balanced meal." A Yakima resident responding to the survey stated his feelings this way: "I have only gone (to a food bank) a couple of times. As long as I have beans and potatoes, I figure someone else needs it more."

The hunger crisis in this state is real, and it is obvious that much more needs to be done to help the helpless.

Recent Efforts to Alleviate the World Hunger Crisis

The United Nations

On November 20, 1989, after ten

long years, the United Nations adopted the Convention on The Rights of Children, a historic international treaty setting forth minimum standards by which governments would deal with the concerns of children. The convention has two primary objectives: First, it challenges each signatory to uphold all the "minimum rights and special

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protections" children require; this includes protection from hunger, disease, torture, and hazardous working conditions. Second, it guarantees the right to a home and an education for all children.

A fundamental aspect of the convention is to focus the attention of all signatories on the welfare of children. The convention guarantees all

children basic human services, primary health care, and primary education. Nations must also guard their children against child labor, drug abuse, sexual exploitation, and mandatory service in the military. The convention also focuses on child adoption standards and juvenile justice systems.

A significant milestone in protecting the safety and welfare of all children, the

convention is the first of its kind to be adopted, ratified, and fully implemented in less than one year. In early August 1990, it became international law. By that time, 22 nations had ratified its bill of rights, consisting of 54 articles. On September 2, 1990, the convention was fully implemented. The United States was a primary contributor to the drafting of the convention; yet, to date, the convention has not received approval from either Congress or the President. We hope the United States will become a signatory to the Convention soon to show its support and to inspire other nations to adopt it.

The United Nations has also established the United Nations World Food Program (WFP). Recently, the WFP reported having allocated about \$8,000,000 in emergency food aid. The WFP reports that as of 1986, it has purchased in excess of 1.4 million tons of food from Third World countries. It has distributed this food to other countries. Thailand, the largest Third World exporter of food to other Third World countries, distributes fish, cooking oil, rice, and beans. This food feeds Namibian refugees in Angola, schoolchildren in Cape Verde, and Cambodian refugees in Thailand. The WFP also distributes corn grown in Kenya to the Sudan, and corn grown in Zimbabwe to citizens of Mozambique, suffering from the consequences of war.

While the hunger problems in the world grow, those least capable of fending for themselves continue to be the neediest—children. In conjunction with the recent efforts of the WFP, the United Nations has also been instrumental in attempting to reduce the number of dying infants in the world. During the first World Summit for Children, held September 30, 1990, at the United Nations, leaders from over 70 nations adopted a declaration and a set of goals to decrease, by one-third, the number of infant mortalities in the world by the year 2000. Currently, about 14 million infants die every year before the age of five.

World leaders attending the summit also proposed to reduce, by one-half, malnutrition among children and to increase the average weight of newborn infants. Summit leaders also proposed to eradicate polio, reduce the number of

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Yves Fortier, Canada's ambassador to the United Nations, expressed a very important objective of the summit: "...to launch a consciousness by the public, by the international community, that it is time to put children at the top of their political agenda, both domestically and internationally.

President George Bush, in his address to other world leaders, said, "We are gathered to speak for the children of the Earth...Let us affirm in this historic summit that these children can be saved when we live up to our responsibilities as a world community of adults, of parents."

Javier Perez de Cuellar, Secretary General of the United Nations, in concluding the first World Summit for Children, made the following observations:

"Poverty...is the main enemy of children....There is no way in which issues relating to children can be segregated from the issues of overall social and economic environment. We now have a unique opportunity to establish a world order which encompasses not only the maintenance of peace and security but also the better management of the world's economic and social affairs....The moving concern which has occasioned this summit meeting must now guide the international community in that endeavor."

The United States Legal Community The American Bar Association

Policy Goal VIII of the American Bar Association (ABA), adopted by its House of Delegates in 1984, is specifically designed for the advancement of the rule of law and justice in the world. Given its history of commitment to the principle of the rule of law, the ABA has declared its support in the effort to help alleviate world hunger, and accordingly, has taken an important step toward implementing Policy Goal VIII and combating the hunger crisis. The ABA House of

Delegates expressed unanimous support for this cause in 1986 by adopting a landmark resolution which supports: 1) the recognition of a fundamental right to food (a nutritionally adequate diet) for every person throughout the world, and 2) urges the United States government to make the right to food a principal objective of U.S. foreign policy.

In addition to the ABA's involvement

in the world hunger crisis, various American lawyers have been active in supporting the cause for hunger relief. They have set up nonprofit organizations to make the legal community more aware of this critical situation, and to generate finances to assist the starving. These lawyers have made public their concerns and efforts, requesting others to assist them in their

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worthy programs.

Law Firms and Local Bar Associations

One program that has been created on a local level is American Law Firms for African Relief (ALFAR), founded by Steven Brill (editor and president of *The American Lawyer*), and various lawyers at the Washington, D.C., firm of Hogan & Hartson. The fundamental purpose of this program is to act as "a nonprofit corporation that will raise money from American law firms for specific projects aimed at alleviating the effects of famine in Africa." They have also developed two projects (operated by CARE) directed at long-term famine relief in Mali and Sudan. In addition, they have been guaranteed a commitment from the United States Agency for International Development (AID), stating that the United States government will match the money raised from American law firms up to a maximum of \$700,000. The primary objective of the corporation is to provide food and other necessities to thousands of starving children as quickly as possible.

Another program founded for the purpose of alleviating hunger in Ethiopia is Lawyers for Ethiopia, Inc. Founded by John M. Merritt, an American lawyer from the Oklahoma

firm of Merritt, Rooney & Hayden, it is also a nonprofit organization striving to reduce the level of hunger in Ethiopia. In Merritt's words, "The American lawyer, through the annals of history, has always been there to help, and this is an opportunity for the American lawyer to again help."

In 1988, a number of lawyers and judges from the state of Maryland, using the 1986 ABA resolution as a basis and challenge, sponsored the "First Annual Lawyers' Campaign to End Hunger" in which \$65,000 was raised.

The Maryland lawyers felt that a resolution passed by the ABA, the largest and most powerful group of attorneys in the United States, would be meaningless and cynical if not supported by definitive steps to assure that the right to be free from hunger was extended to the hungry in our society. Their efforts, therefore, were directed toward hungry people in Maryland. Maryland's attorney general, the campaign's honorary chair, declared hunger a crime in Maryland, mandating all attorneys and judges to make the right to food a reality in their state. The event drew positive and widespread news media coverage.

In its "Second Annual Lawyers' Campaign to End Hunger" held in 1989, its goal of \$75,000 was realized. In its "Third Annual Lawyers' Campaign to

End Hunger" held in 1990, Maryland lawyers raised a total of \$106,000, after establishing a goal of \$100,000, to assist the Maryland Food Committee in its effort to alleviate hunger in Maryland. The Maryland Food Committee was a logical choice as a donative vehicle as it is the largest statewide nonprofit hunger-advocacy group in the United States. Founded in 1969, it has been very effective at accomplishing the following:

- (1) Directing food grants (in excess of \$1,000,000) to emergency food pantries and soup kitchens;
- (2) Advocating for the elderly who are fed by the state (this effort generated \$600,000 in 1987);
- (3) Winning policy changes in state-run programs benefiting individuals suffering from malnutrition; and
- (4) Coordinating local efforts to respond to hunger and poverty in Maryland's urban, rural and migrant communities.

These dedicated and determined lawyers and judges from Maryland have conducted comprehensive and imaginative campaigns. For example, they have solicited large law firms to commit to a large annual donation, encouraged all firms to raise funds in-house from partners and associates in order to perpetuate the concept of annual donations, and asked smaller firms to donate approximately one hour of pro bono work from each attorney in the firm. The Maryland Lawyers' Campaign to End Hunger has also encouraged attorneys in the public and academic sectors to become involved and asked law students to donate their time to promote the campaign by participating in particular events or projects.

Public attention to the Maryland Lawyers' Campaign to End Hunger was enhanced by a "media plan," which included the following:

- (1) Giving public recognition to the legal community for its commitment to the Campaign;
- (2) Writing feature articles and

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having radio/television appearances by committee members in order to increase public awareness of the project, and to encourage fund-raising;

(3) Requesting donations from a local Maryland newspaper, which provides regular advertisements and lists Campaign donors; and

(4) Organizing a special "wrap-up" event where the total donations are announced. (This provides public recognition of the commitment, achievement, and generosity of Maryland attorneys and generates future support).

The Texas Bar Association Young Lawyers' Section has also established a Hunger Relief Committee, and has inaugurated annual fund-raising campaigns to feed the poor and homeless. These campaigns have been very successful. Texas lawyers, to date, have raised \$257,000 in three successive campaigns. The 1990 campaign resulted in donations of \$107,600.

Washington State

In the state of Washington, the Loren Miller Bar Association, in conjunction with the Washington Women Lawyers, Seattle-King County Chapter and the Asian Bar Association, recently completed an extremely successful food drive for local families.

"The food drive was a tremendous success," stated Richard A. Jones, Loren Miller Bar Association president. Jones added, "This was an opportunity for a number of lawyers to help feed more than 250 needy people during the holidays—this is a great way to bring in the '90s."

The Loren Miller Bar Association is a statewide service organization of black judges, attorneys, and law graduates and is the Washington state affiliate of the National Bar Association.

The WSBA Board of Governors recently adopted a resolution supporting the Washington State Lawyers' Campaign for Hunger Relief and encouraging all lawyers to support the effort. Further support is derived from the humanitarian attitude and wisdom of WSBA executive director Dennis P. Harwick, who

believes, "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."

Seattle lawyers Charles Burdell (retired King County Superior Court judge), Brad Doyle, Floyd Fulle, Richard A. Jones, Mary Ruth Mann, Steve Miller, Fred Noland, David Otto, James E. "Jim" Rogers, Seattle marketing consultant Peter DeLaunay, Erik Wogstad, assistant regional director of CARE, Randi Ryan, Division of Family and Youth Services for the city of Seattle, Sharon Reason, Department of Human Resources for the City of Seattle and the authors of this article are presently spearheading the First Annual Washington State Lawyers' Campaign for Hunger Relief and using the successful Maryland experience as a model. This group will work closely with the presidents of all local bar associations throughout Washington to coordinate the effort. Co-chairs Brad Doyle and David Otto have established a goal to *end* hunger and homelessness here and elsewhere in the world. The honorary co-chairs of the campaign are U.S. Senators Brock Adams and Slade Gorton, Washington state Chief Justice Fred H. Dore, and Washington state Attorney General Kenneth O. Eikenberry.

The Washington State Lawyers' Campaign for Hunger Relief seeks to raise \$100,000 in 1991. Seventy-five percent of the funds received will be allocated to EMM Northwest Harvest, the Seattle-King County Coalition for the Homeless and other effective local organizations providing food and shelter for the thousands of needy men, women, and children living in Washington state. The remaining 25 percent of these funds will be allocated internationally through CARE, CCF (Child Alert), and other highly respected international hunger relief organizations in an effort to help feed the starving children of the world.

Additionally, the Washington State Lawyers' Campaign for Hunger Relief is drafting proposed legislation that will establish that the right to food and other necessities of life are basic human rights. It will also sponsor and support legislation designed to protect and benefit the hungry and the homeless.

Why the Legal Community Should Become Involved

The United Nations' Universal Declaration of Human Rights includes an express declaration of the right to food. It states that satisfaction of basic needs is an inalienable right and every man, woman, and child has a fundamental right to food. In 1975, the United States Congress passed a resolution affirming the right to food which provides, in addition to adequate food, such basics as water, clothing, shelter and medical treatment. The right to food, therefore, as established by the United States Congress, is an "umbrella" right covering an assortment of subsidiary rights.

Deprivation of necessities may often lead to alienation and disregard for the state and the laws of society. It can destroy people, or it may temporarily impair their ability to conduct themselves with due regard for moral and legal concerns. In a world where millions of people are starving or suffering from hunger-related diseases daily, we cannot realistically expect world order.

The problem is magnified with the knowledge that most current revolutions stem from problems based on hunger, poverty, and inadequate land, or distribution thereof. The world food crisis can be a threat to the stability of the national and economic security of the United States and other developed and less-developed countries.

It is the goal of the ABA and its Standing Committee on World Order Under Law to promote world order, justice, and peace. This effort, however, is undeniably hindered by the continual growth of hunger, poverty, and alienation.

When the United States Senate introduced Concurrent Resolution 66 in 1975, and when the United States House of Representatives proposed Concurrent Resolution 57 in 1985, its members had as a goal the future elimination of world hunger. Stipulated within Concurrent Resolution 66 is a statement made at the World Food Conference by the President (through the Secretary of State) proclaiming, "...that within a decade no child would go to bed hungry, that no family would fear for its next day's bread, and that no human being's future

and capacities will be stunted by malnutrition." All the governments at the World Food Conference adopted this objective. In addition, the Resolution recognizes that "within our independent world, hunger anywhere represents a threat to peace everywhere." It maintains that every person in the United States and worldwide has an inherent right to food, the right to a nutritionally adequate diet and that fulfilling this right should be recognized as one of the paramount objectives of United States policy. Thus, it is a major goal of the Washington State Lawyers' Campaign for Hunger Relief to introduce legislation that guarantees all people the basic rights to food, shelter, and medical care.

Concurrent Resolution 57 recognizes that "both the private and public sectors, by reason of their knowledge, experience, and other resources, have a valuable role to play in alleviating world hunger." The Resolution, also acknowledges that LDC's have the most severe food problems, and that they can only offer a minimal (at best) incentive for any reasonable level of investment by foreign corporations. These countries lack trained people and expertise, farm-to-market roads, irrigation systems, communication networks and modern facilities. Concurrent Resolution 57 recommends that this country's leading institutions collaborate throughout the decade in establishing a successful plan that would ultimately end world hunger. Interested organizations may work on a national, regional and state level to accomplish this objective. Finally, it recommends that "such an undertaking should be designed to secure from private firms a commitment to a corporate agenda that reflects a resolve to end world hunger."

With the above considerations in mind, it is extremely important that lawyers, judges, and law students in the United States take necessary action to help in reaching the vitally important goal of putting an end to the world hunger crisis. Since the legal communities in part, helped create the forums for remedying the problems of hunger and poverty, its members should be responsible for seeing that such forums effect positive and lasting results.

Breakthroughs in the areas of poverty, hunger, and human rights, among the most difficult issues in American domestic life, have in the past required the energy, acumen, and resources of the legal community. The legal community has a tradition of providing leadership and direction in articulating international, national, and local policy and protecting individual rights. It is our challenge to maintain this tradition.

If we all recognize the importance and immediacy of the world hunger crisis, which definitely includes the United States, and take appropriate measures to alleviate it, we too, may come to know just how rewarding it can be to help put an end to this horrible and intolerable situation. As lawyers, we know that the rule of law depends upon a legal system that promotes social justice and equal opportunity. As responsible leaders in American society, it is our professional duty to work in concert for the public good—both internationally, as well as domestically. Specifically, our ultimate goal is to eliminate the hunger crisis and establish by positive action the legal right to food, water, shelter, and medical care as fundamental human rights. □

Robert C. Mussehl was a member of the ABA House of Delegates since 1979, and is currently a member of that organization's Special Advisory Committee on International Activities. He was a member of the ABA Standing Committee on World Order Under Law from 1983 through 1989, and chaired that committee from 1986 through 1989.

Nicholas A. Stamoulis is a graduate of the University of Washington, where he earned a Bachelor's Degree in Political Science and was an active participant and leader in student government. He is currently studying International Business and Trade Law at the University of Puget Sound School of Law.

The authors expressly thank Father Robert F. Drinan (U.S. Congress, 1972-1982, Professor of Law, Georgetown University), David Otto and Morris H. Rosenberg for their valuable input.

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Legal-Community Contacts

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<p>Mary Ruth Mann (206) 623-2800 1300 Hoge Bldg. 705 Second Avenue Seattle, WA 98104</p>	<p>Steve Miller (206) 682-3607 c/o Marine Digest P.O. Box 3905 Seattle, WA 98101-3202</p>	<p>Robert Mussehl (206) 622-3000 [B] Mussehl & Rosenberg (206) 623-8568 [H] 1111 Third Avenue, Suite 1010 Seattle, WA 98101-3202</p>
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Hunger Relief Committee Meetings

Wednesdays 12 to 1:15 p.m.
Law Offices of Mussehl & Rosenberg
1111 Third Avenue Building, Suite 1010
Seattle, WA 98101-3202
(206) 622-3000



NEWS FROM HOME

The American Association of Attorney-Certified Public Accountants, Inc., Washington Chapter, have elected the following persons as officers for 1991-92: president: Joe Lawrence; vice president: Suzzane Danielle; secretary: Mike Boyle; treasurer: Joe Brotherton.

Founded over 25 years ago, the AAA-CPA limits membership to individuals who hold licenses as attorneys and CPAs, although a majority of members practice mainly or solely as one or the other. Information on the organization and membership can be obtained from Joe Brotherton at (206) 325-3537.

CLARK COUNTY REPORT

by JOHN F. NICHOLS

Happy Trail-Trials to You: After years of extended service with the Clark County prosecutor's office, Dick

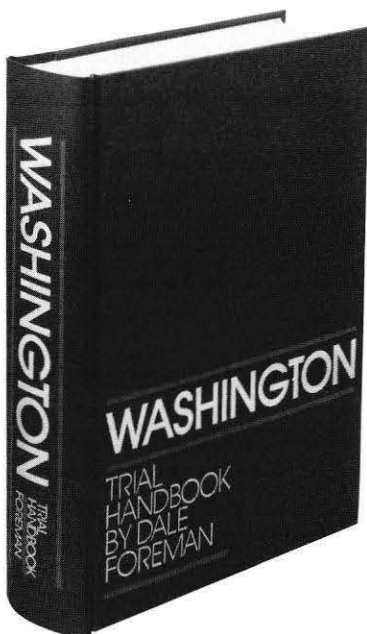
Monaghan retired. Dick, who was in charge of the support/paternity cases, plans to spend his spare time blood-typing the various canines in his neighborhood. The biggest surprise associated with Dick's retirement was that someone was actually hired to replace him. Good luck, Dick, and don't forget that blood is not only thicker than water, it is also a different color.

Bob's Law: CCBA'er Robert Bennett, not to be confused, or even compared, to Judge Roger Bennett (as was done in my last column), took the enforcement of the law into his own hands last month. Bob, as is his habit, was staring out his office window when he happened to spy someone breaking into his car. Bennett immediately finished filling out his month's time slips, put on his Nikes and gave chase. The ensuing 5k road race ended up at the local Winchell's and into the hands of the police. The cops, after ascertaining who was the thief, questioned the suspect on the propriety of breaking into a Pinto and Bennett on why his Pinto would be looked at. The officers

then complimented Bob by saying, "A few more Twinkies, and a little less energy, and he could be one of us."

Bosses' Night: The Ft. Vancouver Legal Secretaries presented the 25th Annual Bosses' Night in March. "Country" Bud Gallup M.C.'d the proceedings, displaying his Kansas humor as well as the ability to insult both sexes and all varieties of ethnic groups. Special celebrity guests included the court of appeals' version of "Twin Peaks," J.D. Morgan and Gerry Alexander. Justice Morgan lent a measure of formality to the event by citing a number of obscure North Dakota cites and giving a sound decision on the award of door prizes. The highlight of the evening occurred when a teary-eyed Lisa Lowe formally relinquished her "Boss of the Year" tiara to this year's winner, Wayne Nelson. Following his parade down the runway, accompanied by tears and flowers, Wayne credited his victory to his employer, PUD, for allowing him so much time off that his secretary didn't have much to do. He also thanked his

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fellow ratepayers for their continued use and abuse of electricity. Nice touch, Wayne; shocking, but nice.

COWLITZ COUNTY REPORT

by ODINE H. HUSMOEN

A report from Cowlitz County is now forthcoming from this observer by reason of default. Apparently the local bar has not seen fit to replace this aging observer.

There have been a substantial number of changes in the last few years and only a few of them have been noted for this publication. Recently, the prosecuting attorney's office has brought the greater influx of new faces to the bar. The incoming faces coincided with the election of **Randy Furman** as district court judge, defeating long-time occupant of that post, **Ronald Huntington**.

Joining the prosecuting attorney's staff are **Tom Ladouceur**, **Lourene Miovski**, **Tad Scudder**, **Eleanor Couto** and *Bar News* editor **Lindsay Thompson**. **Jill Johanson** has also joined the prosecuting attorney's staff as the civil deputy prosecutor, support enforcement division, moving over from the position of Longview assistant municipal attorney. Her replacement at the city of Longview is **Janna Lovejoy**. **Sue Bauer** has rejoined the staff after a brief stint with Clark County. **Darrel Ammons** has joined the Walker & Dowell law firm.

New name plaques are going to be created very soon because of an announcement by Judge **Alan Hallowell** of the Cowlitz County Superior Court. He apparently will be seeking an early retirement, and as a result, has asked the bar association to obtain the names of interested replacement candidates and to conduct the usual popularity vote.

The recent "Beagle Awards" given in Clark County for local telephone advertising prompted me to look at our Yellow Pages section. It would probably be worthwhile for all attorneys, especially those that had practiced before advertising became permissible, to take a look at your



University of Washington Asian Law Program graduate Charles Duan, flanked by attorney Hale Johnson on (l) and WSBA president Lowell K. Halverson (r) is sworn in as Washington state's first foreign law consultant. "...(T)he adoption of Rule 14, which makes it possible for (Duan) to consult in Washington, is a recognition that not only international trade, but all other forms of cultural exchange are essential to strengthening ties with the Pacific Rim. Washington's Asian Community has long been second in size only to California's. Given Charles' credentials and his time in the Northwest, the bar takes a pleasure in welcoming him as a 'dual legal citizen.' The lawyers of Washington are proud to include you, Charles, as one of our own!"

Yellow Pages. Some current members of the bar must have a great sense of humor or are totally oblivious to what they are saying about themselves.

To the Cowlitz County bar president, **Lindsey Cotterell**, a motion is hereby made that a new reporter be appointed to make a regular contribution to the *Bar News*.

EAST KING COUNTY REPORT

by RANDOLPH I. GORDON

In Eseldorf, Austria, in the year 1590, a young boy is sitting with two friends when Satan makes their acquaintance. The Mephistophelian stranger in Twain's "The Mysterious Stranger" offers Twain's most pessimistic view of the human race. Yet for the inveterate optimist there is one hopeful passage:

Will a day come when the [human] race will detect the funniness of these

juvenilities and laugh at them—and by laughing at them destroy them? For your race, in its poverty, has unquestionably one really effective weapon—laughter. Power, money, persuasion, supplication, persecution—these can lift at a colossal humbug—push it a little—weaken it a little, century by century; but only laughter can blow it to rags and atoms at a blast. Against the assault of laughter nothing can stand.

This is the great secret. How, then, can this discovery be applied to the self-important contentiousness of litigation, where humor is all too often lacking?

Humor bespeaks a gentle humanity and perspective inconsistent with stark dichotomies of the courtroom. It is as though, entering the courthouse, the entire Universe aligns itself between two poles: the funny and the forensic. If a lawyer cannot see something laughable in the average case, he is a

sorry soul, indeed. An objective view of almost any set of interrogatories should lead any right-minded person to convulsions of laughter. But if the interrogatories are insufficient, the responses surely will suffice.

One of my favorites is the evasion,

"Question is unduly burdensome." Hell, the whole case is burdensome; why pick on this question? Are experts intended to be called for trial? Intentions are a slippery thing. At this point, even the novice attorney who has never revealed in early life an inclination

towards philosophy finds flowering within him the fully-formed expression of a deterministic Universe free from both will and intention. That is, at least, up until the discovery cutoff.

The suppression of humor and its correlate—perspective—is, however dif-

UPICEL University of Puget Sound School of Law's Institute for Citizen Education in the Law

What do young people know about the law? Are there barriers within our schools and communities to increasing minority involvement in law-related education?

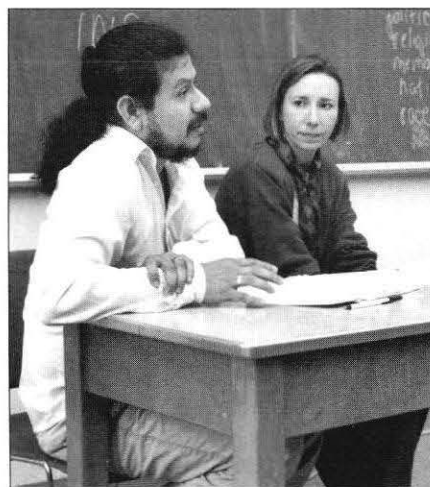
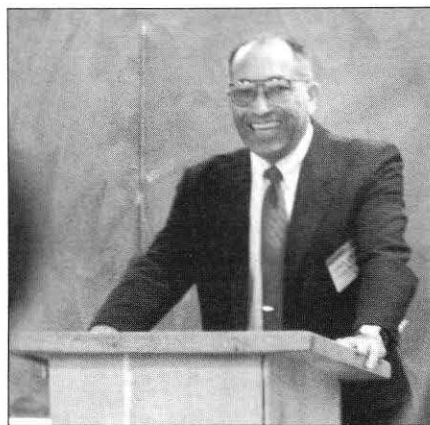
While there are no easy answers to such questions, participants at a recent conference agreed law-related education (LRE) can yield positive—if not dramatic—results.

Using culturally authentic lessons, educators from three states demonstrated how attitudes and behavior can change. Workshop leaders used various techniques to show how students learn about justice, responsibility and the role of the individual within a free society.

Students learn to make decisions based on logic rather than emotion, and they develop respect for fairness and authority, noted **Margaret Armancas-Fisher**, director of the University of Puget Sound School of Law's Institute for Citizen Education in the Law (UPSICEL), which sponsored the daylong event in cooperation with other groups.

Forty educators took part in the conference, which included sessions with students from Seattle's Franklin High School. Along with presenting an excerpt from the mock trial used in this year's statewide competition, the students joined in small group discussions to strategize ways to enrich LRE programs.

Other highlights of the March 2 conference were "hands-on" lesson demonstrations to acquaint educators with techniques for fitting law-related education into "conventional" school



photos by Cheri Brennan

curricula and to illustrate ways to utilize outside resources.

Opening sessions featured an overview of minority outreach programs, presented by UPSICEL directors, and a discussion of the benefits of increasing LRE's relevance to minorities, presented by **Mabel McKinney-Browning** of the American Bar Association.

Washington State Supreme Court Justice **Charles Z. Smith** reviewed minority involvement in the legal profession, citing findings from a recent research project he chaired. "We must let young people know what law is—and what it is not," he said. And, he added, we must let them know their future is limited only by their ambition.

Justice **James Dolliver**, also of the State Supreme Court, discussed the value of LRE from the judicial perspective. The long-time proponent of LRE examined law from three aspects: instrumental, fundamental and transitional. Commenting on his own secondary education, Dolliver said he regretted it did not provide him with much understanding about the law as a "protector, an enabler and a restraint."

The minority outreach conference was sponsored by UPSICEL in cooperation with the ABA's Special Committee on Youth Education for Citizenship. Funding was provided by the Legal Foundation of Washington, the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention and the ABA's Fund for Justice and Education.

ficult, essential to the relentless workings of the adversarial system of justice and the prolongation of litigation. Removed from the contextual clues of everyday life, all facts are the same size in the courtroom. If the results, delays, and expense of litigation could be made apparent in advance, a significant number of parties to prolonged litigation would elect a carelessly refereed fistfight in a back alley or boardroom.

It has occurred to me that, left to their own devices, parties will often find alternatives to full adjudication of their legal rights. The notion that there are more efficient alternatives to resolution of disputes than the full panoply of procedural due process which inheres in a jury trial is apparently inimical to principles basic to American constitutional law and, from all appearances, to be discouraged. It must be because only by the grim, relentless workings of the legal system can legal authority be generated by the appellate courts, which accretions to the common law are, admittedly, the highest contribution that any lawyer can make to the legal system. It follows that shortcuts such as mediation, arbitration, and negotiation before trial, are to be avoided and, accordingly, are seldom the subject of instruction in law schools.

There is one legal function, however, in which laughter is seldom a stranger: the annual EKCBBA cruise. This year, on June 28 at about 6:30 p.m., members of the East King County Bar Association and their guests will board the M/V Celebration at Kirkland's Carillon Point dock bound for points west (i.e. Lake Union) and an evening of camaraderie, dancing, and dining. Bruce Gardiner is taking reservations at (206) 823-9456. It is not too late to have therapeutic amounts of laughter administered to restore the balance of humors.

LAW SCHOOLS

University of Washington law professor **Roy Prosterman** has been named the first John and Marguerite Walker Corbally Professor in Public Service. The professorship, endowed by the Corballys, honors UW faculty in all fields whose professional achievements are recognized as making signal

contributions to public service, regionally or nationally. Since joining the UW law faculty in 1965, Prosterman has been noted for creation of a program—implemented between 1970 and 1973—in which about a million Vietnamese tenant farmers received individual ownership of the land they worked; drafting a law in El Salvador which has transferred land to 52,000 tenant families; consulting with the Egyptian Ministry of Agriculture on land reform; and leading a delegation to Latvia and other parts of the Soviet Union to help officials there shift from collective to private farming systems. Prosterman will hold the Corbally chair for five years.

SKAMANIA COUNTY REPORT

by **ALAN L. GALLAGHER**

Jan Kielpinski of Stevenson, a member of the Coast Guard Reserves, was called up for service in the Persian Gulf War in February and left midmonth for training in Florida.

Alan Gallagher left Kielpinski & Lorne March 1, 1991 and is now associated with the Canby, Oregon office of Bettis & Ricker, P.C.

Longtime area attorney and former judge **John Thomas Day** died of cancer earlier this year.

Thus Skamania County lost a substantial part of its attorney population.

SEATTLE-KING REPORT

by **JAMES VARNELL**

Deja Vu: Sunny Climes. As a result of the interest sparked among Bar Association members by the current referendum on the location of the 1995 Bar Association meeting in Hawaii, this correspondent pored through past issues of the *Bar News* to see if an issue of this type had occurred previously. As fate would have it, a similar imbroglio occurred in 1930 regarding the proposed midyear meeting of the Minor Traffic Infractions Subcommittee of the Criminal Practice Section. This subcommittee meeting had originally been scheduled to be held on the island of Kokomo (a Caribbean paradise, virtually unknown at that time, but recently popularized by a Beach Boys song and a **Tom Cruise** movie).

Under the leadership of one Alva Short, a member of the Board of Governors, a referendum campaign was launched to require the subcommittee meeting to be held in-state at one of the following scenic locales: Pomeroy, Washtucna, Pe Ell, George or Sedro-Woolley. Short, a South King County attorney who was often described in Seattle newspapers as a "gadfly" and was known to his friends simply as "Alva," argued that the holding of the midyear meeting in Kokomo was simply a tax write-off for the more wealthy members,

We are pleased to announce that

T. Noble Foster, Esq.

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and could not be afforded by the less-affluent attorneys. Short placed full-page advertisements in local papers, including a dignified picture of himself

in a judicial robe drawn open to reveal surfing shorts and sandals.

The campaign apparently was effective. At the annual Bar Association

meeting held in November 1930 at Miami Beach, Florida, Short led the floor vote which ultimately determined that the subcommittee meeting, scheduled for January 1931, would instead be held in George, Washington at the Martha Inn.

Office Moves. **Waller Taylor III** and **David M. Dawson** have joined **Reed McClure**. **Llewelyn G. Pritchard**, **C. James Frush** and **Mark C. Dean** have become partners, and **Linda D. Walton** is a new associate at **Helsell, Fetterman, Richard G. Wood** has opened an office in Bellevue. **John O. Graybeal**, **Larry A. Jackson**, **H. Albert Richardson**, **Jeffrey T. Haley** and **John M. Johnson** announce the merger of their practices and the formation of **Graybeal Jackson Richardson & Haley**.

Announcements of new partners include: **Susan Barley**, **Dori E. Brewer**, **J. Christian Moller**, **Philip S. Morse**, **Richard W. Oehler**, **Vicki M. Pierce** and **James P. Savitt** at the Seattle office of **Perkins Coie**; **Mary Steele**, **Jerry Zhu**, **James Wreggelsworth** and **Joseph Weinstein** at **Davis Wright Tremaine**; **David E. Breskin** at **Short Cressman & Burgess**; **Jennifer Cobb** and **Arne Hedeem** at **Ferguson & Burdell**; **Kathryn M. Battuello** at **Karr Tuttle Campbell**; **Cynthia Thomas**, **Mary Foster Vrbanc** and **Paul Brain** at **Tousley Brain**; and **Larry "Mr. W.A.C. Basketball" Smith** at **Graham & Dunn**. New associates include: **James Latting** at **George, Hull & Porter**; **Paul F. Norris** at **Hendricks & Lewis**; **Timothy S. McGarry** at **Walthew, Warner**; and **David S. Grossman** at **LeSourd & Patten**.

Bogle & Gates announces that **John J. Fausti**, **Walter W. McMonies**, **Byron W. Milstead**, **Michael P. Mirande**, **Mark Charles Paben**, and **Al Van Kampen** have become partners; and that **Patrick W. Kuo**, **Michael R. Spaan** and **David L. Canary** have become Of Counsel. **Danial D. Pharris** has become a partner, and **Cheryl D. Carlson** an associate, at **Lasher Holzapfel Sperry & Ebberson**. **Barry C. Maulding** has been elected corporate secretary and

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Effective February 1, 1991

Formerly with **Preston Thorgrimson Shidler Gates & Ellis**, Mr. Ambrose will continue to practice in the areas of business, corporate and real estate transactions, with an emphasis on the representation of closely held corporations. He is admitted to the bars of Oregon (1979) and Washington (1983).

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have become associates of the firm.

January 1991

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P.O. Box 1606
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appointed general counsel of Momentum Distribution, Inc. **Jonathan S. Cole** has been appointed director of the Contractor Listing Program in the Office of Enforcement Policy, U.S. Environmental Protection Agency.

Of Note. **Karen J. Summerville** has been appointed to the board of directors of the German American Chamber of Commerce of the Pacific

Coast. **Dave Burman** has been named head of the litigation department of Perkins Coie. **Richard J. Howard** has been selected to serve on the 1991 legal committee of the American Association of Homes for the Aging. **Linda Kelley Ebberson** has been selected as managing partner of Lasher Holzapfel Sperry & Ebberson. **Richard Edwards** has been named managing partner at Miller Nash.

IN MEMORIAM

A memorial service was held March 9, 1991 for retired Superior Court Judge **John J. Langenbach**, who died in Tumwater at the age of 97. A longtime member of the Bar Association, Langenbach was appointed to the Superior Court by Governor Langlie in 1949 and sat for Pacific and Wahkiakum counties until his retirement in 1968.

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