Washington State Bar News
Vol. 45, No. 7, July 1991

Celebrating Small-town Practice ○ The Bench: Education & Selection
Practice Alert: The Soldiers & Sailors Civil Relief Act

Join thousands of prominent attorneys on America's fastest growing legal directory.

A listing in West's Legal Directory instantly displays your credentials to thousands of law firms and corporations.

With the touch of a few buttons, they can view your client list, read about your most significant victories, identify your areas of practice, the foreign languages you speak and any other information you choose to list.

So you get national exposure, new opportunities for referrals and the knowledge that you are listed among some of the most prominent attorneys in America.

YOUR INFORMATION WILL ALWAYS BE CURRENT

With traditional directories, your information is updated just once a year. But on West's Legal Directory, you can update your information any time at no additional charge. All it takes is a phone call.

IT'S THE MOST COST-EFFECTIVE DIRECTORY AVAILABLE

Your Basic Profile is always free. And if you act quickly, you can get the more detailed Professional Profile listing free for one year. Don't wait!

CALL 1-800-777-7089 TODAY TO BE INCLUDED IN AMERICA'S FASTEST GROWING LEGAL DIRECTORY

WESTLAW® **WEST'S LEGAL DIRECTORY**

Only on Westlaw!

Note: Many Professional Profile listings contain multiple screens of information.

 267102

Washington State Bar News
Vol. 45, No. 7, July 1991

Published by
WASHINGTON STATE BAR ASSOCIATION
500 WESTIN BUILDING 2001 SIXTH AVENUE
SEATTLE, WA 98121-2599

LINDSAY THOMPSON, *Editor*
JENNIFER KLAMM, *Managing Editor*
DENNIS M. EAGAN, *Advertising Director*
PATTY MULLADY, *Editorial Assistant*

DENNIS P. HARWICK, *Executive Director*
GEORGE SCOTT, *Director of Public Affairs*

PUBLISHED early in the month of cover date and mailed second class. Editorial deadline 25th day of month for second issue following. Direct correspondence to Washington State Bar News, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599, telephone (206) 448-0441. All editorial material, includng editorial comment, appearing herein represents the views of the respective authors and does not necessarily carry the endorsement of the Association or the Board of Governors. Likewise, the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement. SUBSCRIPTION, included in active membership, is $12. a year for inactive members (WA state residents add $0.98 WA state sales tax), and $24 a year for nonmembers (WA state residents add $1.97 WA state sales tax).

FEATURES

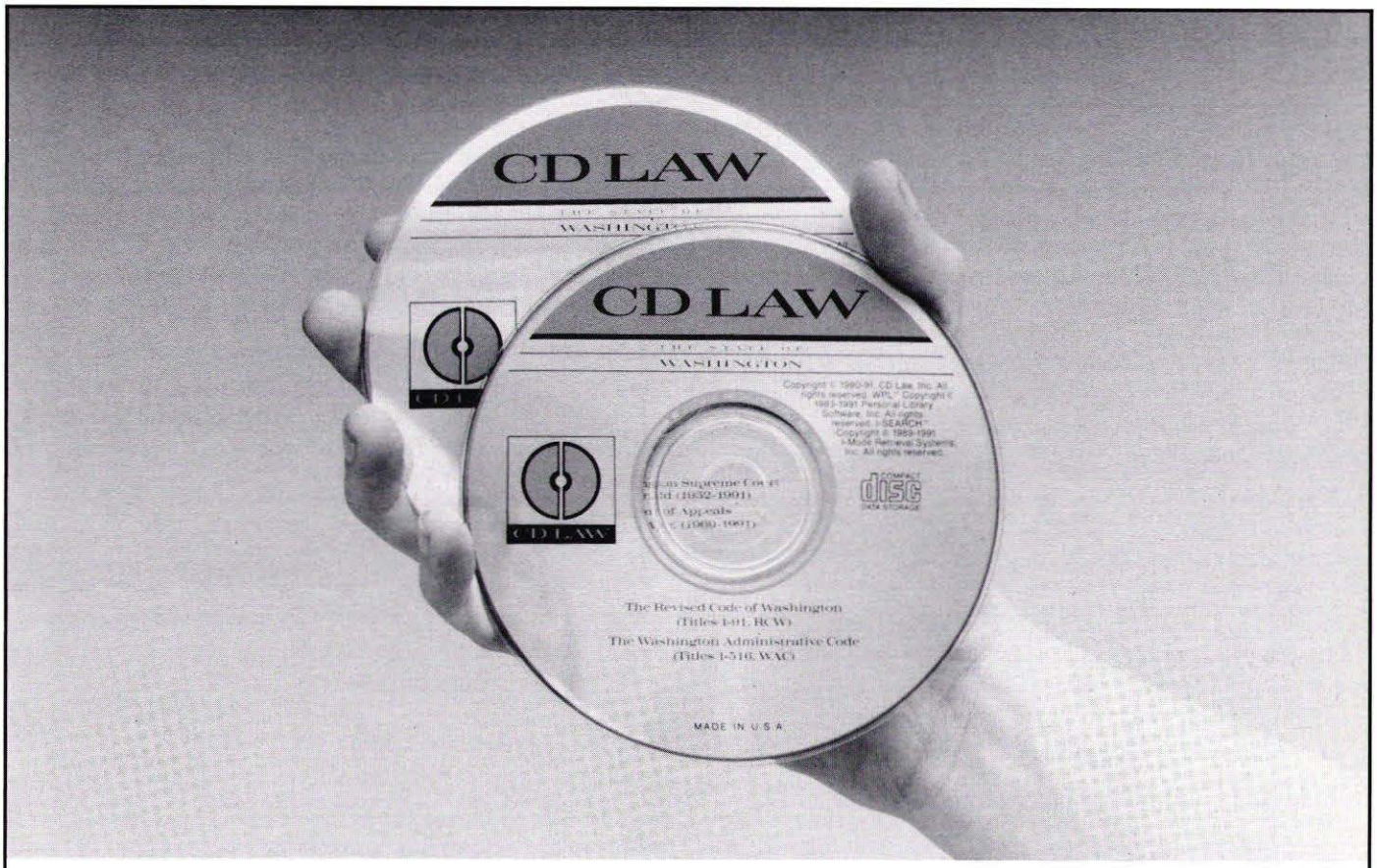
DEPARTMENTS

ART CREDITS

Cover: We celebrate July with a head-on portrait of a bald eagle taken by award-winning nature photographer **Al Berni** in his Whidbey Island front yard.

WSBA Telephone Numbers

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



FAST! POWERFUL! EASY TO USE!

Unlimited Computer Access to Washington law for only $175.00/month!

Now you can hold a complete electronic Washington law library in the palm of your hand. Using our CD Law Libraries, you have nearly 50 years of Washington case law and every Washington statute at your fingertips, accessible in seconds! All you need is a CD-ROM drive and a computer to quickly, easily, and comprehensively search these Washington legal databases — the most important bodies of law for Washington practitioners. Our current CD Law Libraries include:

Washington Statutes
Titles 1-91, RCW; Titles 1-516, WAC. $50.00/month single disc subscription. Includes all updates.

Washington Decisions
Volumes 25-116 Wn.2d (1946-1991); 1-60 Wn. App. (1969-1991). $150.00/month single disc subscription. Includes all updates.

Both CD-ROM discs are available for $175.00/month.

For more information or a free demonstration, call us at (206) 623-1688.

CD LAW

CD LAW, INC.
1920 Smith Tower
Seattle, WA 98104
(206) 623-1688

LETTERS

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

A Blake By Any Other Name/Simply Wouldn't Be the Same

Editor:

Lest anyone blame the wrong attorney for the comments on the Court of Appeals decision in *Estate of Meyers* contained in the letter published in the April *Bar News*, I would like to point out the misspelling of my last name and admit to authorship.

THOMAS M. BLAKE
Seattle

More on Odd John

Editor:

John Rupp's nice article, "The Odd John Case" (*Bar News*, April, 1991), brought back some real memories. My father, M. Bayard Crutcher, was an admiralty lawyer with Bogle & Gates. He represented the underwriter that Odd John Solnordahl tried to defraud by sinking the CAPE DOUGLAS. (I'm afraid Mr. Rupp has made a Freudian slip in calling her the "Black Douglas.")

The case has some historical significance. As I remember it from my dad, Odd John was the first American master in the 20th century to be convicted of barratry (a fancy admiralty term meaning the sinking of a vessel by her master). Odd John had sunk the CAPE DOUGLAS in just about the deepest part of Puget Sound, and her recovery was the deepest water salvage of a vessel at that time.

But there's more to the story. Odd John was an inept seaman, but a great con artist. He had bilked a number of Norwegians in Ballard out of their savings to invest in the CAPE DOUGLAS, and it was their demands for repayment that gave him the idea of sinking the vessel for insurance money. Not knowing how to sink the vessel himself, he bribed a more experienced man to show him which seacocks to open. Odd John marked them with yarn. On the night of the sinking, Odd John plied his first mate with liquor, so as not to have a witness, and navigated through the Ballard locks and down Puget Sound with the aid of a Shell road map. After opening the seacocks, he shoved his mate in a rubber dinghy and rowed ashore.

Odd John's story about the sinking satisfied neither the underwriters nor my dad. Odd John said he had struck a hard object in a place where, demonstrably, there were none (though a rumor was floated that there was a half-sunk hull of a Japanese submarine drifting about the Sound). Other stories came to light about Odd John's ineptitude as a sailor. The underwriters refused to pay the claim and undertook what was truly an heroic salvage operation. When the CAPE DOUGLAS was raised, yarn was still found around her open seacocks.

As Mr. Rupp wrote, even a lawyer as capable as Theodore LeGros couldn't get Odd John off on facts like these. After Odd John was sent off to McNeil Island, then a federal penitentiary, my dad had occasion to visit another prisoner there (a client?). As he boarded the prison ferry, he looked up at the wheelhouse to see none other than Odd John, who had conned the warden into making him master of the prison ferry.

MICHAEL M. CRUTCHER
Louisville, Kentucky

April Was Wonderfully Foolish

Editor:

Thank you for the wonderful April, 1991 issue of the *Bar News*. What fun! From Benchley to "In the LAP" to Rupp on the Odd John Case, it just kept getting funnier until it erupted in the hilarious report on the Board's work. Of course, in the latter, the raw material provided by Messrs. Howell, Long, Tolman, Chambers, et al. is already pretty fine grist for any humorous mill.

JAN ERIC PETERSON
Seattle

More on QDRO Basics

Editor:

In re: the QDRO Basics (*Bar News*, April, 1991): Governmental and church plans *are* subject to the QDRO rules under Internal Revenue Code Section 414(p)(11). This section was added in the Revenue Reconciliation Act of 1989, Section 7841(a).

KAREN HAYNES-PALMQUIST
Seattle

Which Side Are We On?

Editor:

I recently learned that the attorneys employed by the State Bar Association are attempting to unionize, apparently to the dismay of the Board of Governors. Considerable sums of money are being expended to counter these efforts. I find this to be a completely inappropriate use of our bar dues, a use that should be ended. If these attorneys wish to unionize, they should be free to exercise that choice. Our bar dues certainly can be better utilized.

SALLY F. STANFIELD
Seattle

Clark County Report —A Must

Editor:

What would I do without the "Clark County Report?" Mr. Nichols has a wonderful sense of humor, and I confess it's the only column I regularly read. It lightens my day.

CHRISTOPHER E. YOUNG
Seattle

FROM THE ARCHIVES

TEN YEARS AGO: *Washington State Bar News*, July, 1981

Representatives of the Seattle-King County Bar Association appeared before the WSBA Board of Governors in Bellingham to ask them to oppose a national constitutional convention, then just four states away from having enough support to be called. Several governors supported the idea as a means of achieving broad-based constitutional reform, while others thought the Bar Association shouldn't interfere with political matters. The board voted 8-1 to put a decision off a month. The Board also voted to create a committee "to investigate the impact the present court reporting system has on court congestion and delay." Speaking to the Whatcom County Bar Association, WSBA President Brad Jones said the Bar Association would only investigate proven instances of unauthorized practice and only when it could be established that the public was being disserved.

TWENTY YEARS AGO: *Washington State Bar News*, July, 1971

In his column, WSBA president Robert O. Beresford wondered if lawyers would price themselves out of the market. "Both Seattle newspapers prominently displayed a news article recently reflecting the determination by the Seattle-King County Bar Association to raise the minimum hourly rate from $25.00 to $35.00. The Minimum Fee Committee was actually only putting the official stamp of approval on what had long been the established practice, and which, incidentally, still represents a minimum fee substantially less than that of other metropolitan areas such as Los Angeles and Chicago."

The Young Lawyers Section of the Seattle-King County Bar Association sent a batch of resolutions for presentation at the WSBA convention in Portland, Oregon. Intended to reform the Association, the resolutions would recommend amendment of the State Bar Act to provide equal representation of lawyers on the Board of Governors; allow WSBA members to elect the president and a secretary-treasurer; create an independent Young Lawyers Section with power to run itself and take public positions on issues; require annual mailing of each year's WSBA budget and detailed financial statements for the last five years to each WSBA member; and make more efforts to serve the poor and provide dispute resolution services to the public.

The WSBA Board of Governors asked the WSBA Young Lawyers Section to investigate possible specialization in legal practice, and voted to look into a Benton-Franklin County Bar Association invitation to hold the 1972 WSBA convention in the Tri-Cities.

NINETY YEARS AGO: Proceedings of the 13th Annual Session, North Yakima, July 9-11, 1901:

The Association had 219 members after subtracting 22 who were dropped for nonpayment of dues and one who died. The Association had a cash balance of $262.59, and spent $524.90 over the preceding year. President Samuel Stern of Spokane called for a legislative liaison committee of lawyers living near Olympia, "whose duty it shall be to attend the next session of the Legislature and see that certain much needed amendments to our statutes, or enactment of new statutes, is brought about. What our Association ought to do, aside from having a real good time at our annual reunion, is to accomplish something in a practical way, and I know of nothing more important than the amendment or enactment of such laws as the bar and litigants in general may bring much needed relief. I spent upwards of a week at the Legislature in procuring an amendment to our statute permitting depositions to be taken upon oral interrogatories, and it was all I could do, owing to the fact that the bill had been neglected, to get the bill passed. A committee, such as I have suggested, could receive new bills and amendments from lawyers all over the state, could prepare them, or see that they were prepared, and by giving the matter attention early in the session, could, undoubtedly, procure the passage of such bills as would meet the changes suggested by the bar.... We can well afford to raise our annual dues in order to secure a fund which will provide adequate compensation for or the payment of the expenses of a committee selected by this Association, whose duty it shall be to examine all laws introduced, and to make recommendations to the Legislature."

Telling Tales Out of School

Lowell K. Halverson

How many of you have visited your law school since graduation? For most of us the answer is "never." The sad truth is that while there are those blessed few who were attracted to law school like a salmon heading for the spawning grounds, for most, once we hit the open sea, we never wanted to come back voluntarily.

After all, who would want to renew an acquaintance with the electroshock therapist after a three year course of treatment? Law school is a time when our minds get reshaped, often painfully. We are taught to think logically, not intuitively; memory is exalted over the imagination (top right part of most brains, if I recall), which is largely suppressed if not permanently fried. The case study method is designed to discourage aberrations from any except the most linear types of thinking. We are encouraged to look for the exceptions to the Rule in Shelley's case (are there any?), but the *real* social policy behind tax breaks is left for higher organisms, such as the law professors. The pecking order is clearly defined. You are able to get a glimpse of the law professor's face peeking through the clouds on a sunny day. For the average law student, however, it is always overcast.

At least, that is how I remember law school that first week in September during "orientation" some 25 years ago. There we all were in old Condon Hall (secretly chuckling to ourselves at the absurd name they'd given the school): 137 nervous men and three very frightened women. By the end of the year, we were down to 100. All the creative types had left; the dilettantes who were willing to sacrifice their imaginations were still in place (me included, barely) and the three women were less frightened because, unlike most of us, they had clearly done well on the year end tests.

I was down to only one nightmare a year about my law school when, several years ago, I was invited to come back to speak there. The recurrent theme of the dream is pretty common for traumatized veterans of academic Hell: you show up for the examination having attended no classes on the subject, open the bluebook and realize you cannot even recognize the vocabulary being used in the question.

Small wonder that I shook in my metaphoric briefs when told that my very modest talk on "equitable liens" for the second edition of the *Community Property Deskbook* would involve a presentation at the law school. My academic career in the law school did not exactly read like a Horatio Alger story. I knew a couple of my former professors would be in the audience. These were hard-core paper chase types who, I recalled, specialized in arcane forms of public humiliation.

The day arrived. I brought lots of extra reference books (even a good-sized but otherwise extraneous Black's Law Dictionary) to mound around me on the podium. Even so, I knew the books were really only an ineffective talisman against the omnipotent, omnipresent, omni-everything that these law professors could casually invoke, casting logic-based thunderbolts at my disorganized presentation while peeling grapes.

I was barely able to stand, waiting for the hit. Between the rubber knees, the trembling hands, and the quaking voice, I thought I did a pretty good imitation of a "bionic man" reject. By the end of the presentation, I wasn't feeling too bad. One of the professors even came up afterwards and said I had been "adequate." I suddenly realized that the expected humiliations were all in my head, which by then was feeling pretty light—both from the compliment and from the exertions of stuffing all those heavy books back into my trial briefcase.

In the several years since, my stereotypical images of the law school have gone through several more transformations. For one, I'm no longer afraid to go out there. Just six months

ago I got a chance to meet with the Indian Law Student Society at the law school. That's where I learned that the new dean, Wallace Loh, had been instrumental in admitting 10 Native Americans to that year's entering class. Each minority student is being mentored by both a downtown lawyer and a second-year student. All together, over one-third of the class is composed of minorities. It's expected that the following year's class will be even more heavily weighted toward minorities.

The atmosphere is different in other ways. The law school, like the "Great Beast Lurching Toward Bethlehem," seems to be starting into a new age that presages great, maybe even revolutionary, things. There's talk of a mediation center. Plans are afoot for straddling the Pacific Puddle with a major center on Pacific Rim business law. The dean is excited, maybe even manic, about the possibilities of turning the place into a national law center. His ideas are not inconceivable. They may even be achievable.

More recently, this bar president's job has temporarily put me on the school's Board of Visitors. I occasionally get to lunch with the deans and the formerly feared professors. The view, no longer from the bottom side up, is beginning to look better. All of which has caused me to ponder, "Why do law school graduates give less attention to their schools upon graduation than do beauticians and doctors?"

There seem to be more "town and gown" dichotomies between law schools and lawyers than in any other profession. The resulting loss is felt in both communities, I believe. The best medical practitioners are also often adjunct professors of medicine. Their experience in operating rooms and with microscopes is turned into hands-on experiences for the medical students. The best doctors do not turn down the opportunity to share their knowledge with the next generation. The same is not true for our best lawyers, but maybe it would be if the law schools gave them the opportunity to teach and pass on their considerable experience in short clinical settings unencumbered by tenure, publishing and other academic pre-qualifications.

Recently, at the Bellevue Board of Governors meeting, I was able to get all three law school deans to meet with us and discuss the hopes they had for their schools. The emphasis was not on the possibility of greater interaction between their schools and practitioners. Apparently there is no perceived need. The law schools are a treasure trove of information and the cradle from which we all come to the profession. We lawyers should take the lead by convincing the law schools that they have much to offer us practitioners and that we, in turn, have much to offer them.

Russell K. Halverson

Recently I was accused by a former Idaho lawyer, now practicing in Washington, of having lost my sense of humor. He observed, accurately enough, that most of my columns had been relatively serious (he probably said boring) compared to the free-wheeling columns I used to write. I informed him that not many funny things had happened to me so far.

I did make a couple of notes, however, when the ballots on the Hawaii referendum were being counted. If lawyers ever wonder why they can't get their clients to answer a simple "yes" or "no" to a question, they ought to see how lawyers vote on a "yes" or "no" ballot. There was lots of editorializing—some of which is unprintable in this setting. My favorite was the person who responded to the "call" of the ballot this way:

Ballot

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

Yes: X No: 98480*

* I object to being asked for my bar number. It violates the sanctity of the ballot!

Dennis P. Harwick

Keller v. State Bar of California [110 S.Ct. 2228 (1990)]

As many of you know, the U.S. Supreme Court handed down a decision last year that will have wide-ranging effects on mandatory state bar associations. A member of the California bar challenged both the constitutionality of mandatory bar membership and the expenditure of compulsory dues for political and ideological activities. The Supreme Court upheld the constitutionality of mandatory bar membership, but placed some limits on the use of compulsory dues for political and ideological activities.

Although it will probably take several years of litigation in federal courts for clear parameters to emerge vis-a-vis the use of compulsory dues, there appears to be general agreement that *Keller* stands for the proposition that unified (mandatory) bars will be able to exact dues over a member's objection, even to fund clearly political and ideological activities where those activities are reasonably related to:

1) legal ethics and regulation of the profession; and

2) improvement of the quality of legal services.

There seems to be little debate over activities related to legal ethics and regulation of the legal profession. The real gray area is the meaning of "improvement of the quality of legal services." Traditionally, the test for germaneness was "improvement of the administration of justice." Future litigation will have to tell us what "improvement of the quality of legal services" means.

For those activities outside of the *Keller* test, state bar associations must provide a "rebate" vehicle for members who object to the use of their dues. How and when to calculate such a rebate is the subject of another case currently before the U.S. Supreme Court—*Gibson v. The Florida Bar*. At its meeting in May, the Board of Governors of the WSBA adopted the following procedure for entertaining rebate requests:

The Board hereby adopts a policy and procedure whereby objecting members may seek a refund of a pro rata share of their dues representing the amount expended on "improper" legislative activities as defined by *Keller v. State Bar of California:*

1. Notice shall be published in the *Bar News* of the adoption of legislative positions by the Board.
2. Members shall have 45 days from the date of publication to object or be forestalled from doing so.
3. The objection shall be reviewed by the Board to determine whether the activity is not

germane to the "proper" purposes of the Bar.

4. If the activity is deemed not germane, the Executive Director shall promptly determine the pro rata amount of the member's dues attributable to such activity and rebate that pro rata amount to the member.
5. If the objecting member disagrees with the amount of the rebate, the amount of the rebate shall be submitted to an impartial arbitrator.

Since the issuance of *Keller*, the WSBA has taken positions on the following legislative matters (as excerpted from "The Board's Work" - November 1990 through May 1991):

- Supported an amendment to RCW 6.15 increasing the value of the personal property exempt from enforcement of judgments.
- Supported an amendment to the Uniform Limited Partnership Act, RCW 25.10, to bring portions of the Act up to date and to make limited partners more like shareholders in a corporation.
- Sponsored technical revisions to RCW 11.50.010 to involving decedents' creditors' claims.
- Opposed a bill to permit service of district court summonses by registered or certified mail.
- Sponsored technical amendments to RCW 23B to "tidy up" the 1989 Corporations Act revision.
- Sponsored an amendment to RCW 2.36.101 and 2.36.055 to expand the state jury pool to include licensed drivers and ID cardholders.
- Sponsored a series of amendments dealing with deductions involving state and gift tax laws.
- Opposed legislation based on the "Gates Commission Report" which would provide for mandatory pro tem judges or change the jury size or voir dire; supported increasing the number of commissioners counties can have, greater uniformity in local court rules, and an increase in mandatory arbitration limits. The Board also supported the concept of expanding district court jurisdiction so that it would be concurrent with superior court jurisdiction in some areas.
- Opposed legislation to reverse the effect of an earnest money forfeiture decision (Lind Building Corp.).
- Supported a bill to raise prosecutors' salaries in certain counties.
- Supported amendments to RCW 5.60 to extend evidentiary confidentiality privileges to mediators and to support sections of an omnibus bill to allow state agencies to include mediation provisions in their contracts.
- Supported legislation to increase filing fees which would increase the funds available to legal aid programs providing civil legal services to the poor.

If you object to any of these positions, please identify which position(s) you object to within 45 days of receiving this issue of *Bar News* and file that objection with me at WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121.

Recollections of a Decade of Celebrating Small-Town Lawyers

by **Jeff Tolman**

This summer marks the tenth anniversary of the Poulsbo CLE, America's only celebration of small-town law practice. Besides having fun, we've tried to accomplish several things when we gather each year in the Sons of Norway Hall.

We acknowledge the work of small-town lawyers who have excelled. We also try to remind small-town lawyers they are an important cog in our system of justice and, in doing so, to bring out the pride men and women in the trenches are right to feel. As one of our speakers, Sid McMath, noted, "Lawyers are the foot soldiers of freedom." And we try to find out what makes great lawyers and judges great. Are they born different than us? Do they work harder? What specific traits make them extraordinary?

Our event has two parts: a day-long Continuing Legal Education (CLE) program, followed by a dinner where we confer the "Small Town Lawyer Made Good" Award. As Shakespeare said in *The Taming of the Shrew*, we "do as adversaries do in law—strive mightily, but eat and drink as friends." A simple formula has spawned a unique event.

Over the past decade my law partners, Jay Roof and Mike Kirk, and I have had the pleasure of meeting some of the greatest lawyers and judges in America. Our guests and the experiences we've had with them have been extraordinary.

The Ten: Some Remarkable Lawyers

Over the years in Poulsbo, our Small Town Lawyers Made Good have been amazing, individually and collectively. Consider the following:

1982: Justice Robert Brachtenbach, Washington Supreme Court. Justice Brachtenbach excelled as a lawyer and legislator from Selah before his appointment to the Court. His wit and small-town common sense have led to many wonderful stories. My favorite (and certainly most-cited by me) legal opinion is a Brachtenbach classic:

"For the reasons set forth in the majority, I dissent."

1983: Paul Luvera, Mount Vernon. From his rural hometown, Paul has established one of the greatest practices in the Northwest. Most Washington lawyers know Paul as a great plaintiffs' lawyer—and unquestionably he is. However, unbeknownst to many younger lawyers, Paul is as nationally renowned as one of the original gurus of law practice management. In the 60s Paul, Harris Morgan and Jay Foonberg traveled across our land telling lawyers that to be successful they had to learn how to manage their law offices as businesses. Paul's analysis and foresight are always well ahead of most practitioners.

1984: Gerry Spence, Jackson, Wyoming. To say Spence is unique is an understatement. His steel gray eyes burn right through you. Involuntarily you find his presence controlling. When Spence walked into the room everyone—and everything—stopped. Spence and his call-it-like-it-is tales were controversial. Most people loved him; some were offended. You can't be neutral about Spence. We all adored him and the time we were able to spend with him.

1985: John Paul Stevens, U.S. Supreme Court. What a thrill it was to have a justice of the Supreme Court come to Poulsbo! Most of us know them by their written words and annual photographs. In person, Stevens proved as nice as he is brilliant. We have many fond recollections of our time with Justice and Mrs. Stevens: sailing near Port Ludlow for a day; spending the afternoon in the Poulsbo laundramat to relax and meet some locals; his wonderful, human stories about his time in law practice.

1986: Robert J. Bryan, U.S. District Court, Tacoma. Bob Bryan educated a generation of lawyers from the Kitsap Superior Court bench. He then joined a medium-sized Seattle firm (huge by Kitsap measures) and practiced in the city until his appointment to the federal bench. His understanding of people and his great legal mind have always distinguished Judge Bryan. Many times I have seen him explain to a convicted felon why, after deep consideration, he had decided that prison was the best option for the person. More often than I could have imagined, the person would thank Judge Bryan for his concern and

The Small-Town Lawyer

by **Philip H. DeTurk**

What is a small-town lawyer? The question, oft-times asked, does not have just one answer. For the small-town lawyer is different things to different people, depending on the problems that must be solved. In order to function successfully, this attorney must be an expert in everything from admiralty (a client tripped over material on a ferry boat that shouldn't have been in the area where the client was walking) to zoning (another client wants a dilapidated gas station removed from her residential neighborhood; the business still exists because it has supposedly been "grandfathered" into the area).

So the small-town lawyer must evince the perseverance of Hercules; the sagacity of Trump; the craftiness of Geppetto, Pinocchio's father; the compassion of Mother Theresa; and the urbanity of Art Buchwald. This attorney must be able to sit and listen, jump up and procure a book from his or her over-expensive library, run out the door, appear in court whenever necessary and on time, return to the office in a jolly mood so that the entire staff will be heartened by the presence of this individual, and must sit and listen (again and again, ad nauseum).

The small-town lawyer must work long hours, must take work

express the opinon that, probably, the judge was right. We were proud to recognize one of our own in 1986.

1987: J. Harris Morgan, Greenville, Texas. In 1987 we looked nationwide for an attorney who we felt deserved recognition. The answer became apparent early—Harris Morgan. Though not a household name among most Washington practitioners, Morgan has spoken to lawyers in every state (in most, several times) about how to run a law office as a humane, but profitable, business. Harris' theories on billing and serving clients have assisted hundreds, probably thousands, of lawyers across America. Perhaps more than any of our recipients, Harris was truly proud that lawyers 2,500 miles away from Greenville, Texas, appreciated his hard work on behalf of our profession. He and Jay Foonberg gave a spellbinding morning seminar about how to make some money practicing law.

1988: Justice Antonin Scalia, U.S. Supreme Court. We didn't really know what to expect from Justice and Mrs. Scalia. Millions of words had been written about Justice Scalia, both in praise and in criticism of his appointment to the Court. At Poulsbo we met two of the nicest people you're ever likely to know. The Scalias can stay at my house, or drop by for dinner, anytime. They are very witty, very down-to-earth people who, much to our delight, seemed as comfortable in a Washington town of 4,000 as they did seated next to the leaders of our country. Both, too, have a true thirst for life. We fished, toured the area, and exchanged stories. It was easy to forget that our dinner companions were true national leaders. Justice Scalia is a grand person with a grand job.

1989: Bobby Lee Cook, Summerville, Georgia. Bobby Lee and June first visited Poulsbo in 1987 as part of Harris Morgan's program. We all fell in love with them immediately.

There is simply something different, better, about Southerners. They are better story tellers. They love each other more deeply. They feel things and express their feelings better. And Bobby Lee Cook is one of the best southern lawyers. Bobby Lee (on whose career the TV series "Matlock" is based) is a true gentleman, who makes everyone around him feel interesting and important. He practices law courteously and professionally, yet would be an overwhelming opponent. At one of the CLEs he gave a closing argument that created a room without a dry eye in it. If anyone ever said "You remind me of Bobby Lee Cook," I'd certainly say, "Thank you."

1990: Paul Stritmatter, Hoquiam. Last year we came back to our roots to honor Paul Stritmatter, an extraordinary lawyer from southwestern Washington. Paul has, along with his partners Keith Kessler and Mark McCauley, created one of Washington's best law firms. Paul is a hard worker whose small town openness, coupled with an extraordinary mind, makes him almost irresistable to jurors.

A Bonus: The Award Winners Are Just the Beginning

In addition to our award recipients we have been blessed to have many other great guests. Some favorites:

Professor Irving Younger joined us in 1986. He was, quite simply, the best presenter I have ever seen. Every word and gesture grabbed me. I laughed when he wanted me to laugh. I sat silently, listening intently when he wanted me to. When Professor Younger died, a valuable, irreplacable, part of our profession did too.

Racehorse Haynes presented the best dinner speech I've ever heard (even more amazing because he thought our dinner was going to be serious, and, so, had to deliver a whole new speech off-the-cuff). I have watched the tape of Haynes' speech at least 50 times. Every time I laugh. Haynes' ability to pick exactly the right word, gesture and rhythm is unique. He could make a dead man chuckle.

Jay Foonberg gave his patented CLE speech, one that inspired, entertained, and provoked thought by the audience. He gave us needed insights into such taken-for-granted things as business cards and how to answer the question, "What kind of law does Jeff practice?" In doing so, he got us all thinking about what we do for a living and how we can do it better.

Joe Jamail was able to spend only a few hours with us during his busy

schedule. I certainly hope I get another chance to see Joe. His hysterical stories about giving the wrong opening statement to a jury and about a juror who hated him dying mid-trial are part of the Poulsbo legend.

Donn Fullenweider from Houston came in a last-second rescue mission after our scheduled speaker became unavailable. Donn's tales of divorce practice in Texas (done by jury and on a contingent fee) made us realize that states' rights are alive and states' cultures differ as day and night. It also made us realize that a friend in need *is* a friend indeed.

Professor Barbara Babcock from Stanford Law School gave an inspiring and insightful CLE presentation on criminal defense. Her reputation as one of this country's finest legal educators clearly is deserved.

Sidney M. McMath joined us last year from Little Rock, Arkansas, having been Governor at age 34, retiring as a General in the Marine Corps while, at the same time, being one of this country's great trial lawyers. Sid's perspective on the interplay between law and society's advances was inspirational. His many accomplishments are humbling. His friendship is addicting.

Judge Robert E. Jones from the U.S. District Court in Oregon reminded us that judges don't need to be bland. His tales of spending time in a prison just to see what it was like and the insightful lessons he learned from interviewing over 2,000 jurors were both interesting and entertaining. I'd try any case in front of Judge Jones. He's bright, funny and human. That's all I ask.

Our "diamond in the rough" was Gedney Howe, a long-time friend of Bobby Lee Cook's from Charleston, South Carolina. Gedney is unique for his panache and his message. He is a kind lawyer whose empathy with others is quiet, unassuming, and comfortable. He is such a nice person that if my wife left to be with him I'd be mad, but I'd understand. Gedney's CLE presentation was my first or second favorite. His "Money for Hooper" story, given at the 1989 dinner in a classic Charleston drawl, is one of the most often repeated and most memorable of a decade of memorable speakers.

Some Thoughts, Some Q&A, Some Conclusions

Discussing the lawyers and judges we've been so fortunate as to bring to Poulsbo, some questions recur: Who would I go to if I were in trouble? It depends where my problem is. In the South, I'm heading for Bobby Lee Cook. In the Carolinas, Gedney Howe. In mid-America, Spence. In Texas...well, you understand.

What makes these men and women great? They all have extraordinary minds. They all love, truly love, our profession. They all have an extraordinary sense of, and interest in, history. They all are excellent communicators. All have had a full barrel of life experiences. Most feel as comfortable with nonlawyers (or small-town lawyers like us) as they do with fellow big shots. And they all know themselves.

That last aspect is what I believe sets them apart from most lawyers. They know their strengths and their weak suits. They maximize what they do best. Spence looks into your soul when he talks to you. Haynes' words, gestures and enthusiasm bring you into his spell. Jamail's folksy, precise tales make you lean forward so as not to miss a word. Cook's small town warmth is combined with an almost undefinable characteristic that makes you listen to and believe Bobby Lee. All are great because they know what they are great at and always play to those strengths.

Finally, what is it like to be around these giants? In a word, wonderful. They are brilliant, entertaining, interesting and they love their work. Every one of the people mentioned in this yarn has made me proud to be a lawyer, and especially proud to be one who practices in a small town.

This year on August 8 we are having our tenth event, honoring U.S. Senator Alan Simpson from Cody, Wyoming. We will be sending brochures. I hope you can come. I'm confident you'll go away feeling good about this wonderful profession. □

Jeff Tolman, Poulsbo attorney, is a frequent contributor to the Bar News.

home in order to bring it to a conclusion during hoped-for leisure time, must sometimes spend evenings and weekends in the office, and must expect to earn little money, but much devotion as a result of efforts put forward to resolving litigation or other legal matters (s)he has been hired to handle.

In short, the small-town lawyer is a blend of book-gleaned knowledge, good common sense, a droll sense of humor, an enigmatic ability to rebound from setback after setback, a strong constitution which never seems to wear out, and the ability to accept that "the check may just be in the mail" sometime when a client advises of such a purported fact.

The small-town lawyer is you. It is me. It is our neighboring lawyer across the town, on the other side of the park. It is any attorney dedicated to the attempted accomplishment of what the client desires to be done. It is the individual who undertakes matters hoping to bring about results different from those presently existing and, less hopefully, even be paid for some of the time expended in endeavoring to do so.

The small-town lawyer is a saint to his or her staff, a font of knowledge to the jurist before whom that counsel appears, a superperson to the clients who need help, and soon-forgotten creditor after the work has been accomplished.

***Philip H. DeTurk** is a sole practitioner in Puyallup. He occasionally reviews classics of legal fiction for the* Bar News.

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

Contracts.

(*Case 1.*) *Berg v. Hudesman*, 115 Wn.2d 657, 801 P.2d 222 (12/6/90) (reported this column April 1991), recently adopted "plain meaning" rule, whereby extrinsic evidence of intent of parties to contract may be received even if contract is not ambiguous. Court of appeals recognized *Berg*, but found it inapplicable in a situation in which a lease clearly required tenant to make repairs, and parties' extrinsic discussions had not touched upon repairs in question. Tenant was held liable for repairs. ***Burgeson v. Columbia Producers, Inc.***, 60 Wn.App. 363, 803 P.2d 838 (Div. 3, 1/22/91).

(*Case 2.*) Another court of appeals decision also recognized *Berg v. Hudesman, supra*, and found it inapplicable. Issue was whether collective bargaining agreement required arbitration. Court of appeals held that contract clearly required arbitration and that parties' pre-contractual negotiations had not affected language of arbitration clause. ***Olympia Police Guild v. City of Olympia***, 60 Wn.App. 556, 805 P.2d 245 (Div. 2, 2/15/91).

(*Case 3.*) Sellers sought actual damages from defaulting buyers under earnest-money agreement that allowed sellers actual damages upon buyers' default. Court held that sellers could recover lost benefit of bargain, measured by difference between agreed price and resale price, as well as expenditures for taxes, utilities, and interest pending resale and also broker's commission on resale. But court denied seller recovery of broker's commission on original sale because the commission would have been due even if buyer had not defaulted. ***Mueller v. Johnson***, 60 Wn.App. 683, 806 P.2d 256 (Div. 2, 3/14/91).

(*Case 4.*) Lessees exercised purchase option, giving down payment. Parties later agreed to extend closing date indefinitely, which court interpreted to mean closing within reasonable time. Then lessor/vendor demanded immediate closing. *Held*, lessor's demand was anticipatory breach, which excused lessees from performance and entitled them to restitution of their down payment. ***Turner v. Gunderson***, 60 Wn.App. 696, 807 P.2d 370 (Div. 3, 3/19/91).

—S. W. DeLong

Criminal law and procedure.

(*Case 1.*) Police have no duty to administer breath or blood alcohol test to DWI suspect. If they do not administer test, police need not inform suspect of his right to obtain his own test. ***State v. Entzel***, 116 Wn.2d 435, 805 P.2d 228 (2/21/91).

(*Case 2.*) A juvenile may be convicted of burglarizing his parents' home only if the parents have expressly and unequivocally ordered juvenile to stay out of house and if parents have provided for alternate shelter and support for him. ***State v. Howe***, 116 Wn.2d 466, 805 P.2d 806 (2/28/91).

(*Case 3.*) Police were called to apartment complex with posted warnings against trespass and loitering. There they found group of black teenagers whom they did not recognize to be residents of complex. These youths ran away as police arrived and failed to stop when police ordered them to halt. In major expansion of *Terry v. Ohio*, 392 U.S. 1 (1968), state supreme court held that these facts were sufficient predicate for a *Terry* stop for criminal trespass and that failure to halt for this stop made youths guilty of obstructing police officers. ***State v. Little***, 116 Wn.2d 488, 806 P.2d 749 (3/14/91).

(*Case 4.*) Prosecution for second-degree burglary subjected to double jeopardy because defendant had already pleaded guilty to third-degree theft arising out of same criminal episode, even though third-degree theft is not lesser-included offense of burglary. Double jeopardy bars second prosecution involving proof of conduct for which defendant has already been prosecuted. ***State v. Laviollette***, 60 Wn.App. 579, 805 P.2d 253 (Div. 2, 2/22/91).

(*Case 5.*) Evidence that suspect possessed child pornography about 15 years ago, coupled with affidavit claiming that pedophiles are incurable and can therefore be assumed to be in

possession of child pornography in the future, does not support search warrant, where there was no evidence that suspect fit pedophile profile detailed in affidavit. ***State v. Smith***, 60 Wn.App. 592, 805 P.2d 256 (Div. 1, 2/25/91).

—J. Ainsworth

Evidence.

In prosecution for incest, trial court properly admitted defendant's prior conviction for first-degree theft to impeach his credibility. Supreme court held (6-3) that conviction for theft is conviction for crime of "dishonesty" as term is used in ER 609. Thus, under ER 609, theft conviction may be offered by prosecution as matter of right. Court's holding overruled *State v. Burton*, 101 Wn.2d 1, 676 P.2d 975 (1984). In same case, court held that potential error under ER 609 is not of constitutional magnitude, so the usual standards of review and harmless error are applicable. Court said defendant "has no constitutional right to testify free of . . . impeachment." ***State v. Ray***, 116 Wn.2d 531, 806 P.2d 1220 (3/21/91).

—K. B. Tegland

Personal property security.

Millers sold business to Hemenways, taking note for part of purchase price, secured by security interest in inventory, equipment, and goodwill, which Hemenways perfected. Hemenways later sold business to third party, who assumed payment of note. Thereafter, Millers failed to file continuation statement, causing their security interest to lapse. Third party then granted security interest in same collateral to bank, which obtained priority because original seller's security interest had lapsed. Third party declared bankruptcy, and bank took collateral under its security interest. Hemenways now claim that their obligation under note should be reduced by amount of lost collateral pursuant to RCW 62A.3-606(1)(b) because Millers' failure to continue security impaired their right of recourse to it. *Held*, remanded for further evidence concerning Hemenways' status as sureties. Majority, over vigorous dissent, offered guidance on meaning of "unjustifiable impairment of collateral" under RCW 62A.3-606(1)(b). Court indicates that failure to file continuation statement for perfection is not "unjustified" unless creditor owes duty to surety to continue perfection. Opinion strongly suggests that no duty is owed. (*Comment*: Much authority from other jurisdictions holds that failure to perfect or continue perfection is an unjustified impairment of collateral. If the suggestions in this opinion become the law of Washington, this state will be in a very lonely position. - L.S.H.) ***Hemenway v. Miller***, ___ Wn.2d ____, 807 P.2d 863 (4/4/91).

—L. S. Hume

Planning and zoning.

After issuing negative SEPA threshold determination, county issued building permit, but attached mitigative restrictions. Court concludes that county utterly failed to support mitigative conditions by describing specific environmental impacts or citing its policies that called for mitigation. *Held*: (a) A SEPA lead agency, such as county here, may attach mitigative conditions to permit after negative threshold determination. (b) However, in this case mitigative conditions were not justified; record was utterly inadequate to support them. Court approves order to county to issue permit. When county has completely failed to make a record, court should not remand to give them another chance and to delay applicant. ***Levine v. Jefferson County***, 116 Wn.2d 575, 807 P.2d 363 (3/28/91).

—W. B. Stoebuck

Real property.

Ottesens owned a large tract of land. They platted and subdivided a portion of this land, leaving an adjoining portion that was not subdivided. In subdividing, they dedicated a public road that lay along the edge of the subdivision, next to the unsubdivided portion. Defendants acquired lots in the subdivision that abutted this road, and plaintiffs acquired the other, unsubdivided adjacent portion. Then defendants had a part of the dedicated road vacated by county. Issue is whether defendants own full width of vacated road or whether they own half of width and plaintiffs own half of width.

Held: Each party owns half of vacated road. In Washington, when street easements are dedicated, owners of abutting property own the fee under streets. It is true that when subdivider dedicates street wholly within subdivision, *i.e.*, in middle of subdivision, only lot owners within subdivision on either side of street own fee in street. But this rule is inapplicable here because road was on edge of subdivision, and subdivider owned land on both sides of road. When grantor conveys land bounded by a street, presumption is that he intends to convey to middle of street if he owns to middle. Therefore, Ottesens' deed to defendants conveyed to middle of road from one side, and Ottesens' deed to plaintiffs conveyed to middle of road from other side. ***Christian v. Purdy***, __ Wn.App. ___, 808 P.2d 164 (Div. 1, 4/8/91).

—W. B. Stoebuck

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" paper.

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

Notice of Deadline for Filing WSBA RESOLUTIONS

Pursuant to Article VII, Section 5 of the WSBA Bylaws, any ten (10) active members of the Washington State Bar Association may present a written resolution to the Board of Governors for consideration at the Washington State Bar Association's Annual Business Meeting. **The WSBA Annual Meeting will be held on Friday, September 6, 1991, beginning at 9 a.m. at the Washington State Convention Center, 800 Convention Place, Seattle.** Resolutions must be filed with the Board of Governors at least twenty (20) days before the Annual Meeting and must be accompanied by a written report explaining the resolution. The resolution and explanatory report together shall not exceed a total of one thousand (1,000) words.

Resolutions are to be filed with the executive director of the Washington State Bar Association at 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599. **The deadline for filing resolutions and explanatory reports this year is 5 p.m. on August 16, 1991.**

The Board of Governors shall refer any resolution within the purposes of the Association (as set forth in Article I of the WSBA Bylaws) to the WSBA Resolutions Committee.

The Resolutions Committee will hold ***public hearings*** to consider the views of the proponents and opponents of resolutions on *Thursday, August 29, 1991* beginning at 9:30 a.m. and on *Thursday, September 5, 1991* beginning at 9:30 a.m. Both hearings will be held at the offices of the WSBA, 500 Westin Building, 2001 Sixth Avenue, in Seattle.

Proponents and opponents of resolutions are urged to attend the first hearing on August 29, 1991 or to present their views in written form for consideration by the Committee. At the September 5, 1991 hearing, preference in presenting views will be given to those with viewpoints which were not expressed at the earlier session.

If you want a proposed resolution published in the *Bar News*, it must be received by the executive director at least sixty (60) days prior to the Annual Meeting (on or before July 8, 1991).

The members of the WSBA Resolutions Committee are: Ted D. Zylstra, Chair, Hugh K. Birgenheier, Scott A. Collier, Jack R. Dean, Gary D. Gayton, Paul C. Gibbs, Harry H. Goldman, Gary L. Hemingway, James T. Johnson, Edward N. Lange, Frederick W. Lieb, Gregory H. Pratt, Edward F. Shea, and Phillip L. Thom.

Educating the Judiciary

Superior court judges as students: (l to r) ***Faith Enyeart*** *(King),* ***Leonard W. Kruse*** *(Kitsap), and* ***Richard M. Ishikawa*** *(King), study termination of life support issues at Spring Judicial Conference.*

Presenters prepare: ***Judge Rosanne Buckner*** *(Pierce), confers with physician, Dr.* ***Stewart L. Duban*** *and ethicist, Dr.* ***Joan McIver Gibson****, both professors at the University of Mexico, before bioethics panel for superior court judges.*

by **Faith Enyeart**
Judge, King County Superior Court

When I was a trial attorney, I somehow assumed judges didn't need the CLE we lawyers scurried to complete each December to remain members of the bar. On joining the bench in 1983, I learned this was only a half-truth. While judges in Washington are not now mandatorily required to fulfill CJE (continuing judicial education) requirements, they recognize the need of it as much as lawyers do, and they regularly participate in it. Washington judges also lead a nationwide effort to raise the level of CJE.

An alert was called to the importance of CJE by the National Conference of State Trial Judges, which drafted standards accepted by the ABA House of Delegates in 1982. Judge James A. Noe, a member of the King County Superior Court, chaired the conference and signed the implementation document.

Most of you lawyers know that trial judges exit the bench en masse twice per year for a conference because it wreaks havoc with your motion practice or trial schedule.

Just what do judges do on those three judicial days twice a year? Play golf? Share the "secrets of judging" and tell war stories? Let me demystify it for you. As a lawyer, I certainly expected these conferences would be held at places such as Ocean Shores, Sun Mountain and Whistler Mt., B.C. Unfortunately, they occur most frequently at the largest hotels of Pasco, Tacoma, Bellingham and Bellevue. The Inn at Semi-ah-moo is definitely not in the budget, and Washington judges are

not permitted to hold meetings out of state.

Judges spend 2.5 of the three days in CJE. The curriculum probably looks very much like that of trial attorneys: evidence, trial procedure and new legislation. Judicial conferences also frequently examine social issues, such as gender, race, ethnic fairness, substance abuse, and bioethics, which impact the delivery of justice. The remaining half-day is spent on business of the judicial associations and their very active committees.

The Board for Trial Court Education sets standards, provides leadership and coordinates delivery of continuing judicial education to the various court levels. Chaired by Judge James Murphy of the Spokane Superior Court, the BTCE is made up of judges, court administrators, clerks, a law professor and a WSBA representative. Through creation of the BTCE, the Legislature has recognized the importance of ongoing judicial education to Washington's justice system. The BTCE provides accountability to the Legislature for the public funding dedicated to this end.

Judicial education is devoted to assuring competency, performance and also productivity with respect to caseload. A primary focus of trial court education is the Washington Judicial College, which provides a one week's training annually for judges new to the bench. Aimed at insuring competency before adjudication, the program currently resembles a mini-bar review but with the orientation to the role of the judge. In 1987, after completing this cram course on judicial ethics, evidence, search-and-seizure, sentencing, family and juvenile law, Judge Susan Agid (now on the Court of Appeals) dubbed it the "stuffed potato school." Responding to this effect, the program has been redesigned for more participatory learning and a focus on what judges do rather than simply covering substantive law. Judge Marsha Peckman is succeeding me as dean of the Judicial College and has ambitious plans. She was selected to participate in a State Justice Institute project held in California last year for judicial educators designing new judge programs. She comes to her role in judicial education easily, having been a faculty member at the University of Puget Sound School of Law, where she directed the law clinic. On the drawing board for the Washington Judicial College is an enhanced curriculum including computer literacy, expanded judicial ethics and philosophy of decision-making. Judge Charles Delaurenti, of the Renton District Court, chair of the District and Municipal Court Judges' education committee and dean of its judicial college, will be working on similar program refinements for that court level.

Most teaching at judicial education programs is done by judges, just as most CLE is done by practicing attorneys. To avoid the joke of the medical education model "see one, do one, teach one," Washington has taken

leadership in providing faculty development programs to bring adult education learning theory to our teaching judges. In addition, educational planners are working to replace the traditional ad hoc committee planning of educational offerings with a more professional approach to curriculum development. Washington was selected as one of six states to send a team to the National Institute for Leadership in Judicial Education in April of 1991. With assistance from such national experts, the BTCE is also initiating more advanced curriculum planning for judges and court personnel. At its first Washington Judicial Education Leadership Conference, held at the Battelle Institute in May, judges and other court personnel learned the basics of adult learning theory and core curriculum design. Next year the conference will focus on assessing training and education needs for ability-based curriculum development.

The Office of the Administrator for the Courts, an agency created by statute which operates under the supervision of the Washington Supreme Court, promotes high standards for judge and court staff education. It has among its duties the staffing of the BTCE, providing technical assistance to the education committees, planning and on-site management of educational offerings for all court levels. The administrator, Mary McQueen, reports that in 1989-1990 thirteen programs were offered for full-time judges at all court levels covering between 25-30 education days for the year.

Out-of-state education is available to judges on a limited basis, with priority preserved for newer judges attending a general jurisdiction course such as those provided by the National Judicial College at the University of Nevada. This type of programming is in-depth, covering a two- to four-week curriculum with a national perspective. Washington has also been a significant contributor of judge faculty to this and other national programs.

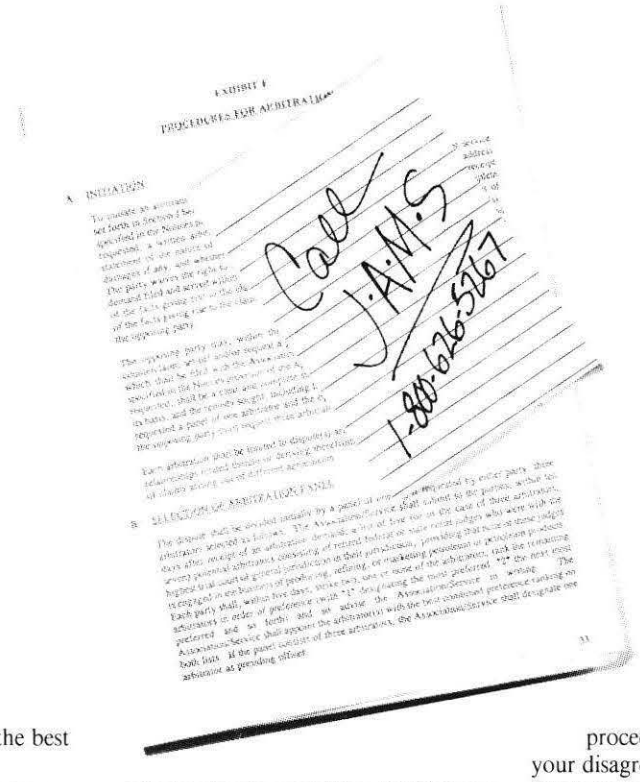
In addition, special courses are offered in-state for specific audiences or to address critical issues, such as the parenting plan and tort reform bills. Specialty courses have also been offered on judicial decision-making, law and literature, computers for judges and everyday problems such as court management and delay reduction.

Working together, the BTCE, the trial court associations and the Office of the Administrator for the Courts strive to assure that judges receive primary training essential to taking the bench and developmental education to sustain competence throughout their careers. □

Faith Enyeart, a pioneer in the field of judicial education, has been on the King County Superior Court bench since 1983. She has just completed her third term as dean of the Washington Judicial College and is a member of numerous educational boards and faculties.

WHAT TO AGREE ON...

BEFORE YOU DISAGREE.



Disputes arise even under the best agreements.

Fortunately, your company can reduce risks and contain costs by incorporating customized dispute resolution clauses in your business contracts. And, of course, resolving disputes quickly and amicably preserves your business relationships.

As the acknowledged leader in private dispute resolution, J·A·M·S can assist you with customized contract clauses which offer protection that generic arbitration clauses can't match, while providing access to a full range of ADR services. Contract clauses tailored to your business needs offer great flexibility in hearing formats and procedures and assure you that your disagreement will be resolved efficiently and economically by J·A·M·S retired judges and justices.

So before you disagree, agree to call J·A·M·S at 1-800-626-5267 for sample Alternative Dispute Resolution Clauses, or for a personal consultation to design the right clause for your next contract.

J · A · M · S®

JUDICIAL ARBITRATION & MEDIATION SERVICES, INC.℠

SEATTLE • PORTLAND

LEGAL FOUNDATION OF WASHINGTON

It's That Time Again

Grant applications are now available from the Legal Foundation of Washington for the funding of legal and educational programs to low-income persons. Foundation president Frank Hayes Johnson estimates over $3 million will be available for distribution to organizations throughout Washington in 1992.

The application deadline is August 31, 1991. Awards will be announced in late November.

Interested applicants may obtain grant criteria and application forms from the Legal Foundation of Washington, 945 Logan Building, 500 Union Street, Seattle, WA 98101, (206) 624-2536.

CENTENARIANS

Big Doings for Margery Dunham

Retired Washington lawyer Margery Dunham celebrated her 100th birthday April 4, 1991 with a champagne buffet luncheon in Port Townsend attended by friends and family.

Born in St. Paul, Minnesota, Dunham is the daughter of a judge. She came to the Northwest after marrying in 1913; in 1922 she enrolled in the University of Washington School of Law. Admitted in 1926, Dunham opened a real estate office in Seattle and was later appointed a state real estate commissioner by Governor Arthur Langlie. Retiring from that post after 13 years, she became chair of the Washington State Real Estate License Law Committee.

Dunham has been the recipient of many awards and honors, including Seattle Realtor of the Year in 1959, the Washington State Distinguished Service Award in 1966, and a special WSBA award in 1977 honoring her half century of service to the state and legal profession. Among her children is a Seattle attorney, Roger Dunham.

THE BAR EXAM

Almost One for Every Day of the Year

Three hundred sixty-four people passed the March sitting of the state bar exam, WSBA president Lowell Halverson announced May 6. A total of 487 took the two-and--a-half day test. 79.8% passed the "substantive" portion of the exam, and 84.7% passed the ethics exam, for an overall pass rate of 74.7%.

The largest out-of-state contingent passing were Oregonians (29), followed by Californians (19). Four New Yorkers, three each from Alaska, Texas and Colorado, two Montanans, and one person each from Utah, Arizona, Hawaii, Indiana, New Mexico, Pennsylvania, Maryland, Michigan, Mississippi, and Canada rounded out the visitors' column.

YOUNG LAWYERS DIVISION

Fear Today, Gone Tomorrow

A decision by the WSBA Young Lawyers Division to cancel its 1992 midyear meeting at the Coeur d'Alene Resort in Idaho has provoked a furor in the eastern Washington press and bar.

YLD Trustee Lawrance Edwards of Seattle was quoted by the Spokane *Spokesman-Review* as saying, "Being an African-American, it just isn't worth attending (a conference) in a state where I fear for my personal safety. This is how I think other people of color in King County feel." Edwards told the paper his refusal to attend any conference in Coeur d'Alene was based on publicity given to the Aryan Nations, a white supremacist group based in Hayden, Idaho.

Former YLD president Harold Clarke of Spokane said the proximity of the Aryan Nations group was "by far and away the triggering factor" in the YLD board's vote at a late April meeting, though he opposed the move. Current YLD president Robert Bakemeier of Seattle said the main reason for the cancellation was that Coeur d'Alene would be expensive and inconvenient for western Washington lawyers to attend. Another former YLD president, John McKay of Seattle, told the *Spokesman-Review* that the main reason for the move was the recent WSBA referendum disapproving the selection of Maui, Hawaii, as the site for the 1995 state bar convention.

A number of eastern Washington lawyers have criticized the YLD decision as unfounded and playing into the hands of the Aryan Nations group's publicity aims.

THE LAW SCHOOLS

New Gonzaga Dean Named

It is a cineaste's dream: one Washington law school is run by James Bond, and now a second is being taken over by Clute. John E. Clute, that is. A Gonzaga University and Law School alumnus, the senior vice president and general counsel for Boise Cascade will take over from James Vaché, who is returning to full-time teaching after five years as dean.

Clute has been associated closely with Gonzaga since his student days. In 1972 he joined the Board of Regents, and in 1975 he was named a university trustee, serving as chairman of the trustees from 1982 to 1989. Since 1983 he has chaired the university's capital campaign steering committee.

The new dean is also a director of the national Judicial College, a former chairman and director of the Idaho Association of Commerce and Industry, and a member of the Idaho Law Foundation, American Judicature Society and the American Law Institute. He is licensed to practice in Idaho and Washington. From 1963 to 1965 he was a staff attorney with the U.S. Atomic Energy Commission. In 1965 he joined Boise Cascade.

THE BOARD'S WORK

by **Lindsay Thompson**
Editor, Bar News

Kelso, Washington
June 21-22, 1991

Present: President Halverson, president-elect Joe Delay, and all the governors. Also present: Robert F. Bakemeier (WSBA/YLD); C.C. Bridgewater (Prosecuting Attorneys' Assn.); Stew Cogan (SKCBA Trustees); Judge Susan Dubuisson (District Court/Magistrates' Assn.); Mary Fairhurst (Washington Women Lawyers, Saturday); Dennis P. Harwick (WSBA Executive Director); Donna McNamara (SKCBA/YLD, Friday); Judge Howard Reser (Superior Court Judges' Assn.); Lee Ripley (WSBA Disciplinary Counsel); Kristin Stred (Washington Women Lawyers, Friday); Mark Shepherd (SKCBA/YLD, Friday/Saturday); Lindsay Thompson (*Bar News* Editor); Morton Tytler (Government Lawyers Assn.); and Robert Welden (WSBA General Counsel).

Reversible Error Department: Trying to record the governors' votes can be like figuring out who's bidding at Sotheby's. Sometimes they vote by voice, sometimes they raise their hand, sometimes they do other things. Governor Don Curran noted that he had voted for all of the proposals under the heading "More Disciplinary Matters," page 37, column 1, of last month's "Board's Work." His votes eluded this reporter, but are noted now.

"Do you ever watch for the longest day of the year, and then miss it?" Daisy wondered aloud in *The Great Gatsby*. 'Twas such a time in Kelso. The Board had a heavy agenda, and when 2:20 p.m. arrived Friday, officially ushering in the summer of 1991, the Solstice passed uncelebrated.

Comes the Revolution: Governor Alva Long announced his program for rearranging the Bar Association at the 1991 Annual Meeting in Seattle September 6. He said there will be resolutions to eliminate spot audits of lawyers trust accounts unless probable cause to initiate them can be shown; resolutions incorporating Oregon rules and statutes regarding open meetings, preservation of documents and public disclosure of Bar Association activity; to provide for popular election of the WSBA president at the Annual Meeting; and to eliminate the requirement that 50 percent of WSBA members vote before a referendum is considered valid.

Meanwhile, Back at the Office: In matters presented by the executive director, the Board unanimously approved a written policy governing access to the WSBA mailing lists; approved a letter of engagement of BDO Seidman as the Association's auditors; approved an increase in dues from $10 to $15 per year requested by the Creditor/Debtor Section; and voted unanimously to look into an idea floated by the Oregon State Bar that Oregon and Washington "trade conventions" in 1995. We'd go to Portland; they'd go to Seattle. "I promise there won't be a referendum," quipped Governor Alva Long. They voted 6-4

to table a request from a California lawyer who'd graduated from an unaccredited law school in that state to waive APR 3(b)(iii). Then the governors heard a brief legislative report from the president, dealt with some lesser matters, and approved a resolution calling on the King County Council to take steps to improve the Bellevue District Court facilities, which are too small, ill-ventilated, and acoustically substandard.

You're Gonna Have To Make Me: Rules of Professional Conduct Committee chair Ellen Dial was back with more information on several complex issues the Board has been considering for several months.

The first was what to do about IRS Form 8300, which lawyers are supposed to fill out when a client pays them over $10,000 in cash. The IRS wants a lot of information on such people, and the RPC Committee proposed a Formal Opinion declaring such information, including the client's identity, a secret which would not be disclosable except after the IRS subpoenaed the lawyer and a competent court ordered the disclosure of the information. This approach would be consistent with the highest appellate pronouncement on the issue so far, a Second Circuit opinion which upheld the constitutionality of the statute and said lawyers had to provide the information if ordered to do so by a court. The Board generally thought this a sound approach, but Governor John Schultz reiterated the view that under federal preemption principles a lawyer clearly has to provide the Form 8300 information, and that the proposed Opinion counsels Washington lawyers to violate the law. The Opinion was approved 9-1, Schultz opposed. The text will appear in the *Bar News* when formally transmitted.

Let's Call The Firm "Wills 'R Us": That's what Governor Jeff Tolman thought of the RPC Committee's proposal to amend RPC 7.5 to reflect recent U.S. Supreme Court opinions on lawyer advertising. The changes would prohibit use of trade names which imply a connection with, or benefit to, a government agency or public or charitable legal service organization, and which contain a geographical designation which does not include a lawyer's name. Discussion centered on specific examples of law firms using names other than the traditional string of surnames and on questions of enforcement. Governor Alva Long wondered why Rule 7.5 was needed at all if no one but lawyers are complaining about trade names used by other lawyers and the Association is taking no steps to prevent use of improper trade names. "We're trying to fix something that doesn't exist," he said. The Board voted to reject the change 9-1, Long dissenting.

And While We're At It: The Board wrestled a bit with the RPC proposal to amend RPC 7.3 to require most communications from law firms to potential and current clients to bear a red legend reading "Advertisement," rejected by them last month. Despite some attempts to revive it for further debate, it stayed rejected.

A fourth proposal, this one to allow private firms to create "Chinese walls"—screening systems to allow the

hiring of an attorney who brings conflict of interest with him or her by excluding that lawyer from any contact with the otherwise conflict-affected case—got little enthusiasm but much debate. It is mainly perceived as a big-firm issue, though its proponents were at pains to argue that not just big firms are affected by such problems. They also argued that the Ninth Circuit has allowed them, and that they are currently allowed for lawyers going from government into private practice. The consensus was that this idea needed more thought, and the Board voted 7-3 to table it until August, Governors Chambers, Schultz and Tolman opposed.

Add A Leaf; We Need A Bigger Table: A number of other matters were considered by the Board but final action was postponed on them. They voted to table to July consideration of a Court Management Council proposal to allow service by fax machines. They voted to postpone making appointments to several state boards until next month, when they take up all committee appointments. They put off consideration of what to do about ancillary business activities of law firms. And they put off decision on creating some new membership categories in the Association.

More Disciplinary Matters: Governor Don Curran came up with some more ideas for the Board to consider. One was carried over from last time: a policy statement which would allow governors to make limited inquiry into the status of disciplinary cases in order to respond to constituent inquiries about them. Debate centered on whether allowing the governors a nose in the tent would be "inherently coercive" to disciplinary staff, as Governor Ron Gould argued; reminiscent of the Keating Five and trying to sort out what's leaning on a case and what's just asking, as executive director Dennis Harwick contended, or just a useful set of ground rules, as Curran and others maintained. In the end, the guideline was approved, 7-3, Governors Gould, Tolman and Tubbs opposed.

The Board also approved having a "school" each year for Disciplinary Board members along the lines of the one for hearing officers approved last month, and approved a guideline that there be no communication between Disciplinary Board members and WSBA disciplinary staff on matters other than administrative or ministerial subjects.

Client Security Program Funding: Claims are getting bigger, CSP chair Greg Dallaire told the Board. The amounts budgeted don't seem to be enough any more. What to do: Increase dues to add funds to the program? Change the standards for awards? Change the timing of awards? After an intense summer squall of debate, the Board rejected a motion to table the matter to another time, 4-6, and voted 7-3 to continue the current standards for making gifts from the fund to clients who've lost funds through lawyer misconduct, but to prorate those gifts if the amount awarded exceeds the amount budgeted for the year. governors Chambers, Curran and Tubbs voted no.

Computerization: All of a sudden, there is action on many fronts in the effort to make lots of information

available to Washington lawyers by computer. The Board approved a contract with the state that will make the Revised Code of Washington and the Washington Administrative Code available on the WSBA computer bulletin board almost immediately, and, for the first year, free. The Reporter of Decisions is looking into what it would cost to computerize all of the Washington Reports, Second Series, and make them available in a manner which would recover his conversion costs by early 1992. Slip opinions will start becoming available on the SCOMIS state computer system in September. After some debate about whether doing so would cost the Bar Association income by cutting into sales, the Board voted 6-4 to put the Family Law Deskbook on the computer bulletin board on a trial basis now.

UPL: No one wants to be on the board that ultimately throws up its collective hands and admits defeat in controlling the unauthorized practice of law. So the Board voted to revive the moribund UPL Committee and see if it could come up with some new ideas, including acting as a sort of investigative body to put together cases and refer them to the Washington Attorney General and county prosecutors. The vote was 7-2-1, governors Slater and Tolman voting no, governor Alva Long not voting.

Wrap-up in Kelso: In other action the Board heard a report on the progress of the WSBA-sponsored liability insurance program; voted not to file an amicus brief in a lawsuit involving real estate agents who draft commission agreements; passed a resolution supporting the Family Law Section for a state-sponsored Family Law Symposium to try to make sense of our system before the next legislative session; took a brief look at the latest draft of the 1991-1992 budget; and voted to convene next month in Blaine.

Attend the WSBA Annual Convention and complete a full year's requirements of CLE credits.

The cost is minimal—about $16 a credit—and the benefits are limitless.

CALENDAR DIGEST

July 1991

12 The Essentials of Real Estate, Spokane. *Sponsored by:* WSBA CLE and WYLD. *For information:* (206) 448-0433.

17 The Essentials of Real Estate, Seattle. *Sponsored by:* WSBA CLE and WYLD. *For information:* (206) 448-0433.

19 The Essentials of Real Estate, Seattle. *Sponsored by:* WSBA CLE and WYLD. *For information:* (206) 448-0433.

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

26 Criminal Law, Seattle. *Sponsored by:* WSTLA. *For information:* (206) 464-1011.

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

August 1991

1-4 National Lawyers Guild National Convention, Seattle. *For information:* Sylvia Cedillo, (206) 622-5144.

2 Advising Small Businesses, Spokane. *Sponsored by:* WSBA CLE and WYLD. *For information:* (206) 448-0433.

9 Advising Small Businesses, Seattle. *Sponsored by:* WSBA CLE and WYLD. *For information:* (206) 448-0433.

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

31 Deadline for applications for 1992 grants from Legal Foundation of Washington. *For information:* (206) 624-2536.

September 1991

5 WSBA Board of Governors meeting, Seattle. *For information:* (206) 448-0441.

6 WSBA Annual Meeting, Seattle. *For information:* (206) 448-0441.

6-7 Water Access: Our Legacy in Crisis, Tacoma. *Sponsored by:* Washington Department of Ecology and Washington Department of Natural Resources. *For information:* (206) 943-0394.

11-14 WSBA Convention, San Diego. *For information:* (206) 448-0441.

16-25 Skills Training, Seattle. *Sponsored by:* WSBA CLE. *For information:* (206) 448-0433.

27 Toxic Tourists: Pollution and International Borders, Seattle. *Sponsored by:* WSBA CLE and the World Peace Through Law Section. *For information:* (206) 448-0433.

October 1991

2 Charting a Course in the Legal Profession: Career Planning for Young Lawyers, Seattle. *Sponsored by:* WSBA LAP. *For information:* (206) 448-0605.

3 Lawyers at Midlife: Planning the Second Half of Your Career, Seattle. *Sponsored by:* WSBA LAP. *For information:* (206) 448-0605.

4 What Can You Do with a Law Degree? A Career Planning Intensive for the Un-, Under- or Unhappily Employed Lawyer, Seattle. *Sponsored by:* WSBA LAP. *For information:* (206) 448-0605.

29-30 Annual Washington Public Employment Relations Conference. *Sponsored by:* Conflict Management Institute. *For information:* (206) 441-1772.

31-Nov 3 National Asian Pacific Bar Association Convention, Seattle. *For information*: Sharon Sakamoto, (206) 682-9932, *or* Mimi Castillo, (206) 624-1913.

Public Notices:

In re RCW 19.52.120(1): Legal Interest Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in June 1990 is 5.98%. The maximum allowable interest permissible for **July 1991** is therefore **12%**. Compilations of the average coupon equivalent yields from auctions of 26-week treasury bills appear in the *Bar News* on page 39 in October 1987 for 1982-1984; on page 37 in June 1989 for 1984-1985; on page 51 in June 1990 for 1985-1990 and on page 55 in June 1991 for 1985-1991.

Announcements:

Rule Comments Invited: When it reconvenes in October, 1991, the WSBA Court Rules and Procedures Committee is scheduled to review the Civil Rules for Superior Court (CR) and for Courts of Limited Jurisdiction (CRLJ). Your comments and suggestions about these rules are invited. They should be sent to Steven Rosen, Staff Attorney, WSBA, 500 Westin Building, 2001 Sixth Avenue, WA 98121-2599.

King County Rule Change: Effective April 1, 1991, the King County Superior Court began issuing a Case Schedule for each Petition for Modification filed with the Court. This change applies not only to new case filings, but also to petitions for modifications received for an existing case. All family law modification petitions must be filed at the cashier's windows. If they are not, the case will not be assigned a trial date. Petitions for modification of a parenting/residential plan (custody or visitation) or other modifications regarding property, etc. will receive a 12-month schedule, which can stipulate into a 28-day window. Petitions where the sole purpose is to modify child support to maintenance/spousal support will receive a three-month case schedule (trial by affidavit). Scheduled trial dates on all trial by affidavit cases will be assigned Friday trial dates, which are firm unless changed by court order. Parties can no longer stipulate to change the trial date. Case information sheets

will be required to be filed with initial filings.

Goldmark Award nominations open: The Trustees of the Legal Foundation of Washington seek nominations for the Charles A. Goldmark Distinguished Service Award, to be presented in early 1992 at the Foundation's annual award luncheon. The award honors the prominent Seattle attorney who served as president of the Foundation at his untimely death in 1986.

The annual award is given for exceptional efforts to assure equal access to justice. In assessing the candidates, the Trustees will recognize outstanding work that has a recognizable positive impact on residents of Washington and that furthers the goals and objectives of the Foundation.

Send nominations by October 15, 1991 to James E. Fearn, Jr., Legal Foundation of Washington, 500 Union Street, Suite 945, Seattle, WA 98104. Documentation and letters of support along with the nomination are welcome. For additional information, call (206) 624-2536.

State Law Library Books Recently Cataloged

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

On January 7, 1991, the State Law Library began circulating the video collection of the Office of the Administrator for the Courts (OAC), which has more than 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.

When requesting materials, please include the author, title, and call number.

ADVERTISING—LAWYERS —PUBLIC OPINION

Report on the survey on the image of lawyers in advertising. Chicago, IL: American Bar Association, Commission on Advertising, 1990. Pp.153. ***KF310.A3R46 1990***

CRIMINAL PROCEDURE

Voorhees, Donald S. *Manual on recurring problems in criminal trials.* Edited by Deirdre Golash and Bruce Clark. 3d ed. Washington, DC: Federal Judicial Center, 1990. Pp. 181. ***KF9655.A7V65 1990***

ENVIRONMENTAL LAW

Washington environmental law handbook. By the law firm of Preston Thorgrimson Shidler Gates & Ellis. Rockville, MD: Government Institutes, 1990. Pp. 368. ***KF3775.W2 1990***

FRIVOLOUS SUITS (CIVIL PROCEDURE)

Vairo, Georgene M. *Rule 11 sanctions: Case law perspectives and preventive measures.* Englewood Cliffs, NJ: Prentice-Hall Law & Business, 1990-. 1 vol. (loose-leaf). ***KF8887.V35 1990***

LEGAL CORRESPONDENCE

Maerowitz, Marlene A. *Model letters to doctors, witnesses, adjusters and others.* Edited by Tina M. Fife. Santa Ana, CA: James Pub. Group, 1990. V.p. ***KF320.L48M2 1990***

PERIODICALS

The American review of international arbitration. New York, NY: Parker School of Foreign and Comparative Law, Columbia University, 1990-. V. 1, no. 1-. ***PRR***

Constitutional law journal. Newark, NJ: Seton Hall Law School, 1990-. V. 1, no. 1-. ***PRR***

WITNESSES

Aron, Roberto, Kevin Thomas Duffy and Jonathan L. Rosner. *Impeachment of witnesses: The cross-examiner's art.* Trial Practice Series. Colorado Springs, CO: Shepard's/McGraw-Hill, Inc., 1990. Pp. 460. ***KF8950.A96 1990***

(Items for inclusion in "Digest" should be sent to Lindsay Thompson, Bar News Editor, Prosecutor's Office, Hall of Justice, 325 South First Avenue West, Kelso, WA 98626. Deadline is the 15th of each month for the second issue following.)

Judicial Selection Reform:

Part I of II

by **Charles H. Sheldon**
Professor of Political Science
Washington State University

Last year the Board of Governors greeted the Young Lawyers Division's report urging adoption of a merit plan for the selection of judges in Washington with comments such as, "Change for change's sake isn't worth a damn," or "We're wasting our time. If there were a problem we'd have heard about it by now from our constituents," or "The trial balloon has gone up. There has been comment. I'm not sure we have enough of a problem to warrant such a study. Moreover, a study would suggest there is a problem." The Board's minutes reported that "after some shuffling of the deck chairs, the [YLD's] report slipped beneath the waves."[1] All of this was before Charles Johnson defeated Keith Callow in the September balloting.

In response, the Board appointed President Halverson and Governor Gould to study the need for judicial selection reform and to report back to the Board at its next meeting. Again, in reaction to the ad hoc committee's preliminary report, the Board voted to "thank the committee for its work and relieve it of any further assignment."[2]

However, others were not as cautious. Newspaper editorials, legislative leaders, and segments of the Bar spoke of a problem of crisis proportions, demanding change. Most feared that if nothing is done, the inactive, unpredictable and nonrational, if not irrational, voters would permit unknown or unacceptable judicial candidates to don the robes of office. The Legislature responded with several proposals aimed at moving the final voter decision to the general elections.[3] Some legislators were enamored with the symmetry of the "Merit Plan" and proposed a constitutional amendment placing Washington among the reform-minded states adopting the plan.[4]

Some members of the legal profession worry that the Bar lacks the influence it must exercise in judicial elections. But others argue that the present system works when candidates use it. They point to the Richard Guy-John Spellman race as an example. Two-thirds of all judges are initially appointed, and the Bar plays a significant role in the screening and approving of those appointed. The appointees gain the security of incumbency, making elections largely irrelevant. And, besides, as a result of the Johnson-Callow nonrace, candidates will now get out and inform the voters. Despite the hue and cry, some lawyers insist that the unified WSBA has no business intervening in the judicial selection process.[5] Whatever the merits of the proposals and the arguments, it is most likely that the Bar Association, and certainly its members, directly or indirectly will be involved in the debate over selection reform.

On their part, social scientists have provided precious little empirical evidence to guide policy makers in this important issue. [6] Would it, perhaps, be useful to suggest a general framework within which the inevitable debate over the "best" method of selecting judges can be conducted, and at the same time, to supply some practical examples within that context? It has been generally concluded that despite some recent and notable efforts, minorities remain underrepresented on the Washington courts.[7] A review of the status of minorities in the state judiciary could provide the context for the discussion.

To that end, permit me, in broad strokes, to paint a picture of the ideal system of selecting judges at the state level and to review how close the present system in Washington comes to this ideal with special references to racial and ethnic minorities. A discussion of first principles is an obvious beginning point. Most of the discussion will not come as a surprise. We have heard it all before, somewhere. Nonetheless, it might be useful to subject ourselves to such a review.

Constitutional Democracy and Judicial Selection

The very essence of all American constitutional thought is to legitimize government by popular consent, but to limit the authority of those conducting the public's business. Constitutional government means limited government, for those in power cannot always be trusted.

Judges play significant but often conflicting roles in this constitutional framework. They wield both the shield and the sword of government. In the process of resolving disputes between private parties and between government and individuals, judges on occasion make significant public policy. Karl Llewellyn proposed that judges are involved with policy decisions when they think "in terms of prospective [public] consequences of the rule under consideration."[8] Long ago, Alexis de Tocqueville recognized the policy and political role of judges: "Scarcely any political question arises in the United States that is not resolved, sooner or later, into a judicial question." Courts make public policy, and judges are among those who wield the sword of government.[9]

Of course, the policy responsibilities of judges vary. The opportunities for confronting policy issues increase as an issue moves up the hierarchical structure of the courts. It is admittedly rare for a superior court judge to confront a policy issue. But the opportunity for such a confrontation increases with the court of appeals and reaches its highest level with the Washington Supreme Court.

Even before *Marbury v. Madison* (1803), state jurists were exercising judicial review, the ultimate in judicial, if not political, power.[10] Judicial

Some First Principles

review, of course, enhances the policy role of the courts.[11] Constitutional issues do not confront high bench jurists that often—recently constituting roughly 12 percent of their caseloads—but on occasion the results have profound effects on the individual, the public and the government.

However, should the judges wield the sword to the detriment—perceived or real—of the public, a number of significant checks can be imposed on the jurists. Impeachment, removal, censure, jurisdictional limits, public criticism, legislative reversals, electoral challenges, constitutional amendments and a number of lesser constraints can be imposed. As with other public officials in the constitutional system, judges are far from free to impose their views of public policy on the political system. Arguably, however, the most effective check on judges remains self-restraint. Before the imposition of damaging checks from the Legislature or the people, judges will restrain themselves.

The roles of the judiciary in a constitutional system conflict. Judges are not only given the opportunity to grasp the sword of power but are expected on occasion to lift the protective shield of judicial review, thwarting another's aggrandizing efforts. Not infrequently, courts, and especially the state's court of last resort, must ignore the majority and exercise their protective role. For example, provisions of the state's Declaration of Rights may need to be applied, reminding the public that the majority is not always right.

Democratic Judicial Selection

Given the important powers held by those public servants in black robes—powers which could be boldly used or purposefully ignored—the question of who is selected to occupy seats of state benches becomes important. The assumption underlying judicial selection is that *how* judges are selected determines the characteristics and decisional tendency, however slight, of those *who* are chosen to don the robes of judicial office. Will we get the swordsman, the shield bearer or both?

Although the process of judicial selection varies among states and even within states, certain principles must always be observed in any attempt to put into place an acceptable form of judicial selection. Five selection principles are involved. But it is the particular mix of three—*access, participation* and *representation*—that determines the balance between the other two—*accountablity* and *independence.*

Public and Political Accountability

As Karl Llewellyn reminds us, when judges contemplate the effect of their decisions on the community or a large part thereof, they are in fact contemplating policy decisions. The doctrine of *majoritarian democracy* dictates that those responsible for such decisions remain *accountable* to the public. This obligates in some manner judges, legislators and executives.

Accountability "...mean[s] keeping an institution's decisions in line with community political or social values...."[12] At least two forms of accountability keep judges in touch with community values. *Public* accountability suggests that elections, public opinion and the media provide the judges with clues concerning community values. *Political* accountability means that special interests, pressure groups and political parties send judges signals about their views of policy alternatives. Test cases, amicus efforts, persistent litigation, campaign funding, endorsements, canvassing and campaign expertise are some of the political contributions to political accountability. Both voter and group constraints are placed on a "court's exercise of discretion" which, in the absence of the judges, might stray from prevailing societal values.[13] Of course, the methods by which judges are selected and retained in office bear directly on both forms of accountability. For example, accountability may be manifested in granting or withholding of group endorsements, in refusing or giving campaign contributions, in careful screening by interested groups, in awarding editorial support, or simply casting a vote (or withholding it) in an election. The extreme of accountability, whether public or political, requiring judges to serve as mere delegates is rarely accepted because of a contradicting demand on their attention.

Judicial Independence

Although it may be conceded that judges are policy makers and consequently to some degree responsible for policy decisions, it must be also conceded that judges are different. Unlike legislators, mayors, county commissioners or governors, judges must disregard the political or economic interests represented by the parties to the dispute and must ignore the political consequences of their ruling. In order to render an objective decision, judges must rely upon an independent appraisal of the law as it applies to the litigants. Furthermore, in order to shield individuals and minorities from being pushed aside by the numerically stronger, judges must shut out the cries of the dominant forces: political, economic or social. Consequently, a substantial degree of judicial *independence* is required in any system of justice. The *rule of law* can mean no less.

Thus, judges are on the horns of a dilemma. On the one hand, majoritarian democracy demands that when judges make policy they be answerable to the public. On the other hand, the rule of law also requires that judges be free from the outcries of the public. A

synthesis of the two antitheses—accountability and independence—must be achieved. Actually, achieving some sort of equilibrium among the three other principles of democratic judicial selection may bring about the synthesis.

Representativeness

State governments are to be representative governments. The policy makers should somehow reflect the views of the often culturally diverse citizenry. However, three views of representativeness are possible. First, the policymakers are representative when they constitute a cross section of the cultural diversity (ethnic/racial) of the state or jurisdiction. Second, representativeness could possibly be achieved if the policymakers, failing to be from the cultures found in the jurisdiction, possess many of the other characteristics of the constituents, such as income, religion, and education. For example, many would argue that a Caucasian blue collar worker could represent an African-American blue collar worker. Third, even though judges may neither be from the cultural segments of the community nor approximate its economic and political characteristics, representativeness can be achieved if they gather information on the prevailing views by closely monitoring their constituencies. This requires that the judges not only stay attuned to changes in the community but that they be able to correctly interpret those changes. For our purposes, the "cross section" definition seems most appropriate and is clearly the most tangible measure of representativeness.

Access

Access demands that, except for some specialized requirements (e.g., education or techincal skills) all have an equal chance to be chosen as decisionmakers. In the case of the judiciary, the pool of eligibles should include all attorneys. Only a select few will be awarded the robes of office, but in the beginning, none should be disqualified because of factors such as status, class, race, gender or religion. Elitism has no place in democratic selection.

Participation

A constitutional democracy rests upon popular consent. As a reminder, Article I, section 1, of the Washington State Constitution reads: "All political power is inherent in the people, and governments derive their just power from the consent of the governed." Consent to the Constitutional Compact was formally received upon statehood in 1889. But a periodic renewal of consent enhances the legitimacy of those assigned public duties under the Constitution. Relatively short tenures to be periodically reviewed through the election process renew the consent. The more that individuals and groups participate in the selection and retention of judges, the greater the jurists' legitimacy.

Periodic, informative and contested elections that catch the attention of the electorate and competitive appointments should allow for the necessary level of public participation in selection in order to surround judicial decisions with sufficient legitimacy. Compliance with court rulings and respect for the law the judges expound depend upon a high level of legitimacy. □

Footnotes

[1] *Wash. St. B. News* 30 (December, 1989). Earlier, the first "Gates Commission" dropped consideration of selection reform although Chief Justice Vernon Pearson, in forming the commission, had recommended consideration of a merit plan.

[2] 45 *Wash. St. B. News* 24 (January, 1991).

[3] HB1001 would require that all non-partisan races be decided in the general elections. Similarly, SB 5029 provides that if two or more candidates file for office, the two top candidates in the primary be listed on the general election ballot.

[4] SJR 8218 would change the constitution and establish a merit (or Missouri) plan.

[5] Perhaps *Keller v. State Bar of California* (110 S.CT. 2228, 1990) would impact the bar's selection reform activities.

[6] By concentrating on the formal methods by which judges are selected, social scientists ignore what really counts; namely, the informal uses of the formal methods. See, for example, Slotnick, "Review Essay on Judicial Recruitment and Selection," 13 *Just. Sys. J.* 109 (1988) and Sheldon and Lovrich, "State Judicial Selection" in *American Courts*: ... (C. Gates and C. Johnson eds).

[7] Sheldon, "Representativeness of the Washington Judiciary: Ethnic and Gender Considerations," 43 *Wash. St. B. News* 31 (1989) and *Minority and Justice Task Force, Final Report.*

[8] K. Llewellyn, *The Common Law Tradition* 36 (1960).

[9] The policy-making role of courts has recently become the subject of litigation. See, e.g., *EEOC v. Massachusetts* (858 F.2d 52, 1st Cir. 1988) and *Gregory v. Ashcroft* (898 F.2d 598, 8th Cir. 1990).

[10] Sheldon, "Judicial Review and the Supreme Court of Washington," 17 *Publius* 69 (1987).

[11] Judge Theodore Stiles, a leader on the first Supreme Court in 1889, wrote: "... the courts are, and in the nature of things, must be the appellate body, and their power to review extends over the entire domain of public and private rights. Once it is conceded, as it now universally [is], that a statute may be declared void as unconstitutional, there is no denying the proposition of judicial supremacy....[T]here is no power except that of the people in constitutional convention that can reverse [a court decision]." Stiles, "Legislative Encroachments upon Private Right," 1899 *Proceedings Wash. St. Bar Ass'n* 66. See also, Utter, "State Constitutional Law, The United States Supreme Court, and Democratic Accountability: Is There a Crocodile in the Bathtub?" 64 *Wash. L. Rev.* 19 (1989).

[12] Wasby, "Accountability of Courts," in *Accountability in Urban Society* (S. Greer, R. Hedlund and J. Gibson eds, 1978).

[13] *Id.* at 145.

Part II of this article will appear in the August 1991 issue of the *Bar News*.

Life is Short

Quitting my law job was one of the best decisions I've ever made. I never intended to practice law, but rather use the knowledge and skills acquired in law school as tools to make a contribution. I thought I would live some sort of Bohemian life style. Somehow I forgot this during my three years of law school drudgery.

I practiced law for about 10 years—as a law clerk, small firm associate, prosecuting and defense attorney. On the up side, I enjoyed becoming a competent lawyer: much of my work was socially useful, and the people with whom I worked were bright and hardworking. On the down side, I was dissatisfied and restless.

I decided to take a break to figure out what to do. I had read several books and articles about change, and made lists of pros and cons of my life and work as a lawyer, and had started research and volunteer work in both nonlaw and law-related areas. I quit. I spent a couple of weeks on the beach in a foreign country and never looked back.

O.K., it wasn't quite that easy, but almost. I researched and abandoned dozens of career ideas, took workshops on a variety of topics, volunteered for several community organizations (including the Lawyer's Assistance Program) and went to Lawyers in Transition seminars.

Although I had a fair idea of the type of skills/values/environments and subjects I was interested in and comfortable with, and I had several ideas of what these combinations might look like in a package (job), I balked when confronted with particular opportunities that seemed to measure up; something was always not quite right. Falling into a few different freelance jobs, it dawned on me that much more important to me than anything else on my proliferating lists was the desire and need to be free from the accoutrements of a conventional career. Somehow I had always known this about myself, but I guess I didn't think I could actually make a living this way.

After a series of minor epiphanies, some attractive opportunities came my way. Right now I am working on a six-month project in a nonlaw area of interest, using my favorite skills, with a fun and competent bunch of people including a fellow transitioned-lawyer friend. I am also working on a small law project with another like-minded lawyer friend. I could not be happier.

What is the point of this meandering article? The point is, life is short. Find a way to do what you want.

The Soldiers and Sailors Civil Relief Act: A Statute Revisited

by **Jack F. Nevin**

The return of our soldiers from Operation Desert Storm has brought with it a number of legal issues. Many of these issues revolve around the application of a little-used statute called the Soldiers and Sailors Civil Relief Act (SSRA). Practitioners throughout our state need to learn about this statute.

The SSCRA is divided into three articles. The following is an overview of this statutory scheme. Recent changes enacted by Congress are included. Practitioners should attempt to apply these provisions collectively.

Article I

Article I (50 USC App. 510-517) contains the general provisions of the SSCRA. Its purpose is to postpone and/or suspend certain civil obligations of service members on active duty so they can devote their complete attention to assigned military duties.

The SSCRA pertains to "persons in military service," which includes members of the Army, Air Force, Marine Corps, Navy, Coast Guard and Public Health Service personnel detailed for duty with the Army or Navy. It also includes the Reserve components of these services and the Air/Army National Guard activated to federal service. "Military service" is defined at 50 USC App. 511 as "federal service on active duty."

Practitioners representing reservists should determine their clients' active duty status. A service member's status defines the protections afforded under the SSCRA. Enlisted reservists are protected from the date they receive their orders for active duty (50 USC App. 516). All others receive their protections from the date of entering active service (50 USC App. 511). Courts have held that an individual service member's misconduct can be a basis for cutting off his/her protections under the SSCRA. See: *Mantz v. Mantz*, 69 N.E.2d. 63;(Ohio C.P. 1946); *Harriott v. Harriott*, 511 A.2d. 1264 (New Jersey 1986). If a service member is in a military prison or is in an absent without leave status, it is conceivable that the court will not grant protections.

The protections provided by the SSCRA are not limited to service members. Dependents can take advantage of the protections of Article III benefits including rent, installment contracts, mortgages, liens, assignments, and leases (50 US Code App. 536). Also, those individuals having joint liability with service members are likewise protected. This protection applies to any provision that stays, suspends or postpones an obligation.

It is possible to waive these protections, but only after the effective date of SSCRA coverage (50 US Code App. 517).

Article II

Article II of the SSCRA (50 USC App. 520-527) contains the most well-known protection afforded by the SSCRA: the limitation on interest payments above six percent. At this point it should be noted that the SSCRA is a statutory product of World War II. Before Desert Storm, World War II was the most recent war requiring a significant Reserve callup. The number of active-duty service members during the Viet Nam era precluded the mobilization of large numbers of Reservists. Although the SSCRA applies to all service members, as a practical matter it is of most importance to returning Reservists. Lending institutions have found that, much to their dismay, interest rates are based upon economic standards of the 1940s and 1950s and not the economic realities of today. Nevertheless, 50 USC App. 526 establishes that six percent cap.

There are, however, certain requirements before an individual can take advantage of this provision. The obligation must have been entered into *prior* to entering military service. Consequently, if your clients, after receiving their active duty orders, seek to obtain a second mortgage at six percent interest, they will not prevail. Under this provision there is also a requirement that the military service materially affect the service member's ability to pay at the prior interest rate. However, under this provision the burden of proof is upon the lending institution to show that the person is not materially affected. An important point to remember is that this protection becomes effective when the soldier enters active military service—not when (s)he chooses to invoke the protection: A service member activated for Operation Desert Storm who discovers some six months into the tour that (s)he is entitled to this protection may be entitled to the six percent interest rate dating back to the point when (s)he entered active service, not when (s)he discovered and/or decided to

---

* This article is based in large part on materials provided by Maj. James Pottorff, Instructor, Dept. of Administrative Law, United States Army Judge Advocate General's School, Charlottesville, VA. His generosity and assistance in the preparation of this article are greatly appreciated.

invoke that protection.

The question of what becomes of the difference between the actual interest and the six percent has not been litigated. It is the position of the Judge Advocate General's branch of the Army that the difference is to be forgiven, not accrued. A look at the legislative history of the SSCRA reflects that in 1942 the six percent cap was added. Congress intended six percent to be an absolute cap during service, not accrual. This six percent cap has been recognized by most mortgage companies throughout the United States. Some mortgage lenders (Fannie Mae) have reduced to six percent upon receipt of orders without even checking for material effect.

The most accurate way to compute the interest implications for open-ended credit contracts, i.e., charge cards, is to distinguish between pre- and post-active service credit. As to the amount accrued pre-active service, the actual interest rate is appropriate. However, those debts accrued post-service must be reduced to six percent. Perhaps the simplest approach would be for a service member to have a new card issued for the period of active duty. Cosigners on these loans *supra* , if they are jointly liable, will also receive protection. The legislative history of the SSCRA supports the proposition that business partners will also receive protections.

Currently there are a few exceptions to the six percent interest cap. The most significant one is the guaranteed student loan program administered by the Department of Education. However, while not recognizing the six percent cap, DOE will permit lenders to forebear or even defer guaranteed student loan payments.

Stay of Proceedings

50 USC App. 521 permits a delay of civil court proceedings where military service prevents a plaintiff or defendant from asserting or protecting a legal right. Both plaintiffs and defendants can request stays in civil proceedings only. Note that this does not apply to criminal or administrative proceedings. The request for a stay must be made at any stage of the court action so long as the request is made during service or within 60 days thereafter. The maximum duration of stay is the period of service plus three months after discharge. Following this period, the defendant must appear in court to defend the action (50 USC App. 524).

During peacetime it is important for the service member to be reasonable in requesting the stay. Oftentimes courts require the service member to show due diligence in attempting to obtain leave and/or secure the financial means to appear in court. In this area, the burden of proof lies on the soldier to prove that military duty has materially affected the ability to appear in court. Note that this is the reverse of the burden contained in 50 USC App. 526.

There are cases holding that the burden of proof may shift depending on the facts (*Boone v. Lightner*, 319 US 561 (1943)). However, service members

should assume that they have the burden of proving that military service has materially affected their ability to appear in court. To support a showing of material effect, soldiers (and their counsel) should be prepared to show proof of unsuccessful efforts to obtain leave. Affidavits in support of unavailability should be readily obtainable from the soldier's command structure. It is recommended that civilian counsel work closely with a legal assistance officer from the soldier's local JAG branch in obtaining that proof. Three cases dealing with the issue of a soldier's due diligence are: *Underhill v. Barnes*, 228 S.E.2d. 905 (1982) (court took judicial notice that the defendant had 50 days of accrued leave); *Keefe v. Spangenberg*, 533 F.Supp. 499 (W.D.Okla. 1981) (court denied stay based upon fact that defendant was a volunteer in a peace-time military); and *Palo v. Palo*, 299 N.W.2d. 577 (S.D. 1980) (court found soldier could have taken leave as well as had the resources to finance an appearance in court). If the court finds there has been a material effect, the court must order a stay.

50 USC App. 520 provides protection against default judgments. It is intended to provide relief by affording the service member against whom a default judgment is entered a potential means to have the judgment reopened. Relief is available only if the service member "defaults of any appearance" in court (50 USC App. 520(1)).

> "In any action or proceeding commenced in any court, if there shall be a default of any appearance by the defendant, the plaintiff, before entering judgment shall file in the court an affidavit setting forth facts showing that the defendant is not in military service."

It should be noted that any appearance by a defendant may terminate the default judgment protections and thereby render the service member subject to a default with no right to petition the court to reopen the case. It should be noted that there are cases indicating that an appearance by a defense counsel (albeit a special appearance) is sufficient to constitute a waiver of the SSCRA protections as it relates to default judgments. The following are examples of situations in which courts have found an appearance:

1. filing an answer through counsel or pro se;

2. in-court requests through counsel that the complaint and/or service be quashed (*Blankenship v. Blankenship*, 82 So.2d. 335 (1955));

3. contesting jurisdiction through court appearance of retained counsel (*Reynolds v. Reynolds*,

134 P.2d. 251 (1943)); and

4. requesting postponement through motion by retained counsel (*Vara v. Vara*, 171 N.E.2d. 384 (1961)).

Perhaps the most cautious approach is to have the individual's commander write a letter to the clerk of the court and/or the assigned trial judge asking for a stay on behalf of the service member. That way neither the service member nor counsel has appeared on his or her behalf. The act clearly states that before a plaintiff can take a default judgment (s)he must file an affidavit regarding military service *supra*. A judgment obtained without that affidavit is voidable upon the service member defendant's showing that the presentation of a defense was prejudiced by his or her military service. Some courts have held that the request for a stay under the SSCRA is an appearance that waives the right to reopen the subsequent default judgment; however, a recently proposed legislative change would require that a request for a stay does not constitute an appearance or otherwise preclude an individual from reopening a default judgment.

The court must appoint an attorney if the defendant is in the service and does not have an attorney present in court or if the plaintiff does not know whether the defendant is in the service (50 USC App. 520(1)). The responsibility of the court-appointed attorney is to ascertain whether the defendant is in the military and, if so, to request a stay of proceedings in the defendant's behalf.

In order to reopen a default judgment, the judgment must have been entered during the service member's term of service or within 30 days thereafter. Application to reopen must be made during service or within 90 days thereafter. To successfully reopen a judgment the defendants must prove that they could not be present in court to conduct a defense because of their service (material effect), and they must reveal a defense to all or part of the original cause of action. However, if it is shown that the plaintiff submitted a false affidavit regarding the service member's status (inaccurately reflecting the defendant's status) then the defendant need not show the existence of a meritorious defense in order to reopen the default judgment.

Suspension of Statutes of Limitation

50 USC App. 525 tolls the running of statutes of limitation during the service member's period of military service with respect to any administrative or civil proceeding involving a service member as either plaintiff or defendant. As the SSCRA does not limit application of the provision to a single term of enlistment or to specific periods of career service, courts have interpreted this provision in various ways. In *Pannell v. Continental Can Company, Inc.*, 554 F.2d. 216 (5th Cir. 1977), the court refused to apply section 525 to toll a redemption

period for real property because the soldier involved was a career officer. In *Bickford v. United States*, 656 F.2d. 636 (1981), the court held that section 525 tolls the statute of limitations for all service members regardless of whether they are first-term or career military.

Article III

Article III of the SSCRA (50 USC App. 530-536) pertains to rents, leases, installment contracts, mortgages, liens and assignments. For purposes of Article III, protected people include not only those on active duty (50 USC App. 511) but also dependents, in their own right (50 USC App. 536).

Section 530 prevents eviction of a service member or his or her dependents for nonpayment of rent without a court order. The premises must have been occupied as a dwelling by the service member or a dependent. Military service must have materially affected the service member's or the dependent's ability to pay. Although the SSCRA originally said that the rent in question must not have exceeded $150 per month, that has recently been changed by Congress. Now, for evictions commenced after July 31, 1991, the rent ceiling requirement is $1,200 per month. (Public Law #102-12, SSCRA amendments of 1991.) The act further provides for a stay of eviction proceedings up to three months, and criminal sanctions including one year confinement and a $1,000 fine for participating in an eviction which violates this section.

50 USC App. 534 permits lawful termination of a pre-service lease by a service member entering active duty. Here the service member need not show a material effect, but only that the lease was entered into prior to entry into military service, the lease premises were occupied for dwelling, professional, business, agricultural, or similar purposes by the service member or the service member's dependents, and that the service member is currently in military service. Here the service member must deliver written notice to the landlord after the service member has entered on active duty or received induction orders.

Mortgage Foreclosure

50 USC App. 532 provides protections from mortgage foreclosure. The obligation must have been entered before entry into military service, and it must be secured by a mortgage or other security on real or personal property. Property must be owned by a service member or his dependent before the member's entrance into military service and must still be owned by either at the time relief is sought. Lastly, military service must materially affect the individual's ability to pay. Although the statute does not set it out clearly, it appears that the burden of proof at this point is on the service member to show material effect. That proven, the court

should grant a stay of proceedings or extend the maturity date by way of diminished payments or reopen or set aside a foreclosure judgment.

Rescission of Installment Contracts

50 USC App. 531 allows for the rescission or termination of installment contracts, which must be contracts for the purchase of real or personal property or lease or bailment with a view to purchase real or personal property. The contract must have been entered into before the member's entering into military service, and the deposit or installment payment must have been made before entering into military service. Once again, the service member must show material effect in ability to pay.

Recent Changes in the SSCRA

On March 18, 1991, President Bush signed the SSCRA Amendments of 1991, P.L. 102-12, which were intended to improve and clarify the protections provided by the SSCRA. In addition to the $1,200 cap on evictions *supra*, the most significant addition to the act pertains to medical personnel ordered for active duty. This is a new section (702) contained in Article VII of the SSCRA. It is anticipated that it will be codified at 50 USC App. 592.

Under this provision, healthcare providers and others furnishing "services determined by the Secretary of Defense to be professional services" are eligible to apply to have their liability insurance policy suspended during periods of active service. To qualify, they must have been ordered to active duty after July 31, 1990 and have had professional liability insurance in effect before beginning active duty. No premiums are to be charged during the period of active service. Professionals receive refunds of any premiums paid for future coverage or credit towards payments of premiums after active service ends. After active service, professionals have 30 days to request reinstatement of insurance. Liability insurance carriers are to reinstate coverage on the date on which professionals transmit written requests to insurers. The minimum period of reinstatement is the period remaining on the policy when the practitioner entered active service. No increase in premiums is allowed except for general increases in premiums charged for coverage or other persons in the specialty. This provision provides a stay of civil actions against the professional while insurance coverage is suspended if: 1) the action is commenced during the period of suspension; 2) the action is based on an incident occurring before the date the suspension became effective, and 3) the insurance will otherwise cover the alleged malpractice. If an action is stayed, it will be deemed filed on the date that the insurance is reinstated. The statute of limitations does not run during the period of suspended insurance coverage. If the professional dies while coverage is suspended, the suspension ends upon death and the insurance carrier is liable for malpractice claims to the same extent it would be if the professional had lived.

Health Insurance Reinstatement upon Reemployment

A new section (703) has been added to Article VII of the SSCRA. This is codified at 50 USC App. 593 and has the effect of amending 38 USC 202(1)(b). Upon release from military service, persons entitled to SSCRA coverage are entitled to reinstatement of health insurance coverage that was in effect on the day before active service began. At the time active service ends and coverage is to be reinstated, insurance carriers are not allowed to require a waiting period or exclusion of coverage for a pre-existing health condition, unless the health condition is service-connected.

In excess of 1,000 reservists from the state of Washington were activated for Operation Desert Storm. By now, most of these individuals have returned to their civilian positions. While their combat experience is behind them, their legal problems may have just begun. An understanding of this statute, its recent changes and applications should be of great benefit to practitioners who are serving the needs of these returning veterans. □

Jack Nevin is the legal advisor to the Pierce County Sheriff's Department. He is Major in the 6th Military Law Center (Army Reserve).

The Legal Access in Washington Electronic BBS A Progress Report

Legal Access in Washington's electronic bulletin board system (LAW BBS) is a WSBA pilot project which has been operating from its new location at the bar office since April 20, 1991. Announced by bar president Lowell K. Halverson ("The President's Corner," *Bar News*, April 1991), LAW BBS now has about 575 registered users, fairly evenly divided between lawyers and nonlawyers; users call from many states, often daily.

Questions about access to some legal databases, however, most notably the Supreme Court Reports, cloud the picture of the ability of LAW BBS to fully serve the purpose for which it was created: to promote free or low-cost computerized legal research and access to legal information.

A computer bulletin board system is a PC connected to a modem, which allows other PCs to communicate with the host over ordinary telephone lines. The host PC runs software that provides services for displaying bulletins (text files containing many kinds of information), for the exchange of electronic messages, both local and from networks of other BBS systems, and for the transfer of computer files, both "downloaded" from the BBS to the user and "uploaded" by users to the BBS. LAW BBS now runs on four PCs owned by the bar association, currently using three telephone lines. According to system operators Jeff Jernegan and Jim Wagemann, the system can easily be expanded to offer as many additional telephone lines as needed.

Bulletins available include the bar association's entire series of public information brochures. In addition to lively discussions on the local message board, the system carries various topical conferences, including USLaw, USParalegal, Disabilities and WordPerfect. Recent conference additions include the Washington Association of Criminal Defense Lawyers Conference and the Court Clerk's Conference. Downloadable file offerings include user-donated forms and files relating to many areas of practice and recent slip opinions of the courts, including the U.S. Supreme Court.

Central to the mission of LAW BBS, though, is making on-line legal research available for free or at low cost. Only the Revised Code of Washington database is currently available for on-line research, and the database does not yet include 1990 and 1991 legislation. The bar association has been negotiating with the state Code Reviser, and the most recent RCWs and WACs should soon become available. Using software developed by Richland attorney Edward Hiskes, the BBS currently offers keyword searches, with AND and OR connectors, very similar to those of WestLaw or Lexis. The search software allows viewing of both a list of citations containing "hits" on the key words specified, and also the full text.

Washington caselaw, though, is not yet available for on-line research, although the Supreme Court Reports and Washington Appellate Reports back to 1977 currently exist on computer tapes. The computer tapes are under the control of the Supreme Court Commission on Supreme Court Reports, an agency created by statute to oversee the publication of the reports, which so far has declined to allow copying for use by LAW BBS or others. As recently as May 29, representatives of the Commission, the WSBA Committee on the Computerization of Law and the Judicial Information System discussed computerized access to legal databases, but so far no clear direction has emerged. It appears the Supreme Court Reports are likely to be available first through the Judicial Information System mainframe computer, which has a fee of $150 to join and charges $25 per hour for use. While this is not costly compared to the commercial databases, LAW BBS system operators are concerned that such a decision could actually impair access to the reports by making it too costly for the general public. And they are frustrated, since their search software is up and running, and the reports could be made available almost immediately if they had access to the existing tapes.

Says LAW BBS sysop Wagemann: "We are at a real crossroads here. Is the bar going to stand by its original commitment to free or low-cost access to legal databases, not only for the bar but also for members of the public?" Wagemann encourages lawyers to make their opinions known to their representatives on the Board of Governors.

To try out LAW BBS, return the information packet order form on the reverse of this page. The packet includes software and instructions. If you already have communication software and a modem, the LAW BBS phone numbers are (206) 448-6562 (2400 baud), (206) 448-7315 and (206) 448-7726 (9600 baud).

LAW BBS TELECOMMUNICATION ACCESS PACKAGE ORDER FORM

Please use this form to order a copy of the LAW BBS Telecommunication Packet on floppy diskette. This package of Shareware programs should enable you to install a telecommunication package that will access the LAW BBS Seattle numbers with a minimal configuration effort.

Equipment requirements: IBM PC or compatible computer; floppy or hard drive; Hayes compatible modem (preferably 2400 or 9600 baud ; 1200 will suffice); accessible phone line plug.

To determine which packet you require, please answer the following questions:

Floppy disk size: ___ 5-1/4"

___ 3-1/2"

Floppy disk density: ___ Double Density (360 kb 5-1/4" *or* 720 kb 3-1/2")

___ High Density (1.2 mb 5-1/4" *or* 1.44 mb 3-1/2")

Will you be installing this on your hard drive? ___ Yes

___ No

Bar # Name

Suite# or Room #

Street Address Town Zip Code

Please return this form with a check made out to the **Washington State Bar Association** in the amount of **$10** to cover the costs of the diskette, copying, and mailing. This does not cover the cost of registration of the Shareware programs. If you find these programs to be useful, you should register them with the author(s) directly. They are less expensive than commercially advertised telecommunication programs.

Address your envelope to:

LAW BBS
Washington State Bar Association
500 Westin Building
2001 Sixth Avenue
Seattle, WA 98121-2599

*(l to r): **David Soukup**, NCASAA president; President **George Bush**; **Sharon Lawrence**, 1991 Child Advocate of the Year; **Anne (Mrs. David) Soukup**, Seattle volunteer GAL; and **Beth Waid**, NCASAA executive director.*

Leaders of the National Court Appointed Special Advocate (CASA) Association, headquartered in Seattle, recently traveled to Washington, D.C. for a White House meeting with President George Bush, who recognized CASA as one of the nation's outstanding programs for children and youth.

CASA uses trained community volunteers to advocate for abused and neglected children in juvenile and family court. There are currently 434 CASA programs nationwide.

NCASAA president David Soukup and executive director Beth Waid talked with the President about the plight of abused and neglected children in the U.S. and updated him on the accomplishments of the 19,000 men and women now serving as CASA volunteers in 47 states.

Soukup started CASA in 1977, while serving as a King County Superior Court judge. Now retired from the bench, he is an attorney with Levinson, Friedman, Vhugen, Duggan, Bland & Horowitz in Seattle. Soukup was recently honored with the Mark Matthews Service to Children Award from Childhaven. He is also a volunteer with the King County Guardian Ad Litem (GAL) Program.

NEWS FROM HOME

• **Sally Favors**, PLS, of Tacoma-Pierce County Legal Secretaries Association, was elected 1991-1992 president of the Washington Association of Legal Secretaries (WALS) at its 27th annual meeting hosted recently by the Whatcom County chapter in Bellingham.

Other officers include: **Arline Joyce**, Skagit County, first v.p.; **Mavis McLaverty**, PLS, also of Skagit County, second v.p.; **Roxanne Forrest**, east King County, secretary; **Jan McDonough**, PLS, Thurston County, treasurer; and **Nancy Monson**, PLS, east King County, national director.

Casi Beckmeyer is the recipient of WALS' 1991 scholarship. She is from the Snoqualmie Valley and attended Mt. Si High School. She plans to pursue legal secretarial training at Renton Vocational Technical Institute.

WALS is a nonprofit, nonunion, nonsectarian association for law office support staff. Its primary goal and function is to promote professionalism and education of its members. Membership is open to anyone employed in the legal field.

• **Betty Weihemuller Fox**, Administrator of Treece Abbot, has become the new president of the Association of Legal Administrators,

Betty Weihemuller Fox

Puget Sound Chapter. Other elected officers are **Kati Dunn** (administrator of Riddell, Williams, Bullitt & Walkinshaw), president-elect; **Char Coulbert** (business manager of Cairncross Hempelmann), secretary; **Maurice Delabarre** (administrative director of Ryan, Swanson & Cleveland), treasurer; and **Maureen O'Brien**, (executive director of Stanislaw, Ashbaugh, Chism, Jacobson & Riper), publicity chair.

The Association of Legal Administrators has approximately 165 members who are professional administrators of law firms, corporate legal departments and governmental/judicial legal organizations. The primary purposes of the Puget Sound Chapter are to promote the exchange of information regarding the legal-administration profession, to offer continuing education programs, to act as an employment referral source to law firms and administrators and to educate the entire legal profession about the value and availability of legal administrators.

• Long-time Prosser city attorney **Dwight Halstead** has resigned from that post, in which he served for 32 years. He continues in the law practice he shares with **Paul Meyer**. Prosser mayor **Wayne Hogue** commented on Halstead's tenure: "I can't think of any lawsuits that the city lost; he's attended 100 percent of the council, committee and many other meetings. It's very difficult to find someone who's willing to do that."

Halstead's replacement is local attorney **Joe Schneider**. The mayor said the planning commission was "pleased with his advice...I feel comfortable with him." Schneider has practiced in Prosser since passing the bar in 1976. He is currently with **Howard Saxton** in the firm of Sensney, Davis and McCormick.

In May, Governor Booth Gardner signed into law a measure to make juries in Washington more representative of the population.

• The legislation, introduced by state representative **Jesse Wineberry**, adds licensed drivers in Washington to the list of people eligible for jury duty. (Currently, candidates for jury duty in the state are selected only from the list of registered voters.)

"This bill should erase some of the lingering injustices in our criminal justice system by ensuring that juries are more representative of our state's diverse population," Wineberry said.

The state Minority and Justice Task Force recommended broadening the jury pool in order to lessen the likelihood of bias in juries.

William Gates, chair of the Gates Commission on the Washington Trial Courts, praised the plan to increase participation in juries. He noted that although defendants are promised a judgment by a jury of their peers, the state's present jury selection system does not deliver on that promise.

"When the current jury selection system was designed, the voter registration roll was the most comprehensive list of Washington citizens," said state representative **Marlin Appelwick**. "Now that we have more licensed drivers than registered voters, it makes sense to make the list as large as possible."

• Spokane lawyer **William D. Hyslop** has been nominated by Senator Slade Gorton to be the new U.S. Attorney for the Eastern District of Washington. Hyslop, 40, will succeed **John E. Lamp**, who resigned after ten years in the job. A graduate of Washington State University and

*Governor **Booth Gardner** congratulates state representative **Jesse Wineberry** after signing into law Wineberry's bill to expand the pool of potential jurors.*

Gonzaga University School of Law, Hyslop is a partner in the Spokane firm of Lukins & Annis.

• **Julie A. Kesler** has been named Commissoner for the Court of Appeals, Division One. A 1973 graduate of Hastings College of the Law, she has practiced before various tribunals in Washington, California and Hawaii, and has been a professor of law at the University of Puget Sound.

• Governor **Booth Gardner** has appointed **Anne Schindler** of Seattle to the King County Superior Court seat vacated by the retirement of Judge **James Dore**. Schindler had been with the King County prosecutor's office since 1982.

• Bothell lawyer **Larry McKeeman** has been appointed to a newly created Snohomish County Superior Court seat by Governor Gardner.

• **Kathleen Taft**, a Spokane lawyer, was honored this spring by Western Washington University, which named her its Distinguished Alumnus of 1991. In a career spanning 54 years, Taft has worked in government, the judiciary and private practice.

• **Lonna K. Malone** has been made a partner in the Tri-Cities firm of Critchlow, Williams, Schuster & Malone. She is a graduate of Washington State University and Northwestern School of Law of Lewis & Clark College.

• **Terry Brooks** of Yakima is making the rounds of book-signings, according to the *Seattle Post-Intelligencer*. His new book, *The Druid of Shannara*, reached No. 2 in *The New York Times*' best selling fiction list in late March. It's the second book of a tetralogy by the fantasy writer.

• Three lawyers have joined Landerholm, Memovich, Lansverk & Whitesides in Vancouver, Washington. **Lisa M. Graham** is a 1991 graduate of Northwestern School of Law of Lewis & Clark College. Admitted in Washington and Oregon, she concentrates her practice in land use and environmental law. **Philip B. Janney** is a 1990 graduate of Northwestern School of Law. A former bank officer, he works in general estate and business planning with an emphasis in asset protection planning for individuals requiring full-time care. He is licensed in Oregon and Washington. **Jeffrey A. Meehan** is a 1988 graduate of the University of Puget Sound School of Law and serves as Chapter 7 Panel Trustee for the U.S. Bankruptcy Court in Clark, Klickitat and Skamania counties. He is admitted in Oregon and Washington.

• Ater, Wynne, Hewitt, Dodson & Skerritt have announced several personnel additions: **Peter H. Haller** and **Thomas M. Kilbane** have become partners in the firm's Seattle office. **Stephen J. Kennedy** has joined the Seattle office as a senior associate.

• **Kevin Hamilton** has been selected to serve as a lecturer in the Inquiring Mind Program of the Washington Commission for the Humanities. Hamilton will give lectures around the state on the Bill of Rights and its application to the states, the U.S.-Iran Claims Tribunal and the arbitration of international disputes, and the court fights to implement *Brown v. Board of Education*. Hamilton works with Bogle & Gates in Seattle.

• **B. Shana Saichek** has been named vice president of the Martin E. Segal Company in New York. Saichek joined the company in 1987 as a research associate. In addition to her work for the national pension, compensation and actuarial firm, she is a member of the Employee Benefits and Executive Compensation Committee of the ABA Business Law Section.

CHELAN/DOUGLAS COUNTY REPORT

by **LARRY TOBISKA**

Pro Bono in Chelan and Douglas Counties

"Just how much justice can you afford?" is a question asked in the geographical center of our state as well as elsewhere. Concern about providing access to the system is being addressed in a number of ways in the combined judicial district of Chelan and Douglas counties.

The centerpiece of this effort is a program through a local nonprofit organization called the Community Action Center (CAC). This program was started in 1968 and has served as a model for a number of efforts in other

communities. It is funded by an IOLTA grant, a grant from Evergreen Legal Services and a block grant from the Department of Community Development.

All practicing attorneys except judges, prosecutors and attorneys general are on a roster and participate by spending an afternoon at CAC interviewing people who cannot otherwise access the system. This occurs on Tuesday and Thursday afternoons.

The work of these attorneys is pro bono. They answer legal questions and help people help themselves, but the pro bono work may extend beyond the afternoon at CAC if the attorney decides to take the case back to his/her office. A valuable contribution is also made by paralegals at CAC who facilitate access to the system for people appearing pro se.

On a monthly basis, in 1990 94 people interviewed with pro bono attorneys, and 186 people appearing pro se were assisted at the CAC in Wenatchee. In addition, the CAC responds to approximately 300 telephone calls each month.

The experience of Evergreen Legal Services here demonstrates the continuing need for pro bono help, however. ELS receives about 450 requests for services monthly and is able to provide some level of service to roughly 20 percent. ELS tries to provide full representation in "brutal need" situations, in which a basic necessity of life such as food, shelter, heat, healthcare, safety of a child or vulnerable adult, is at stake.

Evergreen also works to promote the Community Action Center program and assists the Area Agency on Aging Information and Assistance program, which provides fair-hearing representation to seniors with SSI overpayment and medicaid problems.

A recent survey of the Chelan/Douglas Bar Association members showed that 96 percent of the respondents serve on some volunteer organization. These attorneys spend an average of 12 hours per month in volunteer community service. The responding attorneys indicated that they provided services to clients that they intended to be pro bono on the average of 6.6 hours per month.

One notable example of providing special pro bono help is the firm of Jeffers, Danielson, Sonn and Aylward, which has volunteered to accept direct referrals of Evergreen clients who require litigation services and provides help with Evergreen's litigation problems.

CLARK COUNTY REPORT

by **JOHN F. NICHOLS**

Secretaries Say the Darndest Things: Do you ever wonder what your receptionist tells incoming calls when you are somewhat indisposed? Well, if you are **Stan Horack**, wonder no more. A fellow CCBA'er phoned Stan's office and was advised that Mr. Horack was busy. When asked how long Stan would be tied up, the attorney was told, "It looks like a long time....He took a magazine in with him." Let's hope it wasn't the advance sheets.

Can It Be Stopped? Those familiar with the CCBA are well-acquainted with that insidious disease that strikes our most photogenic members. This disease was first discovered in the Yellow Pages afflicting **Dan Marsh**. It appears as a growth attached to the left ear in a shape strikingly similar to that of a telephone. In its most advanced stages, a cord-like growth extends from the ear to a coin-operated receptacle. CCBA officials thought that the plague had been successfully quarantined to the Marsh law offices. Now, two years after its last appearance, it has risen again with new-found vengeance. Its latest victim was spotted in the *Senior Citizen Times* with a small princess phone-like growth firmly attached to her ear. Struck down in the prime of her billable hours was **Liz Perry** and, frankly, it wasn't a pretty sight. Never, never ignore these warning signs:

1. The urge to appear in an ad.
2. The desire to hold the phone to your ear and smile for no apparent reason.
3. Saving coupons for kitty litter when you don't own a cat.

If you answered yes to any or none of the above, seek help now, and save your associates and family from further embarrassment.

Welcome to the Trough. A few years back, when bar numbers were firmly entrenched in four digits, government employment was looked upon as something to do until you could afford to get a paying job. Yes, it was a great place to go for the experience and rest, but don't expect to earn more than the assistant fry cook at McDonalds. But

time, wages and benes change. Taking advantage of the glamour and bright lights of the Clark County Prosecutor's Office is **Bronson Potter**, late of Whitlock, Saunders & Potter. Bronson will be concentrating on land use and specifically the annexation of the south courthouse sidewalk.

In another defection to public employment, **Lindsay Thompson**, late of Weber & Gunn and the WSBA *Bar News*, has joined the Cowlitz County Prosecutor's Office. Why? Well, it appears that after years of practicing in the wilds of Hazel Dell and attending unruly WSBA meetings, Lin is looking forward to the pastoral pursuit of felons. With the lack of felons or the inability to capture same, he will have plenty of time to see to his editorial duties.

EAST KING COUNTY REPORT

by **RANDOLPH I. GORDON**

"I've been thinking about seeing," writes Annie Dillard in *Pilgrim at Tinker Creek*. She goes on to state:

> It is dire poverty indeed when a man is so malnourished and fatigued that he won't stoop to pick up a penny. But if you cultivate a healthy poverty and simplicity, so that finding a penny will literally make your day, then, since the world is in fact planted with pennies, you have with your poverty bought a lifetime of days. It is that simple. What you see is what you get.
>
> ***
>
> But I don't see what the specialist sees, and so I cut myself off, not only from the total picture, but from the various forms of happiness.

Having ruminated on these words I recall something I first heard in law school: "The law sharpens by narrowing." This, in turn, brings to mind something Oliver Wendell Holmes wrote: "The life of the law is found not in logic, but in experience." In our professional experience, how much do we let ourselves see—and feel?

I suppose it is true that the law is a relentlessly analytical, "left-brained" business, at least by tradition. Consequently, when the law falls short of our ideals, it almost inevitably does so in a "left-brained" way: pettifoggery, stodginess, the triumph of form over substance, institutional inertia, inability to grasp the subtleties of the human experience and blindness to broader consequences. You know: too much yang, not enough yin.

What the lawyer brings to the meeting is a way of seeing which is ostensibly orderly and predictable—something which life is decidedly not. An outrage to the layperson may be an irrelevancy to the professional. Members of the general public are all too often driven from the logic of their own common sense by the concern that they are not seeing "what the specialist

sees." Perhaps this deference is to be expected in a nation with a written constitution, declining literacy, and no native aristocracy. Yet what the lawyer brings to the meeting is getting less tidy.

It is not difficult to encounter the erosion of the old way of seeing. Common law writs have yielded over centuries to notice pleading. Torts have surpassed contracts. Virtually every court is a court of equity. Public policy arguments flood the humblest motion calendar. Fleeting images across televisions have displaced the memory of things past. Traditions, history, doctrine, *stare decisis* have yielded to a plasticity shaped by a society straining to meet basic needs.

The order and predictability promised by the last century have not proved durable, but lawyers still approach problems with the old way of seeing. Expectations affect what is seen. When Anton von Leeuenhoek discovered microscopic spermatozoa in 1677, some biologists managed to "see" a preformed miniature fetus huddled in the sperm. As Jonathan Miller wrote in his history of medicine, *The Body in Question:* "As a general rule, human beings tend to overlook or at least misrepresent the appearance of anything which doesn't already figure in a familiar and well-established classification." Too often, lawyers do not see things in sharp focus, rather they screen their seeing by conventions governing what is pertinent.

The next century may distinguish ruthlessly between traditions which inspire respect in the process and traditions which render it effective. What could this mean? Relatively few judges, more special masters, mediators, court-appointed experts, "blue-ribbon" panels, and arbitrators; less adversarial process, more inquisitorial, court-directed process; less advocacy and rhetoric, more collaboration and conciliation; fewer purely legal determinations, more interdisciplinary and administrative decision-making. Law and lawyers could simply become powerless and irrelevant unless their way of seeing expands.

Lawyers must school themselves to mastery of interpersonal relations.

You might start by taking opposing counsel in the case just closed to lunch and spend an hour comparing notes on how well the legal process addressed the real issues underlying the case. Every case has its real world counterpart. Or you simply might focus on being human and professional - attending the EKCBA Summer Cruise or the Golf Tournament.

One addition to the local bar which warrants mention is **Stephen F. Frost**, for 16 years a member of both the Washington and Alaska bars, who has established his general civil practice at 1000 U.S. Bank Plaza, 10800 N.E. 8th Street, in Bellevue, and is interested in associating with local attorneys on Alaska matters.

I'll be seeing you.

PIERCE COUNTY REPORT

by **GEORGE S. KELLEY**

The Tacoma-Pierce County Young Lawyers annually select a recipient of the Liberty Bell Award, which is presented to some distinguished person who has done good in the legal world. This year's winner was **Henry Haas**, who was recognized for his efforts in organizing programs to provide legal services to disadvantaged persons. More specifically, Henry took the lead and did most of the work in establishing the Self-Help Dissolution Clinic and the Free Neighborhood Legal Clinic.

The award was made at the Law Day luncheon where **Lem Howell** was the featured speaker. Lem spoke on the Bill of Rights, which is having a birthday this year.

Larry Couture, manager of the young lawyers' slow-pitch softball team, reports the off-season acquisition of **Jeff Larson** and **Bob Michaels**. He also picked up some nonlawyer players as the usual team members had a habit of failing to show up for games. No one can remember the last time the starting lineup was the same for two games in a row. Once again, the team is sponsored by the trust department of Puget Sound National Bank (the folks who keep your money here in town working and playing for you). At the midseason break—there is no all-star break due to the low skill levels of the players—the team is playing .500 ball, a feat rarely accomplished in its 20-year history.

One of the attractions of moving your office out of downtown to the oldtown district of Tacoma is to escape crime and violence–or so thought **Bart Adams**. This myth was shattered when Bart's nose was broken by a disagreeable fellow over a settlement. No rematch is scheduled and future exchanges will be by fax machine. If you plan to visit

Bart, ask to see his newly acquired Mace collection.

Last month, we reported a plot by Pierce County lawyers to take control in King County. The first move was by Pierce County's Department of Assigned Counsel, which will be providing indigent criminal defense services to Federal Way. Now we learn that Puyallup's **Tony Froehling** and **Alvin Mayhew** have contracted with the city of SeaTac to do its indigent criminal defense work. There is probably no truth to the rumor that Seattle's mayor **Norm Rice** was recently seen in Pierce County discussing cost overruns in his city attorney's office...

SPOKANE COUNTY REPORT

by **MIKE PONTAROLO**

Everything you read in this column is absolutely true, except for that rare story of which you happen to have firsthand knowledge. **James B. King** serves on the Washington Chapter of the American Board of Trial Advocates in recognition of his trial skills. Remember, Jim, you're only as good as your last win. **Robert H. Thompson, Jr.**, a lawyer without a gaming instinct, wins a TV lottery, and the odds are 4:5 he'll report it on his tax return. A partnership with WSBA governor **Dan Curran** is a state in which much is to be endured and little to be enjoyed, as evidenced by his cajoling me into writing this column. TV stars **Leslie Grove, John Powers, Teresa Faust, Greg Hicks, Tim O'Brien,** and Judge **Kathleen O'Connor** distinguished our profession with an Emmy award-winning performance on laws of special interest to teenagers, putting the lie to the fable, "The human brain starts working the moment you are born and never stops until you stand up to speak."

Local bar president **Gary Gainer**, appearing solo on a TV talk show, comes away convinced the "silly question" is the first intimation of some totally new development. **Tom Cochran** has resigned as the managing partner of Witherspoon, Kelley, Davenport

WASHINGTON STATE TRIAL LAWYERS ASSOCIATION REPORT

by **LETHA J. OWENS**

The Washington State Trial Lawyers' 1991 annual convention was held at Whistler, British Columbia, last month. President **Jimmy Rogers** of Seattle will now take up the reins and lead the newly elected WSTLA Board of Governors for the 1992 year. The new board consists of:

President-Elect	Halleck H. Hodgins, Seattle
V.P. East	Richard C. Eymann, Spokane
V.P. West	Nicholas F. Corning, Seattle
V.P. CLE	C. Steven Fury, Seattle
2nd V.P. CLE	Cheryl Robbins Berg, Tacoma
V.P. Finance	Eugene M. Moen, Seattle
V.P. Judicial Relations	Judith M. Proller, Bellingham
2nd V.P. Judicial Relations	Elaine M. Houghton, Tacoma
V.P. Publications	William S. Bailey, Seattle
V.P. Legislative	Wayne Lieb, Olympia
2nd V.P. Legislative	Janet L. Rice, Seattle
V.P. Membership	Frederic G. Fancher, Spokane
2nd V.P. Membership	Robert K. Dawson, Seattle
V.P. Public Affairs	Steven P. Krafchick, Seattle
2nd V.P. Public Affairs	Lori S. Haskell, Seattle
V.P. Development	Terrence P. Abeyta, Yakima
2nd V.P. Development	Mark E. Barber, Renton
Secretary/Treasurer	Anthony P. Russo, Seattle
Editor-in-Chief	David S. Heller, Seattle
1st Cong'l Dist.	Christopher Otorowski, Bnbg. Island
	Philip G. Arnold, Seattle
2nd Cong'l Dist.	Douglas R. Shepherd, Everson
	Thomas Moser, Mt. Vernon

3rd Cong'l Dist.	James L. Sellers, Vancouver
	James Brown, Aberdeen
4th Cong'l Dist.	Jay Flynn, Kennewick
	Dale Foreman, Wenatchee
5th Cong'l Dist.	Edward A. Dawson, Spokane
	John Clark, Spokane
6th Cong'l Dist.	Frank B. Ladenburg, Jr., Tacoma
	Rodney B. Ray, Tacoma
7th Cong'l Dist.	Ronald R. Ward, Seattle
	Laura Jaeger, Federal Way
8th Cong'l Dist.	Andrea Darvus, Seattle
	Richard McDermott, Bellevue
At-Large	Fred Zeder, Seattle
	Timothy Anderson, Kennewick
	Steve Toole, Bellevue
Immediate Past Pres.	Keith L. Kessler, Hoquiam
Past Pres.' Council	Thomas J. Chambers, Seattle
ATLA State Delegate	Robert DiJulio, Seattle
	Michael E. Withey, Seattle
ATLA Board of Governors	Daniel F. Sullivan, Seattle
	Paul L. Stritmatter, Hoquiam

Congratulations and good luck to the new and returning board members. Next year's convention will be held in Sun River, Oregon, from July 2-5. Mark your calendars, and plan to be there.

& Toole, wanting to allow more time for litigating. **Dick Eymann**, the WSBA's gift to the 7.4-mile timed Bloomsday race with 55,983 participants, has the community's praise for organizing the annual spectacular affair. **Mike Price** is now associated with **Peter J. Karademos** with a concentration in family law.

Local tradition of honoring lawyers with 50 years at the bar continues. This year, honorees were **Maury Cooper**, **Bernard Gallagher**, **Alan O'Kelly**, Judge **B.J. McLean**, **William Roberts**, **John Schiffner** and **Lionel Wolff**. One of them refused to admit he was more than 52, even if that did make his child illegitimate!

WASHINGTON STATE LAWYERS' CAMPAIGN FOR HUNGER RELIEF

Involvement by the community continues to increase in the first Washington Lawyers' Campaign for Hunger Relief. New contacts are: **James P. "Jim" Bailey**, PO Box 799, Clinton, WA 98236 (206) 221-7475 (B), (206) 221-7206 (H); **Lisa Blume**, Public Awareness Director, Citizens for a Hunger Free Washington, 146 North Canal Street, Suite 101, Seattle, WA 98103, (206) 632-1150; **Mary Anne Elsasser**, Law Offices of Mary Ann Elsasser, Skinner bldg., 1326 Fifth Avenue, #339, Seattle, WA 98101, (206) 622-6687 (B), (206) 323-4126 (H); **Francis X. Frank**, Management Consultant, 617 N.W. 175th Street, Seattle, WA 98177 (206) 546-3629; **Phillip Hirsch**, Ph.D., Seattle Psychological Services, Suite 333, 216 First Avenue South, Seattle, WA 98104, (206) 621-7007 (B), (206) 365-3717 (H); **Robin Lindley**, Social Security Administration, Suite 1900, 2101 Fourth Avenue, Seattle, WA 98121, (206) 553-7750/663-4102); **Mohammad M.** "Min-haj" **Khokhar**, Coordinator, Gulf Children Relief Fund, 2215 E. Olive Street, Seattle, WA 98122, (206) 322-5150 (B), 324-1975 (H).

IN MEMORIAM

Ralph B. Potts, 93, died in Seattle in April. Born in Appleton, Wisconsin, Potts moved to the Northwest as a child. He graduated from Pacific University and the University of Oregon School of Law. Moving to the Seattle area in the 1920s, Potts got involved with civic and arts groups and became a great force for the arts in the 1950s and 1960s.

In addition to practicing law, Potts wrote a number of plays and books, including an anecdotal history of the Washington Bar, *Come Now the Lawyers*. He was a founder and president of Allied Arts and the Pacific Northwest Writers' Conference and an early supporter of Seattle Repertory Theatre. Survivors include his wife, four children and numerous grandchildren and great-grandchildren.

MOHAI Photography Collection: Firsts in Puget Sound History

Imagine the excitement of witnessing the first plane flight in Seattle followed by the shock of the first plane crash the next day.

Photographers Ira Webster and Nelson Stevens caught those and other events in the Puget Sound region from 1903 to 1950. A new exhibit at Seattle's Museum of History and Industry, *Anything, Anytime, Anywhere*, features these historical moments.

Pemco Financial Center is sponsoring the show, which runs from June 29 through November 3 and includes A number of Seattle buildings that are home to many lawyers today.

Among the photos are:

- Seattle's first airplane flight on March 12, 1910. The pilot, Charles Hamilton, was a barnstormer in an air festival.
- The first airplane crash in Seattle. Hamilton went down in a lake by the Meadows Race Track on March 13. He walked from it unharmed.
- The first general strike in U.S. history. Nearly all Seattle workers walked off the job February 6, 1919, in support of ship workers trying to maintain their jobs.
- The first gush of water surging into the newly completed Montlake Cut.
- Children riding the carousel at Luna Park and other amusements.

Webster and Stevens work is a rare chronicle of Seattle's boomtown growth, fads, people and businesses over many decades.

Many of the photos will be seen for the first time in 70 years.

MOHAI is located in Seattle at 2700 - 24th Ave. E., south of the UW stadium. Hours are 10 am to 5 pm daily. For more information, call (206) 324-1126.

NOTICES

NOTICES ADVERTISING

Professional: WSBA members only. $40/inch. Billed at publication.
Classified: **Members**—$25 for 25 words, each add'l 25¢.
Nonmembers—$35 for 25 words, each add'l 75¢.
Box number service—add'l $6. *Advance payment required. Deadline*: 25th of each month for second issue following. No cancellations after deadline. *Note:* State and federal law allow minimum, but prohibit maximum, qualifying experience for "positions available." Submit double-spaced, typed copy on plain paper (no phone orders) to *Bar News* Classifieds, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

THE LAW FIRM OF
GROSHONG, LEHET & THORNTON

is pleased to announce that

THOMAS D. LOFTUS

former Assistant General Counsel, Senior Trial Attorney and Government Affairs Counsel of Unigard Insurance Group and retired U.S. Military Judge

has joined the firm as Of Counsel

Mr. Loftus has extensive experience in personal injury, property damage, product liability, insurance and employment litigation; government affairs matters and as judge, arbitrator and mediator.

Mr. Loftus will continue his practice with an emphasis on mediation and arbitration in civil litigation and announces his availability to serve in that capacity.

2133 Third Avenue
Seattle, Washington 98121-2325
(206) 448-7172
Fax: (206) 448-3340

PROFESSIONAL

Available for Referrals
and Consultations
Social Security Disability/SSI

James A. Douglas
Peter H.D. McKee

Theiler Douglas
Drachler & McKee
1613 Smith Tower
Seattle, WA 98104
(206) 623-0900

Professional Disciplinary Boards

Bruce Clement

Formerly Washington State
Assistant Attorney General
Admitted to Practice 1970

Accepting Referrals and Associations
under the
Uniform Disciplinary Act
Including Physicians, Dentists, Nurses, Counselors, Optometrists, Veterinarians, and other Licensed Professionals.

Stiltner, Sinclair, Clement & Foster
5500 Two Union Square Building
Seattle, Washington 98101
(206) 224-1600

SEPTEMBER 11-14, 1991

WASHINGTON STATE BAR ASSOCIATION

ANNUAL CONVENTION

CONVENTION REGISTRATION: Call WSBA at (206) 448-0433

Pence & Dawson

Bob Dawson announces his availability for trial of plaintiff's personal injury lawsuits.

624-5000

Bankruptcies Involving Taxes

Gregory C. Dow
1045 Jadwin Avenue
Richland, Washington 99352
(509) 946-7661

Appeals

Margaret K. Dore
former clerk to
Chief Justice Vernon R. Pearson, of the Washington State Supreme Court, and former Clerk to Judge John A. Petrich, of the Washington State Court of Appeals, announces her availability for referral, consultation or association on appellate arguments and briefs.

Margaret K. Dore

Lanz and Danielson
Seafirst Fifth Avenue Plaza
800 Fifth Avenue, Suite 4200
Seattle, WA 98104
Telephone (206) 382-1827
Fax (206) 628-0504

GINSBERG STANICH & DUFFORD

is pleased to announce that

LEO CLARKE*

former
Senior Vice President
Pacific First Financial Corporation
and General Counsel
Federal Home Loan Bank of Seattle

has become of counsel to the firm
emphasizing practice in
corporate, commercial and banking law.
The firm will continue its emphasis on
commercial litigation,
real estate, and environmental law.

Phillip H. Ginsberg
Janis K. Stanich
Wick Dufford
Of Counsel
Robert R. Mackin

Patrick S. Brady
Mark B. Kantor
Gail N. Wahrenberger
Of Counsel
Leo Clarke*

*Mr. Clarke is admitted to practice in the District of Columbia.

1201 Third Avenue, Suite 2780
Seattle, WA 98101-3049

Telephone: (206) 624-6242
Fax: (206) 224-7081

Mark Alan Johnson
5120 Columbia Seafirst Center
701 Fifth Avenue
Seattle, Washington 98104
(206) 386-5566

Announces his availability for consultation, association or referral of substantial claims of legal malpractice.

Securities Matters

25 years' experience
SEC, Blue Sky, Foreign.
Available for consultation.

Butcher & Williams, P.S.
Seattle
(206) 682-7626

FOR SALE/WANTED

Used law books — bought & sold

— Washington-related law books our specialty — law library appraisals by qualified expert. John C. Teskey, Law Books/Law Library Services. Call Seattle, (206) 325-1331.

Softcover lawbooks for Washington lawyers. Used by over 30,000 lawyers nationwide. Attorney's Handbook on Consumer Bankruptcy and Chapter 13 ($21.95); Attorney's Handbook on Small Business Reorganization Under Chapter 11 ($24.95); Attorney's Handbook on Drinking Driving Defense ($24.95); Handbook on the Law of Small Business Enterprises ($24.95). Argyle Publishing Company, 10395 West Colfax Avenue #380, Lakewood, CO 80215 (303) 237-6467.

Books for sale: Current West U.S. Code. Contact Larry Holzman, Vancouver, Washington, (206) 696-0821.

Save 50% on law books: National Law, America's largest law book dealer. We buy/sell. Huge inventories. Excellent quality. Your satisfaction guaranteed. Free quotes. (800) 279-7799.

For sale: USCA fully updated, free service through 1991, $1000 cash or payments: $21.82 monthly; $1139 balance, 12% interest. (509) 325-4552.

SPACE AVAILABLE/WANTED

Beautiful view space with or without adjacent secretarial space available with Theiler Douglas Drachler & McKee in Seattle's historic Smith Tower. Rent includes receptionist, library, telephone, coffee service, and use of photocopier, fax and postage meter. For more information call Elva Axelson at (206) 623-0900.

Prestige office-sharing. Located in the unique Bellevue Place adjacent to the Hyatt Regency Hotel, and many fine restaurants. Also on location is the Seattle Athletic Club. Only six of our 42 luxury suites remain available, exclusively for attorneys and CPAs. Furnished/unfurnished suites, short-/long-term leases. Conference rooms, kitchen, file and storage cabinets. Receptionist, telephone answering, word processing, facsimile and photocopiers. Private secretarial stations and on-site paralegal service available. Enormous full-service law library on premises. Call Ted Barr/Chris Gordon. (206) 451-3961.

Two-person firm with general civil practice wishes to share space with up to three more persons in your space, ours, or new surroundings in downtown Seattle, Denny Regrade. Sole practitioners or small firms, please contact us. Future merger or partnership is possible. Kathy (206) 441-8840.

Space-sharing. First Interstate Center, Seattle. One to four offices available in space with full-service firm and other subtenants, 25th floor. Two conference rooms, library, reception-

---

RAGEN, PETERSON & CROMWELL
A PROFESSIONAL SERVICE CORPORATION

takes pleasure in announcing that

KIRT W. MONTAGUE

joined the firm on
March 27, 1991.

Mr. Montague practices in the corporate, general business and real estate areas. Prior to attending college, he spent several years in the construction industry, working with contractors, developers, finance companies and real estate professionals. In 1987, he received a Bachelor of Science degree in business management and finance from Brigham Young University. In 1990, he received his law degree from the University of Michigan. He is a member of the Seattle-King County, Washington State and American Bar Associations, and is a past member of the National Association of Realtors.

We are also pleased to announce
the relocation of our offices
effective May 1, 1991 to

AT&T Gateway Tower
700 Fifth Avenue, Suite 3925
Seattle, Washington 98104

Our telephone and fax numbers remain

Telephone (206) 340-2655
Fax (206) 340-1128

ist. Fax, Lexis, PC Network. Negotiable terms. (206) 382-2600.

Sublet, Seattle: 2214 square feet office space at 3110 Bank of California Center, 900 Fourth Avenue, available for lease through December 31, 1991 with renewal possibilities with building. High-quality improvements designed for law firm include three exterior offices, library, reception area and three interior offices. Contact Kathy Nichols or Donna Baker at (206) 624-0900 for more information.

Legal-office sharing — Spectacular view offices with adjacent secretarial stations available for lease on the 42nd floor in one of Seattle's premier office buildings. Perfectly suited for sole practitioners. Common amenities include receptionist services, telephone equipment, secretarial furnishings, conference rooms to accommodate 25, common library, copy and facsimile services. Reasonably priced. Call Mary Boyd at (206) 628-5858.

POSITION WANTED

Trial attorney with 15+ years' experience in Ohio is relocating to eastern or central Washington. Practice emphasis: commercial, real estate, bankruptcy, taxation, personal injury and aviation. Washington Bar member (inactive). Joseph G. Carroll, 7300 Brill Rd., Cincinnati, OH 45243; (513) 561-0225.

POSITION AVAILABLE

Attorney jobs — *National and Federal Legal Employment Report:* highly regarded monthly detailed listing of hundreds of attorney and law-related jobs with U.S. government, other public/private employers in Washington, D.C., throughout U.S., and abroad. $32 - 3 months; $55 - 6 months. All new jobs each issue. Federal Reports, 1010 Vermont Ave., N.W., #408-WB, Washington DC 20005. (202) 393-3311. Visa/MC.

Attention attorneys: Paralegal training school seeks practicing attorneys interested in teaching in the Seattle area. Commitment is one night per week, five to ten weeks. Compensation is $45 per evening. Courses being offered are American jurisprudence, criminal law, family law, torts and personal injury litigation, real estate litigation, business law, legal research & writing, estates and trusts. Please send resumé and course preferences to: A.I.P.S., One South 450 Summit Avenue, Suite 340, Oakbrook Terrace, IL 60181.

Attorney position available: Seattle office of Bullivant, Houser, Bailey, Pendergrass & Hoffman is seeking an associate with a minimum of two to five years' experience with an emphasis on insurance defense matters.

Position requires experience in handling auto/premises and product liability cases. Arbitration and trial experience preferred. Salary and benefits are negotiable depending upon experience. All inquiries will be treated confidentially. Send cover letter and resumé to Sheryl A. Cooke, Hiring Coordinator, 701 Fifth Avenue, 4100 Columbia Center, Seattle, WA 98104.

Established Pierce County law firm is seeking an attorney with at least three years' experience in domestic relations, personal injury, and general practice. Salary negotiable. Reply with resumé to Box No. 327, WSBA.

Land use attorney: Seattle firm with well-established real estate and litigation practice seeks associate with minimum of two years' concentrated land use experience. Reply to Box 328, WSBA.

Litigation associate position: Medium-sized downtown Seattle firm seeks associate with experience in litigation. Strong academic background and actual trial experience preferred. Reply to Box 329, WSBA.

Attorney with experience who is tired of long hours and little pay wanted to manage escrow company. Must be an independent person. Duties include all aspects of closing real estate sales and tax-deferred exchanges. Will provide training. *Large* share of profits available for attorney willing to invest in company. Send resumé to: John R. Wagner, 9500 Roosevelt Way NE, Suite #206, Seattle, WA 98115.

Small insurance defense firm, in Seattle, seeking capable and congenial associates with experience. Please send resumé to Eric Freise, 108 South Washington Street, Suite 400, Seattle, WA 98104.

Betts, Patterson & Mines, P.S. seeks associates with one to four years of experience to practice in commercial and tort litigation. Attorneys with excellent skills in research, writing and communication are encouraged to send a cover letter, resumé, self-edited writing sample and transcript to Steve W. Berman, Hiring Partner, Betts, Patterson & Mines, P.S., 800 Financial Center, 1215 Fourth Ave-

nue, Seattle, WA 98161-1090. Telephone: (206) 292-9988.

SERVICES

Omega Attorney Placement: The Pacific Northwest's premier attorney placement firm, specializing in law firm and corporate attorney placement. Direct confidential inquiries to Omega, (206) 467-5547.

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

Need temporary lawyer help? Want to increase your firm's billable hours? Need help with research, interrogatories, depositions, trial preparation, document review....?

The Harvard Legal Group provides the most cost-effective, profitable way of handling work overloads and law firm expansion.

Avoid employee taxes and fixed overhead. We have more than 250 experienced, quality lawyers from $25 per hour. Call (800) 835-3561.

Join the Eastside Law and Tax Library! The Puget Sound area's only membership law and tax library for attorneys, CPAs and other professionals. Corporate, individual or student memberships available. Open 24 hours/365 days per year. Deposition, research and conference rooms with video equipment. Full-service staff including law librarian. WESTLAW with custom printer. Facsimile, photocopier, microfilm and videocassettes. *Free attorney/client referral service for members*. Located on the third floor of the MGM Building, above the Seattle Athletic Club, in Bellevue Place. Please call Ted Barr/ Margie Hawley, (206) 646-3464.

Experienced legal research and writing, motions in Kitsap County on a contract basis. *Excellent* skills and references. University of Washington law school graduate, member WSBA. $45 per hour. (206) 275-0619, Kristin Larson.

Legal transcription: Civil and criminal procedures accurately and professionally typed from cassette tapes. (206) 952-7186 or (206) 233-3143.

For the busy practitioner: Contract attorney, admitted to the Washington Bar in 1981; emphasizes legal research and writing. Former law clerk in King County Superior Court, U.S. Bankruptcy Court. Vanderbilt Law School graduate. Elizabeth Dash Bottman, 6031 50th N.E., Seattle, WA 98115. (206) 526-5777.

Legal research and writing. UW law graduate and WSBA member. Thorough researcher. Effective writer. Strong references. Phone Donald W. Scott at (206) 526-9985.

Urologist, forensic consultant: M.D., J.D., boards, plaintiff and defense. (800) 747-7341 or (314) 361-7780.

L.A. services: WSBA member (since '77) relocated in Los Angeles. Depositions, witnesses interviewed, meetings attended, research. References. (213) 461-4967/(213) 461-0448 (fax).

Highly motivated company will do your legwork. We offer many services including heir/witness locating, asset searches, public record, process service and surveillance. Rates as reasonable as $35 hourly. Ten years' experience. Contact Don Wright, business: (206) 382-9178 or residence: (206) 432-6987.

Seeking contract work: Experienced attorney in commercial, real estate and bankruptcy litigation seeking 10-15 hours of contract work a week while pursuing a Master's degree in Tax at Golden Gate University, Seattle. Rates negotiable. References. Robert Millsap, (206) 525-5289, 4721 - 36th Ave. N.E., Seattle, WA 98105.

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

Going on vacation? You can still profitably take depositions, write briefs, prepare documentation for business transactions, etc. — by hiring an experienced lawyer at a reasonable hourly rate. Just call The Alexander & Thomas Group, Inc., Contract Attorney Placement Service (206) 361-2707.

Environmental consulting and engineering services available to assist your firm. Will provide technical assistance in CERCLA- and RCRA-related matters: RI/FS support; technical document review; regulatory compliance support; natural-resource damage assessments; and PRP searches.

Ten years' environmental experience and working knowledge of state and federal environmental statutes and regulations. Ridolfi Engineers and Associates, Inc., 1001 Fourth Avenue, Suite 3200, Seattle, WA; (206) 684-9352.

WILL SEARCH

Fred J. Lasich: seeking last will, executed after 1975. Last known to be of Kirkland/Redmond area. DOD November 1990. Please contact Robert E. Heaton, (206) 682-3333.

MISCELLANEOUS

Kona, Hawaii. Top floor condo in lovely Keauhou area. Two bedrooms plus loft, two baths. Sleeps six. Beautifully furnished. Complete kitchen and laundry. Three tennis courts and large pool. $750 per week plus taxes. (206) 464-4052, days.

Greenlake condo: two bedrooms, two baths, rooftop deck, quality townhouse. Lease only, $1800/ month. Call Gary East, (206) 525-0600 days, (206) 522-1527 evenings.

Gearhart-by-the-Sea. Luxury penthouse condo, quiet beach, 16 miles South of Astoria. Near Seaside and Cannon Beach. Two bedrooms, two baths, loft, sleeps eight. Pool, spa, golf, tennis. (503) 221-4291.

Five bedrooms, two-and-three-fourths baths; 2100 square feet. All appliances, on cul-de-sac; two-car garage; $1,200/mo; 17118 NE 29th Pl. Bellevue. (206) 285-2525, (206) 285-5166.

LAWYER'S PROFESSIONAL LIABILITY.

WASHINGTON STATE
BAR ASSOCIATION
500 Westin Building
2001 Sixth Avenue
Seattle, WA 98121-2599

Nonprofit Org.
U. S. POSTAGE
PAID
SEATTLE, WASH.
Permit No. 2204