

Washington State **Bar** **News**

Vol. 45, No. 8, August 1991

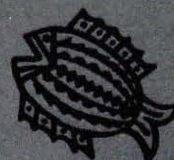
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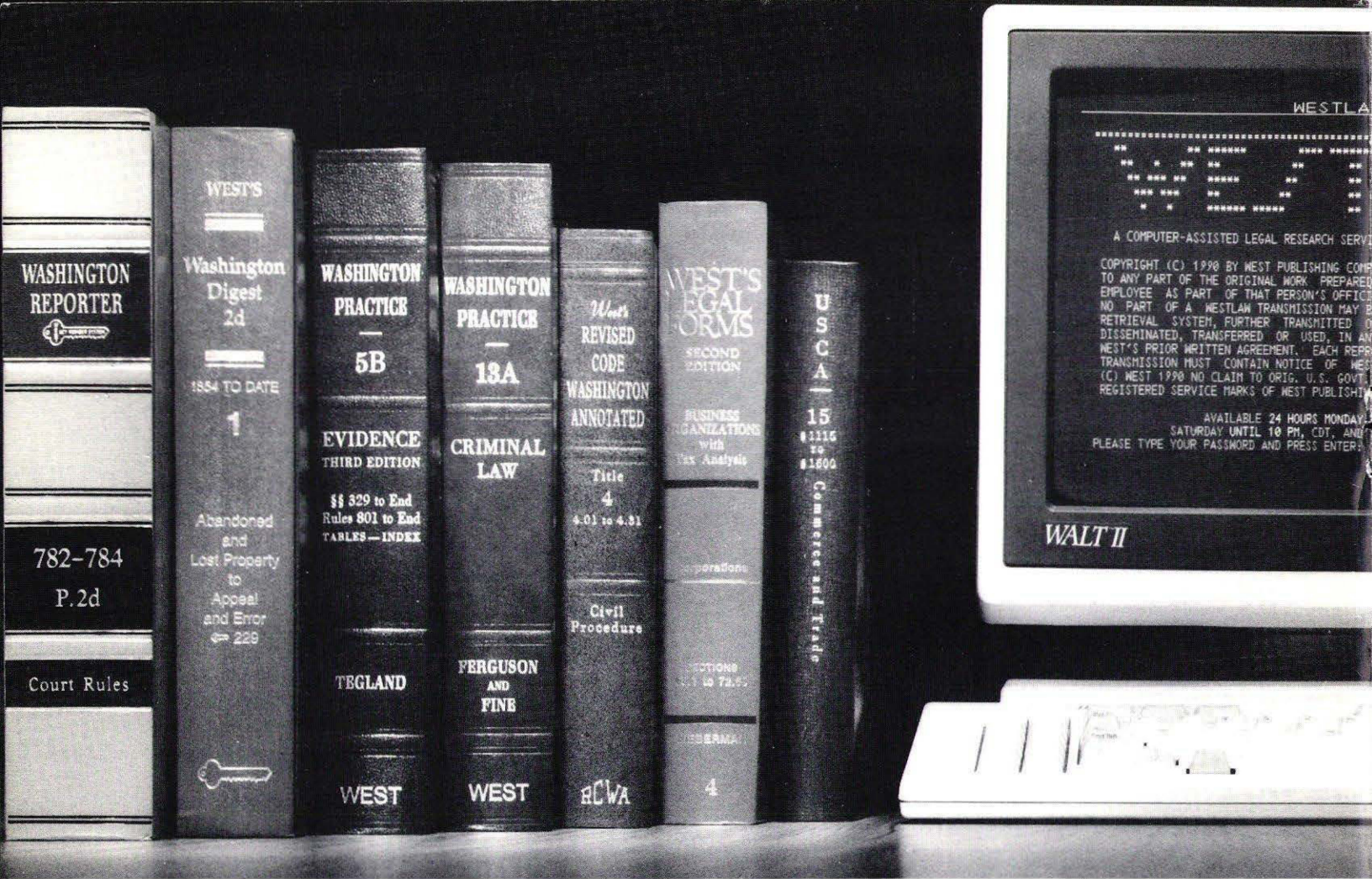
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Judicial Selection Reform, Part II





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Vol. 45, No. 8, August 1991

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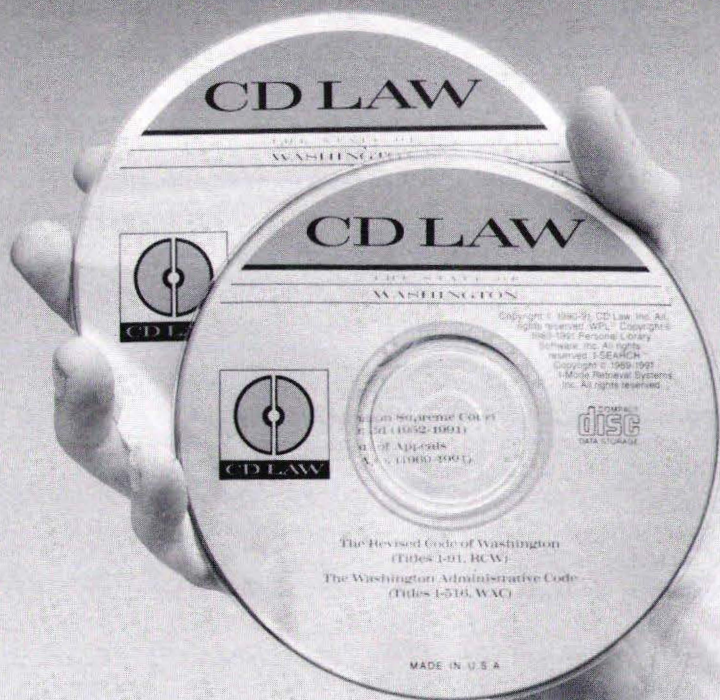
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Graphic artist **Don Coppock**, who designed our November 1990 cover and pro bono logo, adapts the convention theme to this month's cover.

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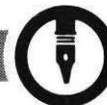
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Letters to the Editor of reasonable length are invited. Such letters should be typed and signed. The Editor reserves the right to select communications or excerpts therefrom for publication, and to edit any letter as may be appropriate.

QDRO Quandary

Editor:

I enjoyed Robert Bohrer's article, "Pension Benefits in Divorce: The QDRO Basics" in your April, 1991 issue. However, Mr. Bohrer's discussion of the timing of QDRO payouts to an alternate payee is, I believe, misleading and requires clarification. At the same time, he describes an exclusion from the QDRO rules as to government and church plans which is not consistent with current law.

Mr. Bohrer notes that a single sum disbursement at the time of employment termination will invalidate a QDRO if the terminating participant is not then "of retirement age under the terms of the Plan." This statement will generally be true in retirement arrangements which postpone distribution until a terminated participant attains a plan's "normal retirement age." Many small companies, however, allow employees who separate from service at any age to receive immediate payout of their vested plan balances. Because funds are available to the participants, an alternate payee would also then be entitled to a distribution.

The article also fails to note the availability of a payout to an alternate payee at the time a continuing employee/participant attains his or her "earliest retirement age." As provided at IRC section 414(p)(4), the unique ability of a non-employee spouse to receive a withdrawal of plan funds while the participant continues to work can be based on nothing more than specific plan language permitting this type of distribution.

Mr. Bohrer also cites the Retirement Equity Act of 1984 as exempting governmental and church plans from the scope of a QDRO. While QDROs were, in fact, ineffective as to these types of plans until 1989, that year's Revenue Reconciliation Act removed the exemption by adding IRC section 414(p)(11). Transfer of a participant's

interest in a governmental or church plan occurring in 1989 or thereafter can be effected by a Qualified Domestic Relations Order.

CLAY R. RANDALL
Spokane

A Really Daft Decision

Editor:

Regarding an article which appeared in the May 2, 1991 edition of the Spokane *Spokesman-Review* indicating that the Young Lawyers Division has cancelled an upcoming conference in Coeur d'Alene, Idaho fearing for the personal safety of minority group members, the Board members who voted in favor of this action should climb down from their high horses where the air is obviously so thin it has affected their ability to make an intelligent decision on such an issue. I am a member of the state bars of Washington and Idaho and actively practice in both jurisdictions. I have resided in Spokane for 16 years. In my estimation, the addle-brained, paranoid behavior of the Aryan Nations Church has been unmatched until this action by the YLD Board. Nothing in recent memory has done more to assist the cause of the white supremacists.

The city of Coeur d'Alene was recently honored as an "All-American City." The citizens of Coeur d'Alene have been nationally recognized for their tireless effort in fighting racism. The Coeur d'Alene Resort was recently recognized by a leading travel publication as the number one destination resort in the world. The resort is frequented by persons of many nationalities. The suggestion by the Young Lawyers Division that Coeur d'Alene is unsafe for members of minority groups is stupendously absurd.

The First Amendment requires us to tolerate the Aryan Nations Church and similar organizations. Common sense requires that we not fear these organizations for such fear is the white supremacist's only effective weapon. By all accounts, the citizens of northern Idaho have done an excellent job of shutting down the Nazis. Ill-advised rantings by uninformed members of an organization sanctioned by the Washington State Bar Association don't make the job any easier.

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Young Lawyers Division, you owe the citizens of Coeur d'Alene and northern Idaho an apology. You should see to this immediately.

JAROLD P. CARTWRIGHT
Spokane

Editor:

The Trustees of the WSBA Young Lawyers Division recently voted to hold the division's 1992 Midyear Meeting at Campbell's Lodge on Lake Chelan—site of the very successful and well-attended 1991 WYLD Midyear in April. Because our decision has generated some controversy, including critical letters to the *Bar News*, we respond with some information and an explanation to put our decision in perspective.

The Board frequently must decide upon appropriate locations for meetings attended by lawyers from throughout the state. Each time such a decision is made, many relevant factors are considered, such as: the opinions and concerns expressed by the WYLD's constituents, historical experience with particular sites, accessibility from all areas of the state, affordability of the meeting place and alternative lodging, meeting room capacities and arrangements, sites of previous meetings, local recreation opportunities, etc. This year, and in future years, the WSBA and WYLD must take the results of the recent "Hawaii Referendum" and the controversy over the 1991 WSBA San Diego Convention into account in considering whether to hold out-of-state meetings. In selecting Campbell's

Lodge on Lake Chelan for the 1992 WYLD Midyear Meeting, the Board of Trustees took all of these factors into account.

It is true that the WYLD Board of Trustees voted against holding the 1992 meeting at the Coeur d'Alene Resort. The Board also rejected other alternative locations which shall remain nameless. A factor which impacted the Board's decision to consider alternatives to Coeur d'Alene was the vigorous opposition expressed by representatives of ethnic minority bar groups affiliated with the WYLD. The WYLD Board was advised that holding a meeting in a location proximate to the headquarters of the Aryan Nations would significantly deter, if not preclude, participation in the meeting by people of color. These people expressed fear for their personal safety and that of their families. At the same time, it was acknowledged by the Board and all present at the Board meeting that the citizens of Coeur d'Alene and northern Idaho have strived to fight racism. It also was acknowledged that concerns regarding the Aryan Nations were based more upon perception than reality. However, the concerns expressed were sincere and deeply felt.

The WYLD Board of Trustees will not apologize for listening to and acting upon the concerns expressed by its constituents. In governing a very diverse, statewide organization, the WYLD Board tries to be fair to everyone in making decisions and balancing

competing interests. In this case, the decision was made with the recognition that the concerns expressed by people of color in our bar association might not be understood by the majority of the association or the public. Nevertheless, those sincere concerns were recognized and respected. All sides of the issue were vigorously debated, and the Board reached a unanimous decision.

The WYLD Board regrets that its actions have been taken out of context, reported inaccurately and misconstrued as a judgment upon the conduct of Coeur d'Alene's citizens. The Board intended to respect the concerns expressed by people of color in our bar association rather than to offend anyone—especially the citizens of Coeur d'Alene, northern Idaho and Eastern Washington.

THE WSBA YOUNG LAWYERS
DIVISION BOARD OF TRUSTEES

Read (Carefully)

Editor:

Attorneys should carefully read Initiative 120, which would legalize abortion on demand. Section 4 of this proposal provides:

Section 4. The good-faith judgment of a physician as to viability of a fetus or as to the risk to life or health of a woman and the good-faith judgment of a healthcare provider shall be a defense in any proceeding in which a violation of this chapter is an issue.

Such language would create a "good-faith" defense to malpractice cases against abortionists. If it were adopted, a physician who negligently injured or killed a mother while trying to save the life of her unborn child would be liable for negligence under usual malpractice standards, while the same physician (or "healthcare provider") would be entitled to a good-faith defense if (s)he negligently inflicted the same injury while engaged in killing her child. "Good faith" is not defined in the initiative, leaving it open to the abortionist to assert that in his or her ignorance (s)he believed that the selected form of assault on the child involved no risk to the mother. The effect would be to eliminate malpractice suits against abortionists, while leaving them in place as to physicians engaged in healing people.

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Meetings, Resolutions, Meetings

The 1991 Annual Business Meeting:

The annual business meeting of the WSBA will be held on Friday, September 6, 1991, from 9 am to 12 noon at the Washington State Convention Center, 800 Convention Place, Seattle. The annual business meeting will include the presentation of the 1991 WSBA Awards (including those to 50-year members), the debate of resolutions (see below) and the reports from the state Chief Justice and the president of the Bar. A special treat is also in store—a tongue-in-cheek presentation of "The CLE from Hell," a spoof of a CLE presentation on technology featuring characters you will surely recognize. Some of the resolutions propose substantial changes in the WSBA, so everyone is encouraged to attend the debate and vote.

The 1991 WSBA Convention September 11-14:

The convention itself will be held in sunny San Diego. A four-page spread of the details is found later in this issue of the *Bar News*. Highlights of the convention include a presentation by Arthur Miller, nationally renowned commentator, and Elden M. Rosenthal, co-counsel with Morris Dees on the Portland "skinhead" trial. In addition, you can fill your CLE ticket for the entire year by attending the CLE programs at the convention. San Diego itself offers a variety of pleasures: the world famous Zoo, Sea World, Old Town, the Wild Animal Park, and, heaven forbid, a trolley to Tijuana that you can catch right in front of the Marriott. By the way, Dennis Connor's America's Cup is moored right next door.



Dennis P. Harwick

Resolutions:

Although resolutions for the annual meeting can be received up through August 16, 1991, the deadline for resolutions to be published in *Bar News* was July 8. As of that date, five resolutions had been received, all submitted by Governor Alva Long. The full text of those resolutions are found later in this issue. In summary, they are:

1. *Referendum Process:*

The resolution would increase the number of signatures on a petition to require a referendum from 250 to 500, would extend the time for filing a petition for a referendum from 60 days following notice of the decision of the Board to 90 days following notice of the decision of the Board, and eliminate the "validation" requirement, i.e., eliminate the requirement that 50 percent of the active WSBA membership vote in order to validate the referendum.

2. *WSBA Records:*

The resolution would make WSBA records subject to the Washington State Public Records Act, i.e., reverse the result of *The Seattle Times v. Washington State Bar Association*.

3. *WSBA Records:*

The resolution would make WSBA records subject to RCW 40.14, i.e., the public records retention legislation.

4. *WSBA Meetings and Minutes:*

The resolution would make WSBA meetings and minutes of those meetings subject to the Open Public Meetings Act (RCW 42.30 and RCW 42.32.030).

5. *WSBA Random Audit Program:*

The resolution would abolish the WSBA Random Audit of Trust Accounts Program (RLD 13.1(a)).

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The Real Farewell —This time I'm not kidding.

As you, Dear Reader, have now discovered, my first farewell address (*Bar News*, January 1991, "Fast Forward to Flashback—a Tale of our Times") was really a spoof. Last January I invented all those "accomplishments" of my term as your 101st president, with the thought that in the remaining nine months of my term maybe some of those projects would be more credibly received if they appeared in hard print.

I am disappointed to report, however, that we do *not* have downloadable relay satellite antennas operated by the CLE Department which would have made seminars immediately available to Omak lawyers who, instead, have to travel half a day to Seattle. Nor do WSBA members have the cellular phone group discounts that are available to used car salespersons. We *do* have a bar association fully capable of implementing those and other programs mentioned in last January's article, but whether the Board of Governors chooses to do so is up to them, not me. And certainly not now, as this lameduck is limping off to other nests, wings folded, beak still unbent but much wiser as to how the bar works. My lesson learned: the president may propose, but only the Board of Governors can dispose.

Which is not to suggest that this hard-working Board of Governors did not get a lot done this year. On the contrary. (Although I hesitate to confess it to them, most of my secret "wish list" got granted).

The new ADR Section is up and more than running, it's galloping.

A bar sponsored computerized bulletin board can be called up by anyone with a modem and a working index finger.

The discipline process is being streamlined, thus assuring due *and speedy* process to the lawyer and to the complainant.

The organization's bylaws are being examined to prepare us for the challenges of the next century, a mere 100 months away.

For the first time, we have futurists drawn from our bar's many constituencies joining together to plan how we meet those challenges. These Long-rangers are writing for us a "book of possibilities" that the Board starts working on this month. And, thanks to 100 of you who stepped forward these past few months, we now have the Lawyer to Lawyer mentoring program that will cut the latent Rambo out of the heart of every new admittee (to be replaced, we hope, by Atticus Finch attributes).

So, all in all, I don't feel too bad about putting that scuba tank on my back and heading down to Roatan, as promised last January. There are a few more projects I would love to see implemented by the bar but lameducks should not be greedy lest they become roast ducks.

Speaking of which, there will be a "roast" worth seeing, to be conducted at our annual business meeting on Friday, September 6 at Seattle's beautiful new convention center. In keeping with our new high-tech orientation, the bar will be showing a videotape entitled "CLE from Hell." It demonstrates the agony of a lawyer attempting to fulfill his annual CLE requirements by attending a CLE on computers—on New Year's Eve. Your favorite lawyer/caricatures are portrayed using the new SCOMIS system and other computer developments. I am trying to get the CLE department to grant at least one hour of CLE credit to all those who attend this annual meeting because of the important educational aspects of the film.

More CLE credits could become available to attendees depending on what



Lowell K. Halverson

happens to certain resolutions being presented during the meeting. Their backers promise us that the "live" theatre will make the videotaped presentation seem like Sunday morning TV. If all goes as I anticipate, the educational opportunities presented by the resolution portion of our agenda will be substantial. We should be able to argue for two additional hours of CLE credit on my presentation of "How to Run a Meeting Using Robert's Most Recent Unpublished Rules of Order." You won't want to miss this annual meeting; seating is limited due to the sizable chunk of reserved seating demanded by the press.

Which makes for an exciting way to exit the 101st presidency. Thanks to all of you ... and farewell (no kidding).

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We are also pleased to announce that
Ronald W. Goss
has joined the firm as an associate.

Ronald W. Goss was formerly a shareholder with the Utah law firm of Van Cott, Bagley, Cornwall and McCarthy. His practice there was exclusively devoted to bankruptcy law. He was the law clerk to the Honorable Glen E. Clark, Chief United States Bankruptcy Judge for the District of Utah. Mr. Goss has authored several published articles relating to bankruptcy law and has briefed and argued six reported decisions.

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New Washington Franchise Laws and Regulations Change Washington Practice

by Gary R. Duvall

In January 1980, the *Bar News* published my article, "Franchise Rule to Change Washington Practice." Over ten years have passed; now, again, significant developments in franchise law prompt me to notify my fellow members of the Bar.

The 1991 amendments to Washington franchise statute and regulations are the most significant developments since the promulgation of the 1979 Federal Trade Commission Franchising Rule.

These amendments reflect both the maturing of the franchising industry and the aging of the Washington franchise legal framework. Washington was among the first states to pass a franchise law in 1971. Since then, numerous states and the Federal Trade Commission have adopted franchise laws or regulations, resulting in what some have called a "patchwork quilt" of state and federal franchise regulation.

The statutory changes enhance internal consistency, reduce disadvantages now faced by Washington-based franchisors in dealing with other states' laws, and clarify the authority of the Department of Licensing. A broad consensus of franchisor interests, franchisee interests and regulators' views is reflected in the amendments.

The regulatory changes are intended to simplify certain procedures and to enhance consistency with other states' procedures.

Franchise Act Revisions

The WSBA Business Law Section Franchise Act Revision Committee's proposals to streamline Washington Franchise Investment Protection Act (FIPA), RCW 19.100, passed the Washington legislature as SB256, and

were signed by the Governor on May 16, 1991. *These changes became effective on July 28, 1991.*

As a member of the Committee since its inception in 1985, I am particularly pleased to announce that franchising will be easier for franchisors in Washington, while basic protections for franchisees are maintained. (Other members of the Committee included Kent Carlson, Chair, Terrence M. McTigue, Robert H. Alsdorf, Professor Donald S. Chisum, George A. Purdy, Michael E. Stevenson (nonvoting)).

Certain key elements of the revisions to FIPA are set forth below. There are other changes too numerous to mention in this summary. Readers are advised to review the full text of the legislation.

Seven Areas of Lessened Regulation:

Narrower Definition of Franchise

The definition of what is a franchise is modified to adopt a definition which is more certain and more prevalent throughout the United States. The new definition covers fewer activities and is clearer. RCW 19.100.010.

Elimination of Salespersons' Registration

Salespersons will no longer have to pay an initial or annual fee, or submit their financial statement. They will have to submit a uniform salesperson's disclosure form, which is in use in other states. RCW 19.100.010, 140.

Out-of-State Sales Exemptions

Uncertainty as to whether Washington-based franchisors must comply with Washington law when dealing with an out-of-state franchisee will be reduced,

under a specific new exemption for out-of-state sales by Washington-based franchisors. RCW 19.100.020.

Use of UFOC Format and State Addenda

The statute eliminates a former trap for unwary out-of-state franchisors, by specifically authorizing regulations concerning the form and content of offering circulars which have been utilized by the Washington Department of Licensing Securities Division for many years, the Uniform Franchise Offering Circular ("UFOC"). State-specific changes for the State of Washington, or utilizing a state addendum, will still be required. RCW 19.100.030, .040.

Exemption for Wealthy and Sophisticated Franchisees

The new statute adds an exemption for "accredited investors." An exemption of a franchisor or offering to an accredited investor, as defined by regulations to be promulgated by the Director of the Department of Licensing, is exempt from registration, but not from disclosure. RCW 19.100.030.

Permitting Negotiated Changes

Franchisors will not have to amend their offering circular or reregister if certain negotiated changes are made to a franchise agreement at the request of the franchisee. Anti-discrimination rules may still apply, however. RCW 19.100.180, New Section 12.

Settlement of Disputes

The new amendments permit releases and waivers by franchisors and franchisees as a part of a settlement of a bona fide dispute if the releasing or waiving party is represented by counsel. RCW 19.100.220.

Four Additional Requirements

Large Franchisors' Annual Filing

In order to maintain the exemption from registration for large franchisors, an annual filing will be required. RCW 19.100.030.

Reduction of the No-Advertising Exemption

The previous exemption for the sale of the first nine franchises, if sold without advertising, is reduced to the first three franchises, sold without advertising, by a franchisor who has not sold franchises outside of Washington, and if the buyer is represented by legal counsel or a CPA. RCW 19.100.030.

Additional Amendment Requirements

Washington law concerning amendment of registration of franchise offerings is conformed to that of all other registration states, in that registration amendment will be required whenever there is a material change in any of the information contained in the offering circular (not just in the financial condition of the franchisor). RCW 19.100.070.

Higher Fees

Initial filing fees and other fees will be raised slightly. RCW 19.100.240.



These changes will require changes in forms and procedures being used by franchisors in registration or claiming exemptions in the State of Washington.

New Washington Franchise Act Interpretive and Policy Statements

Effective January 1, 1991, the Washington State Securities Division of the Department of Licensing promulgated five Franchise Act Interpretive Statements (FIS-1 through FIS-5), and five Franchise Act Policy Statements (FPS-1 through FPS-5). Certain key changes are summarized below.

New Washington State Addendum

The Securities Division has changed the form of state addendum which it will require. Previously the termination and non-renewal sections of the statute had to be set forth verbatim in an addendum or as a part of the offering circular and franchise agreement. Under new FPS-1, a new alternative rider may be attached to either the offering circular or to the franchise agreement. Two possible riders are given, one of which is consistent with a new uniform state addenda promulgated in January of 1991 by the North American Securities Administrators Association ("NASAA"). Although we recommend that franchisors consider adopting the new rider, the state addenda has been less than "uniform" in many states in practice.

Requests for Interpretive and No-Action Letters

The Securities Division has promulgated a new procedure for requests for such letters.

Surety Bonds in Lieu of an Impound Account

The Securities Division now will consider requests for surety bonds in lieu of impound accounts.

Franchise Brokers' Licenses Effective

A franchise broker's license will now be effective for a calendar year and will expire on the last date of each year.

Filing Date Determination

The filing date of documents will now

be the date the document was received by the Securities Division of the Department of Licensing, regardless of the date that it may have been received by state mail facilities or other departments. We continue to recommend that documents be sent by certified mail, especially in light of this policy.

Arbitration in a State Other Than Washington

The Securities Division has qualified its prior position requiring that all arbitrations with Washington franchisees occur in the State of Washington. The arbitration may now occur outside Washington if the arbitrator at the time of the arbitration so determines. Franchise agreements registered in the State of Washington may so state. It is unclear whether this restriction, even as modified, would be upheld if challenged in court in light of recent cases from other jurisdictions.

New regulations will have to be issued to implement the FIPA amendments summarized above, including elimination of salespersons' filing regulations and providing for the "accredited investor" regulations.

Conclusion

These developments ease the regulatory burden on franchising in this state. They bring Washington franchise practice in line to a greater extent with the practice in other states that regulate franchising. They reflect, in this author's opinion, a new spirit of cooperation between competing interests in franchising. Although the relationship between franchisor and franchisee is by its nature adversarial, the maturation of the domestic franchise industry may permit increasing cooperation of these interests in the future. □

Gary R. Duvall concentrates his practice in franchising, is a member of the American Bar Association Forum Committee on Franchising and the International Franchise Association Legal Legislative Committee, and is Of Counsel to Stoel Rives Boley Jones & Grey in Seattle.

CAN YOU ANSWER THESE QUESTIONS?

- What is a Jurat?
- Can I notarize documents going to other states? What are their requirements for notarial acts?
- How do I notarize for someone acting under Power of Attorney?
- Can I notarize wills?
- How do I certify a true and correct copy?
- What is the difference between a Notary bond and errors & omissions insurance?
- How do I administer an oath?
- What are the different types of Notarial acts? What procedures must be followed according to State Law for these acts?

These questions, the Washington State Notary law, and common practices for Notaries in the State of Washington are covered in our seminar.

DON'T depend on "second hand" information. EVERY Notary needs their OWN training. A Notary is usually "appointed" to their position without any training or knowledge of the duties and responsibilities of the office.

For this reason we have developed a seminar for ALL Notaries. You need to know all of the responsibilities and liabilities of the office. In most cases, employers and the Notary can BOTH be held responsible for mistakes made by the Notary. YOUR Employer MAY not be aware that they could be directly involved in any legal action taken against you as a Notary. This seminar is also in their best interest. If you attended a seminar prior to 1988, you should attend again.

Our seminar is a two and one half hour session concentrating on Washington law, and taught by a Washington State Notary. Our speaker is Judith Welsh. She is President of the Attorney and Notary Supply of Washington, Inc. Judith worked with the Law Revision committee on the 1986 notary law and is known statewide for her extensive notary knowledge. An experienced notary instructor for many years, Judith has also been a notary bonding agent since 1982.

We have scheduled a seminar in your area. We recommend early sign up. To reserve space, return the form below with a \$50.00 check payable to "ANS of Wa., Inc." All seminars start at 9:00 a.m. and end about 11:30 a.m.

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ALL SESSIONS BEGIN AT 9am AND END AT 11:30am

<u>CITY</u>	<u>LOCATION</u>	<u>DATES</u>
SEATTLE	Four Seasons Olympic 411 University	Thursday, January 24, 1991 Thursday, April 18, 1991 Wednesday, July 17, 1991 Wednesday, October 16, 1991
TACOMA	Best Western Executive Inn 5700 Pacific Hwy E., Fife	Wednesday, January 16, 1991 Thursday, May 9, 1991 Wednesday, September 18, 1991
EVERETT	West Coast Everett Pacific 3105 Pine Street	Wednesday, May 15, 1991
VANCOUVER	Red Lion at the Quay 100 Columbia Street	Wednesday, May 22, 1991
SPOKANE	Cavanaugh's River Inn 700 N. Division	Tuesday, April 23, 1991 Wednesday, September 25, 1991
BELLINGHAM	Best Western Lakeway Inn 714 Lakeway Drive	Tuesday, June 18, 1991
YAKIMA	Red Lion Yakima Valley 1501 N. First	Tuesday, June 11, 1991
WENATCHEE	West Coast Wenatchee Center 201 N. Wenatchee Ave.	Wednesday, April 24, 1991
OLYMPIA	Westwater Inn 2300 Evergreen Park Drive	Thursday, April 4, 1991
BELLEVUE	Best Western Greenwood 625 - 116th N.E.	Wednesday, January 9, 1991 Wednesday, May 8, 1991 Wednesday, October 3, 1991

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Badgered by Badgett

by Zachary Mosner

Negotiations attendant to troubled loans have always presented unique challenges to lending institutions. Banks have customarily been protected by comprehensive loan documents which state that no agreement or modification can be construed by any discretionary waiver and that no agreement altering terms can be construed absent a written agreement signed by the parties. During the 1980s, under various equitable theories including promissory estoppel, lenders were found liable for oral promises to lend money, make subsequent advances or waive strict compliance on troubled loans. Washington State was removed from the arena as to any major battles on these issues.

The tide turned with the advent of the 1990s. In *Badgett v. Sec. State Bank*, 56 Wn.App. 872, 878 (1990) the Court of Appeals implied a "good faith obligation" on any bank's part to consider a "work-out" or restructuring in light of a prior course of dealing. Despite prior loan documents stating that any prior waiver would not be construed as a waiver for future events of default, the court made a subjective analysis of loan history, thereby disregarding the parol evidence rule precluding use of evidence not included in the original loan documents. Many of the *dicta* of *Badgett* have been overturned in Supreme Court review of the case [116 Wn.2d 563, 569-574 (1991)], as will be discussed further

herein.

In addition, in 1990 the Washington State Legislature amended the statute of frauds to "tighten up" loan instruments and relationships to give greater commercial certainty to every transaction. Under RCW 19.36.100 a "credit agreement" was defined as follows:

....an agreement, promise, or commitment to lend money, to otherwise extend credit, to forbear with respect to the repayment of any debt or the exercise of any remedy, to modify or amend the terms under which the creditor has lent money or otherwise extended credit, to release any guarantor or consignor [*sic*: co-signer], or to make any other financial accommodation pertaining to a debt or other extension of credit.

Exempt under this statute were credit card transactions and consumer loan or credit transactions. RCW 19.36.120. Partial performance of any credit agreement would further fail to remove the agreement from operation of the statute under RCW 19.36.110 likely negating any promissory estoppel defenses. In order to qualify for this extraordinary protection the lender must comply with RCW 19.36.140:

The creditor shall give notice to the other party on a separate document or incorporated into one or more of the documents relating to a credit agreement. The notice shall be in type that is bold face, capitalized, underlined, or otherwise set out from surrounding written materials so it is conspicuous. The

notice shall state substantially the following:

Oral agreements or oral commitments to loan money, extend credit, or to forbear from enforcing repayment of a debt are not enforceable under Washington law.

The Supreme Court ruling in *Badgett* was premised upon events that occurred before enactment of the new statute. Nevertheless, issues considered in the case survive enactment of the statute; specifically, the implied duty of good faith and fair dealing. The Supreme Court holds that "the duty of good faith does not extend to obligate a party to accept a material change in the terms of its contract." *supra* p.569, 572. The parties must only perform in good faith the obligations imposed by the actual agreement.

There cannot be a breach of the duty of good faith by insisting upon strict performance consistent with the contract. The prudent commercial lender should make sure that each loan instrument has an integration clause, barring parol evidence of contract terms along with the language required under RCW 19.36.140. A consumer lender should use the same language in efforts to strengthen its legal position. Even without statutory protection for consumer loans, the Supreme Court ruling in *Badgett* makes it clear that the prudent lender that makes a properly documented loan has little to fear in the litigation arena. □

Zachary Mosner is a Seattle lawyer and occasional contributor to the Bar News on business law developments.

Resolutions

...to be presented at the Annual Meeting September 6, 1991

Note: The following resolutions were received by the publication deadline of July 8, 1991.
(See notice, page 44 of this issue.)

Resolution to Adopt State Open Meetings Policy

Be it resolved:

The Bylaws of the Washington State Bar Association shall be amended to state:

All regular and special meetings of the Board of Governors, its committees and sub-committees, sections and sub-sections, shall be open and public in accordance with the terms of the Open Public Meetings Act, RCW Chapter 42.30, and the minutes of these meetings shall be open to inspection in accordance with RCW 42.32.030.

Statement in Support of Resolution

The meetings of the Washington State Bar Association should be open and public. Minutes should be kept. Once upon a time, there was an Attorney General who thought these matters were governed by state law. See, Letter Opinion of E. Mackie to J. Whetzel, 9/2/71. It was a good idea then. It is a good idea now.

Open public meeting laws are appropriate to and compatible with the administration of a state bar association.

The Oregon State Bar Association is subject to Oregon's open public meetings act. The bar association has simply incorporated the state law into its bylaws. This resolution would bring about the same result in Washington.

It should not be supposed that the Open Public Meetings Act requires open and public meetings concerning matters which need to be addressed in executive session, quasi-judicial proceedings, or other narrowly defined circumstances. See RCW 42.30.110, 42.30.140. The purpose of adopting the Act is to assure that those narrowly defined circumstances are the only circumstances under which the bar's meetings will be closed.

Resolution to Adopt State Records Preservation Policy

Be it resolved:

The Bylaws of the Washington State Bar Association shall be amended to state:

The records of the Washington State Bar Association shall be preserved, stored, transferred, destroyed, or disposed of in accordance with the terms of RCW Chapter 40.14,

the law which governs the preservation and destruction of the public records of the state of Washington.

Statement in Support of Resolution

Earlier this year, a task force of the Seattle-King County Bar Association recommended that the state bar association adopt a records retention policy.

This resolution would accomplish that purpose.

The resolution is not meant to suggest criticism of the present administration and leadership of the state bar association. But it is to suggest that the association would have been well served had the standards described in RCW Chapter 40.14 been applied in the past.

Resolution to Abolish Random Audits of Lawyer Trust Accounts

Be it resolved:

The President and Board of Governors of the Washington State Bar Associ-

ation shall direct the Disciplinary Board to authorize only such audits and examinations of a lawyer's books and records as the Disciplinary Board has determined by majority vote are sup-

ported by reasonable grounds to believe that the lawyer has misappropriated client funds or has otherwise compromised the integrity of the lawyer's trust account.

Statement in Support of Resolution

The fact that someone is a lawyer is not enough to establish probable cause to believe that the lawyer has misappropriated client funds or otherwise compromised the integrity of property

held in trust. That is what this resolution is all about. The President and Board of Governors of the Washington State Bar Association should make it clear that lawyers have constitutional rights, too.

The Rules of Lawyer Discipline

authorize random examinations of a lawyer's books and records. RLD 13.1(a). Random searches are not based upon probable cause. They are not constitutional. This resolution is necessary to bring enforcement of the Rules of Lawyer Discipline within their constitutional limits.

Resolution to Adopt State Records Disclosure Policy

Be it resolved:

The Bylaws of the Washington State Bar Association shall be amended to state:

The records of the Washington State Bar Association shall be available for inspection and copying in accordance with the terms of the Washington State Public Records Act, commonly known as the Public Disclosure Act, RCW 42.17.250-42.17.340.

Statement in Support of Resolution

The Seattle Times was right. The Public Records Act should apply to the Washington State Bar Association.

After all, what do we have to hide?

Public disclosure laws are appropriate to and compatible with the administration of a state bar association. The Oregon State Bar Association is subject to Oregon's public disclosure laws. The bar association has simply incorporated the state law into its bylaws. This resolution would bring about the same result in Washington.

It should not be supposed that the Public Records Act would require disclosure of lawyer disciplinary records. The Act exempts the following materials from disclosure:

Specific intelligence information and specific investigative records compiled by investigative, law en-

forcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

RCW 42.17.310(1)(d). That is a reasonable standard. We can live with that.

The *Times* should have won its lawsuit against the state bar association in 1988, when it contended that the association was subject to the Public Records Act. If it had, there would have been no question about access to the bar's financial records these past few years. This change in the bylaws will settle the issue.

Resolution to Enlarge Membership Voting Rights

Be it resolved:

The Bylaws of the Washington State Bar Association shall be amended by replacing the present text of Article VII, Section 8, with the following:

Section 8. *Membership Voting Rights.* The membership may vote to modify or reverse a decision of the Board of Governors, or to adopt resolutions on any subject on which resolutions have been presented at the annual meeting, including amendments to the Association Bylaws.

The Board of Governors may refer any proposal upon which the membership may vote to a vote of the entire active membership of the Washington State Bar Association. The Board of Governors shall refer any such proposal to a vote of the entire active membership upon receiving a petition to that effect, signed by five hundred (500) active members of the Association. Petitions must be submitted within ninety (90) days of the action which is the subject of the referral.

A vote of the membership shall be conducted in accordance with the procedure described in Article VII, Section 9. The proposal shall be enacted if it is approved by a majority of the votes cast.

Statement in Support of Resolution

Under the present bylaws, the membership may vote on a decision of the Board of Governors or a resolution which has been presented at the annual meeting if a petition signed by 250 active members is submitted within 60 days of the action in question. The vote is ineffective unless fifty percent of the membership participates in the election.

The proposed amendment would increase the signature requirement, enlarge the period during which signatures can be obtained, and eliminate the requirement that fifty percent of the membership participate in order to validate an election.

The idea is to enable lawyers who vote to outvote lawyers who don't vote.



Ten Years Ago: *Washington State Bar News*, August 1981

Bar News editor Steven Reisler called the Board of Governors' meeting in Ocean Shores "sometimes tense... punctuated with an occasional accusatory outburst." The source of

irritation was the 1981-82 WSBA budget, up \$300,000 from the year before at \$2,948,000. Dues were raised \$10 to \$25 per year, as were bar exam fees and CLE registration fees.

"The final budgetary decisions represented a compromise between necessity

and political reality. The dues increase passed by the Board is intended to be both palatable to the membership and sufficient to carry the Association through the next few years (barring unforeseen expenses) without another dues increase."

Twenty Years Ago: *Washington State Bar News*, August, 1971

Noting, "An ex-president of the Washington State Bar Association is about as influential as Carrie Nation at a distiller's convention," president Robert O. Beresford bade farewell to his year in office by touching on a variety of subjects affecting the future of the WSBA. He thought the Board of Governors system, unchanged in thirty-nine years, needed reform: the number and jurisdiction of committees needed change, and the Board "should not have arbitrary and unlimited power to appoint committee chairmen (this power should be exercised only in conjunction with the committee itself)." Beresford returned to the committee system, saying, "I think it is a pretty sad commentary when the bar association

can send out questionnaires to every member asking for interest of the members in committees, and then place possibly one in five of those who have expressed an interest in serving on a committee." He also thought "some way has to be found to spread the membership on the board [of Governors] into areas which are really stepchildren insofar as bar offices are concerned," citing counties which had never had anyone elected to the Board. He called for publication of the minutes of Board meetings "in detail," and thought voting in WSBA elections should be by where lawyers work rather than live. "A glaring example of the result of such a rule is shown in a small wight man office such as my own, where one or the other of us must vote in the First, Second, Sixth and Seventh Congress-

sional Districts." Finally, he predicted that because of some of his opinions in this column and his activities as president, "the Board of Governors... will place me in a position of influence by appointing me to an important committee such as the committee to study the repeal of the Nineteenth Amendment."

At the University of Washington School of Law applications by women were up dramatically, from 85 in 1970 to 225 in 1971. The number enrolled as first-year students in 1971 was 35, up from two in 1964.

Governor Dan Evans appointed lawyers to two new judgeships: Howard Patrick of Oak Harbor to the Island-San Juan County Superior Court, and John Skimas of Vancouver to a new Clark County seat.

Thirty-Five Years Ago: *Washington Law Review and State Bar Journal*, Winter 1956

The WSBA met in Tacoma with the State Judicial Council and the Association of Superior Court Judges. President Harold Coffin reported that the Board met approximately monthly, mainly in Seattle but also in Bremerton, Vancouver and Spokane to take the pulse of the Association. "The meetings take from one to two days, starting at 9:30 in the morning and ending at 5 or 5:30 or 6 o'clock in the evening," he told members. Coffin told the meeting the Board was considering a request to suspend Canon 35 "for a 90-day period to permit courtroom photography on a trial basis," but was going to wait and see what the American Bar Association decided to do first.

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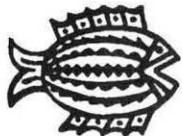
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Others simply relax, enjoy the sun and experience San Diego's lifestyle.

This year, there is one more reason to visit San Diego – and it's especially designed for you.



WASHINGTON STATE BAR ASSOCIATION

ANNUAL CONVENTION

Attend the WSBA Annual Convention and you'll complete a full year's requirements of CLE credits. The cost is minimal – about \$16 a credit – and the benefits are limitless.

This year's topic – surviving the 90s – will give you the latest information on bankruptcy, growth management, law office management, professionally handling unprofessional conduct and more.

You'll meet and share experiences with other attorneys, learn new techniques for solving problems and pick up the latest on practicing law in Washington.

Harvard Professor of Law Arthur Miller, brought to you by the WSBA Litigation Section, the Honorable James Dolliver of the Washington Supreme Court, noted entertainment attorney Jay Cooper, and Elden M. Rosenthal, plaintiff's counsel in the Portland "skinhead trial," will offer special presentations throughout the Convention.



SEPTEMBER 11-14, 1991

TOOLS FOR SURVIVING THE 90'S

Keep up with the ever-changing practice of law. Choose from over a dozen innovative CLE seminars.

DANCES WITH WOLVES AND OTHER PREDATORS OF PROFESSIONALISM.
(WSBA Criminal Law Section)

TO HAVE AND HAVE NOT — DISCHARGE ISSUES IN BANKRUPTCY.
(WSBA Creditor-Debtor Section)

PEACEKEEPING ON PLANET EARTH: THE UN AS THE STARSHIP ENTERPRISE.
(WSBA World Peace Through Law Section)

GROWTH MANAGEMENT: HOW THE WEST WAS WON OR THE INVASION OF THE LAND SNATCHERS? (WSBA Environmental and Land Use Law Section)

SCENES FROM A FAMILY LAW PRACTICE. (WSBA Family Law Section)

YELLOW BRICK ROADS AND EMERALD CITIES: ISSUES IN PUBLIC PROCUREMENT AND PRIVATE CONSTRUCTION. (WSBA Public Procurement and Private Construction Law Section)

THE LEGEND OF GREYMATTER: THE STORY OF INTELLECTUAL AND INDUSTRIAL PROPERTY. (WSBA Intellectual and Industrial Property Section)

TRADING PLACES FOR INTERNATIONAL BUSINESS. (WSBA International Law Section)

2001: A MANAGEMENT ODYSSEY FOR THE GENERAL PRACTITIONER. (WSBA General Practice Section and Law Office Economics and Management Section)

A FISTFUL OF DOLLARS GONE WITH THE WIND. (WSBA Taxation Section)

ADVISING MISS DAISY FROM HERE TO ETERNITY. (WSBA Health Law Section)

BORN FREE: CELEBRATING THE BILL OF RIGHTS. (WSBA Mentor Program)

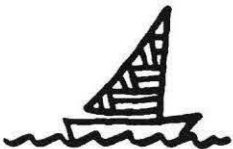
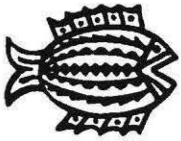
INSIGHTS FROM A LEGAL EAGLE — SPECIAL GUEST SPEAKER ARTHUR MILLER.
(WSBA Litigation Section)

For your husband, wife, kids or interested friend — **WHAT'S IT LIKE TO BE A LAWYER?** The WSBA Lawyers' Assistance Program will present a series of informative and interactive workshops on the stress and distress of being a lawyer or living with one!

ANNUAL BUSINESS MEETING

Mark your calendars for **SEPTEMBER 6, 1991** in **SEATTLE** at the Washington State Trade & Convention Center, 9:00 a.m.—12:30 p.m. Preliminary schedule includes three resolutions to debate, presentation of awards, addresses by WSBA President Lowell K. Halverson and Supreme Court Chief Justice Fred H. Dore.

This will be the business meeting you'll never forget. Don't miss the surprise grand finale!



SPECIAL GUESTS

One of the nation's most dynamic legal authorities. ARTHUR R. MILLER, Professor of Law at Harvard University, former host of nationally syndicated program "Miller's Court" and commentator on ABC-TV's "Good Morning America," will close this year's Convention with a CLE seminar sponsored by the WSBA Litigation Section.

Law with a California twist. JAY L. COOPER talks about Finding the Entertainment in Entertainment Law. Mr. Cooper is a partner with the Beverly Hills firm Cooper, Epstein & Hurewitz, is widely published and has spoken extensively on entertainment law.

ENTERTAINMENT AND RECREATION

HOLLYWOOD GALA JUBILEE Come as you are or as your favorite film star, but don't miss this night. You'll live it up Hollywood style with live entertainment, dancing, and an array of fine foods. There's nothing stuffy about this evening — just a night to remember.

WSBA GOLF TOURNAMENT AT CARLTON OAKS GOLF COURSE. The only handicap you'll experience is never wanting to play another course again. Carlton Oaks — the finest golf course in southern California — offers a glimpse of what Nicklaus and Trevino live daily. Only 72 tee times are available, so sign up early.

A case of courage and conviction. ELDEN M. ROSENTHAL, tells of the professional and personal triumph in obtaining a \$12.5 million judgment against white supremacist Metzger for his role in recruiting Skinheads to murder Mulugeta Seraw in 1988. Mr. Rosenthal is a partner in the Portland firm Rosenthal & Greene.

Celebrating the Bill of Rights. Hon. JAMES M. DOLLIVER, highly respected member of our state Supreme Court, addresses student rights and responsibilities at a CLE seminar sponsored by the WSBA Mentor Program.

A salute to Pro Bono Attorneys. Pro Bono Attorneys will be given special recognition throughout the Convention for the hours and energy they devote to people in need.

WSBA TENNIS TOURNAMENT Take em to Court! This round-robin, mixed doubles tournament lets you test your skills in another court. Space is available on a first come, first served basis, so sign up early.

SAN DIEGO SIGHTS AND SCENES San Diego's attractions are limitless, San Diego Old Town, the Wild Animal Park, Sea World, or the Scripps Institute. Other options? Temeculah Valley, home of world-class wineries; Tijuana, a short trolley ride away and a shopper's delight; and Baja California Peninsula with miles of unspoiled beaches.



E A R L Y

TOOLS FOR SURVIVING THE 90'S

Washington State Bar Association Early Registration Form

COMPLETE THIS FORM AND RETURN IT WITH PAYMENT TO:

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1991 Annual Convention
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**QUESTIONS? CALL THE WSBA AT
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WSBA Convention Accommodations are available at the San Diego Marriott and Marina from September 10-14. Special group rates are available—subject to availability. Reservations must be made by calling:

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(619) 234-1500 ext. 6800**

	Price (per person)	Qty.	Total
Standard Registration: includes 15 hours CLE Credit, course materials, entrance to -- exhibit hall, welcoming reception, morning coffee and refreshment breaks.	\$235	_____	_____
Special Registration: for attorneys over age 70 or those admitted to the WSBA after Sept. 1, 1989 (same benefits as listed above).	\$150	_____	_____
Wednesday Luncheon: Jay Cooper	\$20	_____	_____
Friday Luncheon: Elden Rosenthal	\$20	_____	_____
WSBA Tennis Tournament: includes court time, tennis balls, refreshments and awards.	\$25	_____	_____
WSBA Golf Tournament: includes green fees, golf cart (two person occupancy minimum), transportation and awards.	\$75	_____	_____
Hollywood Gala Jubilee:	\$49	_____	_____
	TOTAL \$		=====

NAME _____

BAR # _____

GUESTS _____

ADDRESS _____

CITY, STATE, ZIP _____

REGISTRATION



Public Notices:

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

The average coupon equivalent yield from the first auction of 26-week treasury bills in July 1991 is 5.98%. The maximum allowable interest permissible for August 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.

FORMAL OPINION #189 (1991)

Disclosure of Client Information to Treasury Department on IRS Form 8300

Issue:

What is a lawyer's obligation regarding compliance with the U.S. Treasury Department IRS Form 8300 which asks the disclosure of the identity of a client making cash payments of \$10,000 or more to the lawyer, as required by federal law and regulation?

Short Answer:

A lawyer is obligated to comply with the requirements of federal law and regulations that IRS Form 8300 be filed under circumstances requiring it. However, the identity of a client paying \$10,000 or more to a lawyer is a "secret" as defined in the Rules of Professional Conduct as "information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client." As such, the attorney may not disclose client identifying information except as permitted by RPC 1.6. Refusal to make such disclosure may result in the issuance of a summons to the lawyer, and the lawyer must properly respond to any efforts to enforce the summons.

Discussion:

Section 6050(I) of the Internal Revenue Code of 1986, as amended, requires that any person who is engaged in a trade or business and who, in the course of such trade or business, receives \$10,000 or more in cash in one transaction or in two or more related transactions, must file a return with the U. S. Treasury Department. The return,

which is to be made on IRS Form 8300, requires various information about the cash transaction, including the name, address, and tax identification number of the person from whom the cash was received.

It is our opinion that a lawyer must disclose to a client that if the client pays the lawyer \$10,000 or more in cash, the lawyer must comply with the

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requirement that IRS Form 8300 be returned as required by law. However, the lawyer may not disclose to the Treasury Department, through the filing of Form 8300 or otherwise, any information pertinent to the client's identity without the informed consent of the client or pursuant to other circumstances permitting disclosure as specified in Rule 1.6 of the Rules of Professional Conduct.

RPC 1.6 provides in part that:

(a) A lawyer shall not reveal confidences or secrets relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in section (b)

(b) A lawyer may reveal such confidences or secrets to the extent the lawyer reasonably believes necessary:

(1) To prevent the client from committing a crime; or

(2) To establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, to respond to allegations in any proceeding concerning the lawyer's representation of the client, or pursuant to court order.

"Confidence" is defined by the RPC Terminology section as "information protected by the attorney-client privilege under applicable law." "Secret" is defined as "other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client." For a discussion of the distinction between "confidence" and "secret," as well as additional reasoning equally supportive of our conclusions herein, see Formal Opinion 183 (1990).

An assertion by a lawyer of the inability to disclose information on IRS Form 8300 because of the requirements of RPC 1.6 may result in the service of a summons upon the lawyer pursuant to 26 U.S.C. §7602, seeking the withheld information. An IRS summons is not self-enforcing. United States district courts instead are authorized to enforce a summons upon a proper showing. §26 U.S.C. §7402(b) and 7604.

If a summons is served upon a lawyer, the lawyer must continue to decline to disclose client secrets except in compliance with RPC 1.6. If the government then seeks enforcement of the summons through the federal courts, the lawyer must respond properly and litigate the issue of disclosure. If ordered to disclose by a judge, a lawyer may do so in compliance with RPC 1.6, which permits a lawyer to reveal client secrets to the extent the lawyer reasonably believes necessary "pursuant to court order."

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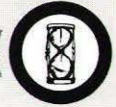
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August 1991

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

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

9 Advising the Small Business Client, Seattle. *Sponsored by:* WSBA CLE and WYLD. Also August 2 in Spokane. *For information:* (206) 448-0433.

9 Understanding and Analyzing Financial Statements for Lawyers, Seattle. *Sponsored by:* Performance Seminars, Inc. *For information:* (800) 635-9615, fax (904) 222-4862.

13 Workers' Compensation in Washington: "Issues and Answers," Seattle. *Sponsored by:* National Business Institute, Inc. *For information:* (715) 835-7909. Also August 15 in Spokane.

15 Workers' Compensation in Washington: "Issues and Answers," Spokane. *Sponsored by:* National Business Institute, Inc. *For information:* (715) 835-7909. Also August 13 in Seattle.

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.

15 *Bar News* deadline, October issue.

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.

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

15 *Bar News* deadline, November issue.

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.

4-5 "Macs and Tax," Gonzaga Law School's 18th Annual Tax Symposium, Hill's Resort, Priest Lake, Idaho. *For information:* John Maurice, (509) 328-4220.

15 *Bar News* deadline, December issue.

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

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.

November 1991

15 Inaugural Community Property Symposium honoring Professor Emeritus Joseph Nappi, Gonzaga Law School, Spokane. *For information:* John Maurice, (509) 328-4220.

15 *Bar News* deadline, January 1992 issue.

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THE BOARD'S WORK

by Lindsay Thompson, Editor, Bar News

Blaine, Washington, July 19-20, 1991

Present: President Halverson, President-elect Joe Delay, and all the governors. **Also present:** Robert F. Bakemeier (WSBA/YLD, Friday); Judge Roseanne Buckner (Superior Court Judges' Assn., Friday); Dennis P. Harwick (WSBA executive director); Judge Robert McBeth (Magistrates' Assn.); Donna McNamara (SKCBA/YLD); Lee Ripley (WSBA disciplinary counsel, Friday); Kristin Stred (Washington Women Lawyers, Friday); Macduffie Setter (Prosecuting Attorneys' Assn.); Mary Alice Theiler (SKCBA Trustees); Lindsay Thompson (*Bar News* Editor); Morton Tytler (Government Lawyers Assn.); and Robert Welden (WSBA general counsel).

A Long Report About the Long-Range Report: After an executive session of about an hour, the Board of Governors suspended the agenda to hear three members of the WSBA Long Range Planning Task Force. Task force chair and former WSBA president William Gates, Seattle lawyer and former WSBA governor Julie Weston, and Seattle lawyer and Asian Bar Association president Gary Machara presented their group's 28 page report and urged its careful and prompt consideration by the board.

"We found a unanimously dim view of the profession and the Bar Association," Gates said. "Things are not as they should be, and the Bar Association is seen by most lawyers as a necessary burden. We need to do something about it when

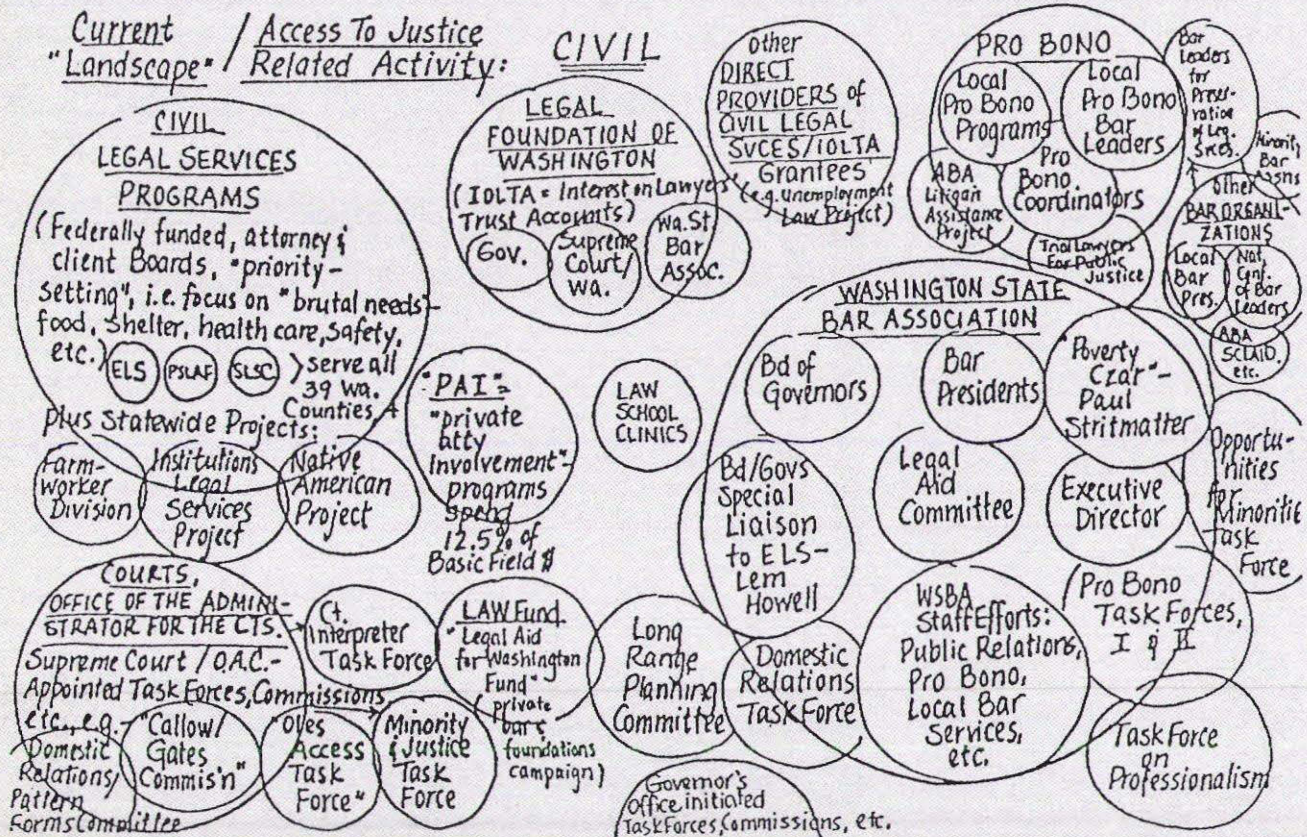
this is expressed by as significant cross section of the bar as the Task Force membership represented."

"It's not a time for business as usual," he continued. "It's time to think about the agenda of the bar—what it ought to be, to change perceptions within and without. This report is an invitation- no, an urging- that the Board of Governors do some significantly different things." The Task force Report makes five recommendations. Each is outlined below, with extensive quotations from the Report.

Access to Justice: The task force's first recommendation declares, "The Washington State Bar Association should accept the challenge of making our system of justice to every Washingtonian.

1. Structural changes in the WSBA should be considered to implement the commitment to access to justice.
2. The Board of Governors should take an active role in achieving the goal of access to justice.
3. Additional staff should be allocated to assist the Bar in its obligation to deliver legal services.
4. The bar must sponsor innovative solutions to the problem of access to justice, including the licensing of laypersons."

Weston told the board the single driving force behind this recommendation was a chart prepared by Evergreen Legal Services director Ada Shen-Jaffe showing, in Venn diagram form, how many players there are in the legal services arena and how often disconnected their efforts are.



"We are the logical leaders," she said. But "we're not just talking about pro bono or the indigent. Much has been done in that area, though we're still not up to the mark. The problem is, only lawyers know the law any more. We need to educate the public. There are major literacy problems we aren't addressing. Take our pamphlets on aspects of the law. We circulate hundreds of thousands of these every year, but they are written for people with college educations."

Weston acknowledged that the recommendation of licensing of nonlawyers to provide certain types of legal services continues to be controversial, but must be considered. "There are too many people, not just the poorest, who are ill-served by the justice system."

Information Technology: The task force calls on WSBA to "ensure that the state's lawyers and judges lead the way in making use of new information technology, to include:

1. Aggressively advancing the current work of the judiciary and the Office of the Administrator for the Courts in establishing uniform databases for material like the Washington Reports and Washington Code;

2. Creating a system to enable ready, inexpensive access to this data;

3. Assisting lawyers in the use of this system and in the selection of appropriate equipment; and

4. Establishing within the Bar, expertise and a committee structure

- a. to effect this recommendation and improve the system to maximize its value to the lawyers of the state, and

- b. to ensure this state's system for delivery of legal services and judicial administration take full advantage of innovations in information technology.

Various streams of information development are moving on parallel tracks in Washington, the Report noted. The Office of the Administrator of the Courts has developed the DISCIS, SCOMIS and JUVIS systems of statewide computerized court records. A pilot project involving electronic filing of documents with courts is underway in Kitsap County. The WSBA is working with various state entities to get the Washington Reports, Administrative Code and statutes completely into computer-accessible forms and available to lawyers and judges, either by computer terminal, like WESTLAW and Lexis, or on CD-ROM disks.

"These developments signal the absolute necessity for the Bar to take an active role with the judiciary and the Office of the Administrator for the Courts to work as a team in the enhancement of the practice of law with all the modern tools available." As part of this effort, the Report calls for standardization, so that data can be transferred from one system to another. "Hardware and software must also be compatible so that judges, clerks, and attorneys can all communicate with the same databases, and with each other." Moreover, duplication of

systems and services must be avoided; CLEs must be laid on to help lawyers learn how to use emerging technologies.

Competency and Professionalism: "Lawyer competency and professionalism are central missions of the Bar. The Washington State Bar Association should adopt additional education and skills training requirements.

1. CLE hours should be increased and the use of advanced technology should be considered for a portion of the credits. Additional hours of CLE should be mandated in ethics and professionalism.

2. A mandatory skills training requirement should be instituted for licensing.

3. An internship or sponsorship requirement should be established for licensing."

Once the law had its own apprenticeship program, the report notes. But more law schools and students and changes in the business climate have directed the law into the form of another business, driven by profit considerations. "The Task Force believes it is the responsibility of the Association to institute programs to reestablish the requirements and training that define a profession. Raising membership requirements will elevate the status of qualifications of the profession in its own eyes and in the eyes of the public it serves." In a chart, the task force compared the requirements to be a lawyer with those of other professions:

Lawyers: BA + 3yrs law school + exam; 45 CLE hrs/3yrs.

CPAs: BA (5yrs); CPA exam, 1-2 yrs public accounting experience; 80CLE hrs/2yrs.

Engineers: BA + 4yrs practice + exam.

Architects: BA (5yrs); 3yrs internship; exam.

Surveyors: 4yrs college; 2-4yrs experience; exam.

Actuaries: BA + 10 exams; 5-10yrs required to complete process.

Psychologists: MA = 2yrs course work/1yr internship; Ph.D = 5yrs course work/1yr internship.

Sociologists: MA/Ph.D = certification includes 1yr of experience + schooling.

Elementary Teachers: BA/MA (5yrs) + 1 semester practice teaching.

Secondary Teachers: Certificate: BA + teacher training + practice teaching (1990: requires MA to earn continuing certificate (after 4yrs teaching)) + testing.

Dentists: BA + 2-4yrs graduate study + exam; internship in last two years.

Physicians: BA + 4yrs medical school, 2yrs internship + residency for specialties (>5yrs) + exam; 150 CLE hrs/3yrs.

Veterinarians: 6yrs education; 200-300hrs internship.

Nurses: BSN (4-5yrs) + exam. Periodic exams; supervised hospital training.

The task force recalled that WSBA has had an award-winning optional skills training course for several years, but recommended going further, at least to the extent of testing skills training issues to prompt the law schools to give it more emphasis, but preferably to adopt something more like the British Columbia model of ten weeks of intensive training and testing in conjunction with the bar exam. There was also discussion of adopting an articling system along the Commonwealth model, and/or creating levels of practice similar to the U.K.'s solicitors/barristers/QCs system. "We recognize these recommendations represent significant changes.... [problems with perceptions of lawyers] will not be met with half-measures or public relations campaigns." New, higher requirements for admission and retention of lawyers are the answer, they say.

Equality in the Practice of Law: "WSBA should implement the remaining recommendations of the Gender and Justice, and Minority and Justice task forces, and:

1. Do research to determine why minority and women attorneys typically receive less compensation than white men with equivalent education and experience;
2. Conduct an all-member demographics study to discover the needs of WSBA members. Information on the composition of the Bar membership should be published annually and should include the age, gender, race, ethnic

origin, and type of practice of each attorney.

3. Examine, with the courts, the legal representation afforded minority litigants in areas of Washington where there are few minority attorneys.

The WSBA should take action to promote equality in the practice of law by:

1. Actively promoting diversification of membership on Bar committees, and making CLE programs reflect the Bar's composition.

2. Targeting law-related education programs at minority populations, and designing them to introduce minority students to career opportunities in law.

3. Developing CLE programs to address the effects of gender, disability and minority stereotyping."

Additional recommendations of the task force:
The task force also called on the Association to lead the way in encouraging law schools, the courts and the Bar to deal with the increasing involvement of lawyers in alternative dispute resolution methods. Further recommended was an anti-bias amendment to the Rules of Professional Conduct "defining and making it a disciplinary offense to discriminate or harass on the basis of sex, race, age, creed, religion, color, national origin, sexual orientation, or marital status", and calling for the same amendment to the Code of Judicial Conduct.

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current role, with expanded resources if necessary. The Association should develop a career and life planning services program to help lawyers deal with "quality of life issues" ranging from balancing career demands with personal life, job/career changes, and the like. Good relations with the Supreme Court should be maintained; more staff should be added in the disciplinary department to handle cases faster; and the WSBA should take a much more active role leading the state's law schools toward programs which will implement these and other recommendations earlier in a lawyer's career. The Association should also set up a depository of long range and other planning reports it commissions and receives to better ensure it acts on old ones before starting new ones. And finally, the word "Association" should be dropped from WSBA's name, and "dues" should be renamed "license fees" to bring them more into line with reality.

A Lot to Chew On: After all that, the board sat back and pondered for a while. Alva Long said when Gates talked about member dissatisfaction he was understating the state of things, and offered a sort of thumbnail minority report. He thought WSBA should set up a program to connect with journalism programs so reporters getting into the court beat will know more about what they are seeing. Governor Steve Tubbs asked the task force members if they'd considered whether the Bar was misallocating present resources or would need more to implement the needed changes. Weston replied, "probably some of both."

Jeff Tolman wondered if there are models for the access to justice elements of the report—other bars who've already started

down this road. California was mentioned. They have a section on access to justice, and a full time staff person. Georgia has some innovative programs. Governor Ron Gould thought it important that the board hit the ground running and moved to approve several of the CLE-related recommendations. Some further discussion followed before the task force members had to leave, and after a pause the president reported on some routine matters. After a bit of sleight of hand by other members to shift the discussion to another item, Lem Howell pointed out Gould's motion was still pending. A motion to table it until the board could take up the whole report failed, 4-6. The Gould motion to have the CLE director develop CLE programs to address the effects of gender disability and minority stereotyping then passed, 10-0.

A Few Bars of Hail to the Chief, Please: Executive director Dennis Harwick announced board election results: in the First District, Wayne Blair defeated Sally Carpenter, 651-501. In the Fifth District, Joseph Nappi, Jr. defeated Paul Bastine, 434-368. In the King County at Large seat, Michael Larson defeated Judith Eiler, 1,544-1,056. The winners take office in September for three years.

Giving the Weber a Grill: California Bar member Donald Weber petitioned the board to waive APR 3(b)(iii), which requires graduates of non-ABA-approved law schools to be admitted elsewhere and practice three years out of the five before applying to sit the Washington bar exam. Weber moved to Washington shortly after admission in California and therefore could not meet the practice test. Lem Howell moved to waive the rule, noting that various other nonstandard ways



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to become Washington lawyers exist, such as the law clerk program. But Don Curran wondered if the board could waive a Supreme Court rule. "We can't waive, but we can petition the Court to do so," replied Ron Gould. Howell amended his motion to that effect; it failed 3-7. "Mossbacks," muttered Alva Long.

From Mossbacks to Greenbacks (Anything for an Alliterative Segue Dept.): WSBA treasurer Ron Gould presented the 1991-1992 budget, with a policy statement intended to guide future boards and budgeteers. It called for balanced budgets each year; budgeting by function to aid cost/benefit analysis of programs; improvement of interim financial statements during the year to reduce the chance of accidental deficits; development over time of a surplus equal to about ten percent of budgeted expenditures; provision of a contingency fund to deal with the unexpected each year; development of a sunset review process for programs; and better long range planning so financial needs can be identified and budgeted for. All very good, the board said, and passed the policy statement.

The budget projects revenues of \$7,077,529 and expenses around \$6,857,225, with a contingency fund of just over \$70,000 and a contribution to reserves of \$150,000 bringing expenses equal to revenues. Starting from the need to add one lawyer to the disciplinary department staff and one computer support/training person, the budget limits staff pay increases to an average of five percent. A major investment in computerization of the Bar office, costing \$200,000 over five years, will begin. Continued support for the new WSBA

electronic bulletin board and other computerization projects get some funds, as does a statewide poll of the membership on various issues, possibly including judicial appointments. Incremental increases in the *Bar News* budget were approved, but a motion to raise the editor's salary from \$700 per month to \$1,000 (instead of the \$833 recommended) passed 8-1, one governor not voting. The Client Security Program is increased in funding from ninety to one hundred thousand dollars. Lawyers' Assistance Program, the Board of Governors, legislative expense, and public affairs are all funded at about 1990-1991 levels. Fee increases in CLE program registrations, certificates of good standing requests, adjustments, up and down, in bar exam fees, and fees for Rule 9 intern applications were approved to raise some extra money. On a motion by Gould to adopt the budget as amended, it was, 10-0.

Comes the Revolution (II): Resolutions were considered by the board for referral to the Resolutions Committee, which will hold hearings and in turn refer the ones that pass muster to the annual meeting in September. This is a relatively unpopular task, because while board members had strong views on all of the proposed resolutions, all they could do was see if they were germane to the WSBA's purposes and pass them on to the Resolutions Committee. So they filibustered them for a while and sent them all ahead, though not without some interesting voting results. The best was on the resolution to send on the resolution adopting the Open Meetings Act, which passed 5-0-4-1: five ayes, none opposed, four abstaining and one not voting. The resolutions are carried elsewhere in this issue.



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Semiahmoo Review: In other action, the board held an extended executive session Saturday to select WSBA committee chairs but carried over committee member appointments to August after some procedural objections were raised by Governor Ron Gould. They met Saturday afternoon with the Superior Court Judges' Association board, to which WSBA board observers and this reporter were not invited. They received the now-legendary \$50,000 contribution to malpractice loss control program from KVI/Scottsdale Insurance, the promoters of the new bar-sponsored insurance program, dubbed "payola" by Governor Alva Long. They noted Supreme Court approval of amendments to CLE rules which allow self-study, and voted to request information from the ABA and other bars on how they handle character and fitness cases of bar exam applicants. They received the results of the 1991 Pro Bono Activity Appraisal Survey; approved nominations by a board committee for WSBA awards at the annual meeting; discussed computerization developments within and without the Association; passed a resolution calling on the appellate courts to make unpublished opinions available on computer; sent a proposed rule to allow certain types of fax filing back to the committee for more work; deferred action on the Court Rules Committee's report until August; discussed the agenda for the annual board planning retreat next month (the Long-Range Planning Task Force Report); made a housekeeping amendment to RLD 11.1(1); approved a new policy regarding access to civil litigants to information from the disciplinary department; decided to send WSBA's ABA delegates uninstructed on the hot topic of ancillary business activities of law firms; heard a report from Governor Ron Gould on judicial polls and whether WSBA ought to get involved with them; met with the board of the Young Lawyers Division, handled some disciplinary matters in executive session, and went home.



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Judicial Selection Reform:

by Charles H. Sheldon

Part II of II

In Part I, (July 1991 *Bar News*), Professor Sheldon introduces "a general framework within which the inevitable debate over the 'best' method of selecting judges can be conducted." He discusses Constitutional democracy and judicial selection, viewing it in terms of public and political accountability, judicial independence, representativeness, access and participation.

A Model of a Democratic Judicial Selection System

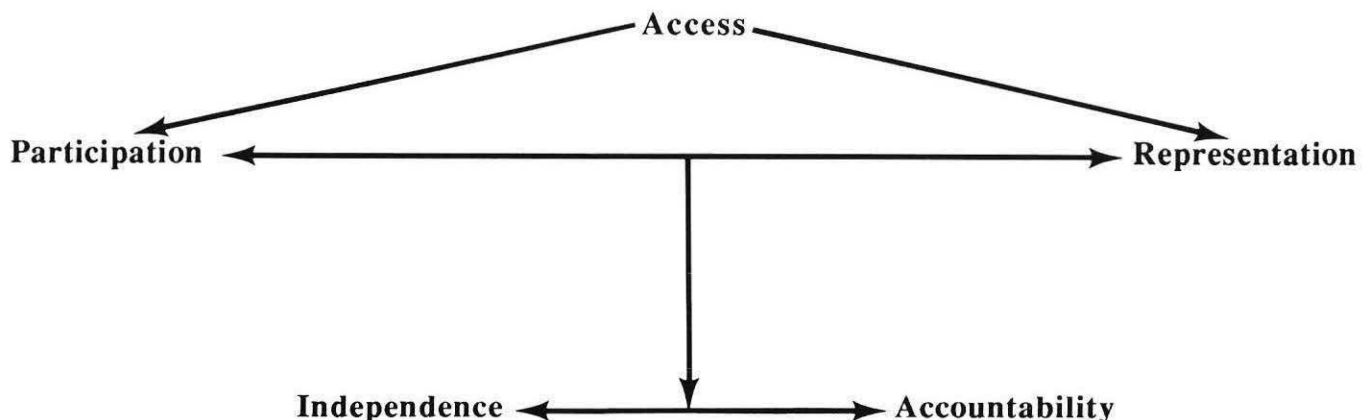
Any democratic system of selecting judges, no matter what the formal method may be (i.e., nonpartisan elections or the merit plan) must blend these often conflicting elements—

accountability, independence, representation, access, and participation—in such a way as to achieve an equilibrium. The attainment of a mix is complicated by the interactive effect each component has on the others. For example, as accountability widens, independence narrows; open access

translates into better representation, but wide participation may come at the expense of independence. It is the equilibrium among the three prerequisites that brings about a balance between independence and accountability, as portrayed in figure 1:

Figure 1

A MODEL OF DEMOCRATIC JUDICIAL RECRUITMENT



The goal of any process which brings judges to the state benches is to achieve an equilibrium among the five elements of the democratic selection system. This goal should be the focus of the debate over which method is best for Washington.

Minorities and Democratic Selection

Does the current mix of participation, representation and access achieve a balance, suggesting that the resulting judges are sensitive toward the conflict between accountability and indepen-

dence? The present status of minorities on the bench in Washington should provide some clues as to the balance.

Minorities and Representation

Judges can, of course, represent their constituents without being exact replicas of the makeup of their

Some First Principles

In Part II, he offers a model of a democratic judicial selection system, discusses minorities and democratic selection and reaches some conclusions about achieving a synthesis of the Rule of Law and Majoritarian Democracy.

communities. Commonly, representativeness is determined by measuring how close the judiciary approximates a cross section of the jurisdiction. Ethnic segments of the jurisdiction which reflect its cultural diversity should be included. In a democratic system, the law and the judges who apply it are responsible for shielding minorities from the threats and actions of the majority. In order to provide this protection, judges need to be sensitive to the values of minorities. Minority judges most likely possess this sensitivity.

The presence of minorities on the bench makes a significant symbolic contribution to representativeness. When members of minority communities become judges, those communities tend to regard themselves as belonging to, rather than being isolated from, the larger community. They can maintain their separate identities and at the same time be among the citizenry. As succinctly expressed by an attorney testifying at the public hearings held by the Washington State Task Force on Minorities and Justice:

A [minority] litigant casts his or her eye about the courtroom realizing that... the court reporter, the bailiff, the court clerk, the judge, the other lawyer and frequently their own lawyer are all white....[T]hat...litigant cannot help but feel at least uneasy [about] whether that forum will be capable of understanding and evaluating his

or her life experiences and the value of his [or her] loss.¹⁴

To which was added: "Because the credibility of our system is so insidiously undermined by these concerns, it is imperative that everything possible be done to assure ... that minority judges are elected or appointed."¹⁵

Also, the more minorities represented on state benches, the greater the pride of those they represent:

Minorities are accorded more respect in proportion to the accomplishments of their own people; judicial officer is such an accomplishment which raises the pride of all...people of a particular race/ethnicity.

How well do the Washington benches reflect the presence of minorities in the population and legal profession?¹⁶

In 1988, the Washington population was 4,565,000, of which 10.6 percent were minorities (African-Americans/Blacks, Hispanics/Latinos, Native Americans, Asians). Of 15,000 active attorneys in Washington that year, approximately five percent were minorities,¹⁷ half of what would be expected if their representativeness was accurate. In 1990, 371 judges made up the Washington judiciary, and 16 (4.3 percent) of these were members of minority groups.¹⁸ Representation fails to reflect the population numbers as well as the percentage in the legal profession.

The lack of adequate representativeness may be explained by the interaction of representativeness with the participation and access elements of the democratic framework.

Access and Minorities

Adequate access to judicial positions requires that a fairly open process draw those most fit from the many that are eligible. Eligibility, of course, is limited to licensed attorneys who have practiced in the state for at least five years. No further formal requirements are evident. But even with a minimum of formal requirements, a number of informal prerequisites exists which narrow access more directly for minorities than others. First, a law school degree is a prerequisite for joining the profession. Among the approximately 1,800 students matriculating last year at Washington's three law schools (University of Washington, Gonzaga and University of Puget Sound) are found 178 (10 percent) minority students. (UW = 12 percent; UPS = 10 percent and Gonzaga = 9 percent). However, the percentages fail to provide a complete picture.

Although no figures are available for the three law schools, if a national sample is any indication, the retention rate of minorities over the three years of law school is lower than for the white students. Richard Abel's monumental study of lawyers points out that even if minorities are admitted to law school in proportion to their presence in the population—which is not the case—

they still must graduate. "The attrition rate," he concludes, "has been markedly higher among minority law students than among law students generally."¹⁹ In 1986, 82.5 percent of minority students who had enrolled two years earlier remained for their last year of law education at ABA-approved law schools. The percentage for all students (including minorities) remaining for the third year of law school was 91 percent.²⁰ Many reasons account for attrition. Financial burdens, social and cultural frustrations, inadequate undergraduate preparation, or poor support group efforts during law school explain the dropout rate. Nonetheless, law schools contribute to the narrowing access to judgeships for minorities.

Yet another obstacle confronts the law school graduate: the bar examination. No figures are available for Washington, but the data concerning bar pass rates from California are instructive. The pass rates for first takers of the bar exam in July, 1986 were 64 percent for whites, 45 percent for Asians, 29 percent for Hispanics,

and 12 percent for blacks. The differences among the groups remained roughly the same for repeaters.²¹ With an observation equally applicable to the State of Washington, Richard Abel writes:

Thus, not only have affirmative action programs been inadequate to achieve proportionality between minority law student enrollments and minority representation in the general population but even the limited number of minority law graduates is not reflected in the production of practitioners.²²

The number of minorities who eventually gain access to positions on the state benches becomes disproportionately few.

Of course, informal access standards also narrow the field of eligibles. Foremost among the informal obstacles in Washington are campaign finances. It costs considerable money to run a contested campaign for a judicial position. Even after appointment, new

judges must set aside funds as insurance against a challenge in the first election.

The costs of campaigns vary considerably, but few can succeed on a small budget. Even though Justice Goodloe won a seat on the state's high bench on only \$17,000 in 1984, he had held aside a considerable amount in case a TV campaign was necessary. In the same year, in another high-court race, Judge Edward Heavey spent over \$140,000 in a losing cause. A run for the trial benches may require somewhat less than a statewide supreme court contest. But, according to one authoritative account, "The expense of running a contested campaign for superior or district court in King County is staggering..."²³ In 1986, the costs of contested races for superior and district court races in King County varied between \$20,000 and \$60,000. Traditionally, the rule of thumb is to have the equivalent of one year's judicial salary set aside in case of a contested race. As anticipated, the winners spend more than the losers. On the average, a bit less than one third of the campaign expenses come from the candidate's own funds. It is most likely that the concern for finances and the often awkward task of soliciting funds for a run for the bench narrow the access, limiting those eligible or those willing to become available for election.

Minority attorneys in Washington make, on the average, less than their white counterparts. In 1988, one-fourth of all white attorneys reported incomes of over \$75,000; only 13 percent of blacks and 10 percent of Asians were found in this high-income category. According to the latest study:

A much larger share of minorities than whites report incomes ranging from \$25,001-\$50,000. Nearly one-half of all Blacks and Native American attorneys (49 percent and 46 percent respectively) and more than one-half of all Asian and Hispanic attorneys (58 percent and 56 percent respectively) report incomes in this range. In contrast, just forty percent (40 percent) of white attorneys report similar income levels.²⁴

Of course, what these income figures

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suggest is that if campaigning costs are a factor in access, minorities are at a disadvantage.

A survey conducted in 1986 among attorneys in Clark, Whatcom and Cowlitz counties confirms the effect of finances on access. A sample of 525 attorneys was asked why they had not seriously considered filing for judicial office. By far the leading reason given by the 299 respondents was "raising money for campaign" (81 percent) followed closely by "time lost from practice" (76 percent) and "costs of campaigning" (73 percent).²⁵ Money limits access to positions on the state benches, and this tends to hinder minorities to a greater extent than whites.

Participation and Minorities

Participation refers to the numbers and diversity of those people and groups involved in the final affirmation of judicial candidates. The most obvious example of participation in Washington is the voters casting their ballots in the non-partisan judicial races in the September primary and the November general elections. In Washington, the voter turnout in the primary elections, when most of the non-partisan judicial races are decided, is low. With the exception of courts of limited jurisdiction, either the candidate receiving more than 50 percent of the vote in the primary is duly elected or his or her name appears alone on the general election ballot. Ordinarily, open seats without an incumbent which attract two or more candidates are not commonly available. Also, incumbents are rarely challenged and, once challenged, are rarely defeated. The paucity of contested judicial races on the September and certainly November ballots affects the level of participation of the electorate.

The turnout of registered voters at the primaries varies considerably. During presidential election years, not more than half of the registered voters show up for the September balloting. During off years, a 30 percent turnout is not uncommon. Add to this the fact that the roll-off for judicial races may rise to 30 percent—i.e., those who vote for the leading race on the ballot but fail to stay with the ballot to vote for judges. Voter fatigue, lack of interest, and

absence of knowledge may help explain the roll-off. Participation is indeed low.

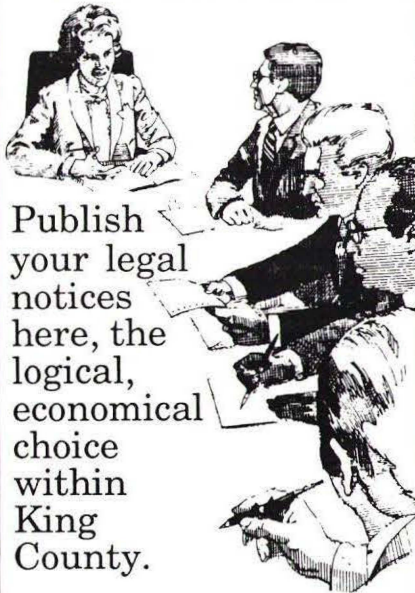
Participation, whether in the primary or the general elections, is far from that democratic ideal we learned about in our civic classes.²⁶ However, it has been convincingly argued that although the voter turnout may be low in judicial balloting, the attentive and knowledgeable voters are more likely to go to the polls, providing a more meaningful participation than if a high percentage of registered voters turn out.²⁷ If general voter participation is high, the uninformed, uninterested and possibly irrational voter could skew judicial election results.

There is considerable evidence, as would be expected, that minorities are drawn to the voting booths when members of their racial/ethnic communities are on the ballot. An analysis of judicial voting in Oregon, for example, concluded, "Clearly, blacks tend to vote for black judicial candidates and support for black judicial candidates falls off dramatically in comparable white precincts."²⁸ Given the oppor-

tunity to vote for one of their own, minorities *do* participate.

Participation is not limited to voters and elections, however. To a great extent, a variety of groups may have already narrowed the field of candidates long before the voters have the opportunity to make their choices. Endorsements, ratings, promises of support, and funding from interested persons and parties can expand participation in both appointments and elections. For example, before governors (county commissioners or mayors) make appointments to vacancies created by resignations or deaths, and before the voters cast their ballots, advice is eagerly offered. In Seattle-King County, a considerable number of diverse groups submit their preferences to the appointing authority, to their membership and to the voters. Participating as active judicial selectors are such groups as the Seattle-King County Bar Association, Washington Women Lawyers, Loren Miller Bar Association, Asian Bar Association of Washington, the WSBA Young

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Lawyers Division, Trial Lawyers Association, Women's Political Caucus, Municipal League, Teamsters, King County Labor Council, *The Seattle Times*, the *Seattle Post-Intelligencer*, King County Democrats and Republicans, Washington Education Association, and the Police Guild. These are quite apart from political and community leaders who lend their names and endorsements to the efforts of judicial aspirants. Participation is indeed considerable in King County, but the level of participation varies between counties and jurisdictions. For example, Spokane and Pierce counties fail to generate such diverse competition among a number of organizations. Except for the screening and endorsements of groups like the Asian and the Loren Miller bars, minority organizations are not widely involved. Outside of King County they are rarely heard from.

Conclusions

Representation of minorities on the Washington benches falls below the percentages expected when compared with the presence of minorities in the population and in the legal profession. To a significant extent, this can be attributed to the narrow access to positions on the bench suffered by nonwhites. Minorities tend to support their candidates for judicial office, if they appear on the ballot. Nonetheless, voter participation remains low in judicial contests, as shown by the finality of the primary elections and the roll-off effect. However, the diversity and numbers of organizations participating in jurisdictions like Seattle-King County is impressive. Organizations such as the Loren Miller Bar Association and the Asian Bar Association give meaning to the participation of minorities in the selection process. The special efforts of SKCBA to include some minorities on its screening committees and the concern for representativeness on the part of the mayor's ad hoc judicial screening committee bode better, if not well, for minorities in at least Seattle and King County environs. The present system of selecting judges in Washington, which is only beginning to be used effectively, could achieve the necessary

equilibrium the democratic model requires. If the theory holds, a synthesis of the Rule of Law and Majoritarian Democracy could result. □

Footnotes

(Numbering continued from Part I, July 1991 *Bar News*.)

¹⁴ Minority and Justice Task Force, 1988 Public Forums at 54.

¹⁵ *Id.*

¹⁶ Lovrich, Sheldon and Wasmann, "The Racial Factor in Nonpartisan Judicial Elections: A Research Note," 41 *West. Pol. Q.* 807 (1988).

¹⁷ Minority and Justice Task Force, "Progress Report" 1989 at iii.

¹⁸ The breakdown according to levels of the state benches (and before the November, 1990 general elections) are: one among nine members of the state's court of last resort; none among the 17 judges of the Court of Appeals; 11 from among the 144 Superior Court jurists; none among the 106 district judges; and 4 of the 95 municipal judges. Although recent figures are not available, in 1985 7.2 percent of the federal and 3.8 percent of the state benches were African-American; 3.1 percent and 1.2 percent were Hispanic; and 0.4 percent and 0.6 percent were Asian. R. Abel, *American Lawyers* 107 (1990).

¹⁹ *Id.* at 103.

²⁰ *Id.* at 258.

²¹ *Id.* at 104.

²² *Id.*

²³ McQuaid, "Fear and Loathing on the Campaign Trail," 4 *SKCBA B. Bull.* 19 (1988).

²⁴ The Task Force report suggests, "The large difference in incomes between racial and ethnic groups in part arises because minority attorneys are less likely to be in private practice than white attorneys. It may also arise because minority attorneys in private practice are less likely than whites to work in law firms." Minority and Justice Task Force, "Racial, Ethnic and Gender Differences in the Washington Bar," (1990) at 10.

²⁵ Sheldon and Lovrich, *supra* note 1.

²⁶ E.g., in the 1984 primary election in Washington, 2,267,432 citizens were registered to vote, and of those only 932,820 (41 percent) cast ballots in the September primary. Of these voters,



656,249 (70 percent) voted in one of the statewide supreme court races. The roll-off between those who voted in the primary and those who cast a ballot for a judge was 30 percent. In the 1990 primaries, 504,239 voted in the Guy-Spellman race—the leading statewide contest. But only 379,390 cast ballots in the Callow-Johnson race, constituting a 25 percent roll-off.

²⁷ Lovrich, Pierce and Sheldon, "Citizen Knowledge and Voting in Judicial Elections," 73 *Judicature* 28 (1989).

²⁸ *Supra* note 12 at 814.

Charles H. Sheldon is a professor of Political Science, Washington State University. Among his publications are A Century of Judging: A Political History of the Washington Supreme Court (U.of W. Press, 1988) and the forthcoming The Washington High Bench: A Biographical History (W.S.U. Press, 1991).

This article is a revision of Sheldon and Lovrich, "State Judicial Selection," in American Courts:... (W. Gates and C. Johnson eds. 1991) and relies on data in Sheldon, "The Composition and Selection of the Washington State Judiciary," in Minority and Justice Task Force, Final Report (1991).

Career (Dis) Satisfaction

The American Bar Association has released the results of its most recent nationwide random sampling of lawyers to determine the state of the profession. The research design was rigorous and resulted in data that are generalizable to the profession at large. Whether lawyers were working in private practice, corporate legal departments or within government practices, a statistically significant number of them (followed from 1984 to 1990) felt dissatisfied with their practice. In 1984, 40% of the lawyers surveyed were very satisfied, but this number dropped to 29% in 1990. These statistics are exceptionally compelling because in the 1984 study those reporting greater dissatisfaction tended to be associates. The 1990 study indicated that the individuals reporting increased dissatisfaction were more likely to be partners and earning more money. Those who were dissatisfied increased from 18 percent to 23 percent.

What has happened? Dissatisfaction with practicing law is no longer relegated to those who are junior associates, practicing certain types of law, working alongside or with other lawyers in a particular type of practice. The study

found that dissatisfaction was prevalent throughout the profession.

There appear to be two major contributors to the increased levels of dissatisfaction. The study revealed that lawyers' perceptions of their work environment affected whether or not they felt dissatisfied. In particular, negative work environment factors such as interpersonal coldness in the work atmosphere, lack of respect by superiors, political intrigue and backbiting, advancement based on subjective factors rather than on the quality of work, have all increased during the last six years. Positive work factors such as adequate clerical and paralegal assistance, magnitude of financial reward, and opportunity for advancement have all decreased. Yet the deteriorating work environment has not led to a mass exodus from the profession: Only two percent of the sample planned to leave within the year.

Instead, the deterioration was linked to increased levels of mental and physical distress (e.g., depression, anxiety, stress-induced physical illness, interpersonal problems, and obsessive/compulsive behavior) and a decreased ability to cope with it (e.g. social support,

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relaxation, exercise, expression of humor, etc.). The increased levels of distress and decreased coping ability significantly affected the lawyers' families, the quality of their work and productivity, their firms, their clients, and lawyer satisfaction with the profession.

As LAP begins its fifth year of operation this month, the professional staff and peer counselors are strongly encouraged by the strength of the program and its ability to assist effectively the 800 lawyers who have sought our services. Despite the ABA data, LAP's confidence in the abilities of lawyers to take charge of their lives, sustain recoveries from clinical depression or alcoholism, and increase their coping abilities, has never wavered.

This last year, LAP has added another component to its services. Peer counselors, who have successfully moved into other jobs (mostly within the legal profession) during their careers are running a career service division. LAP established this program because our clients have demonstrated that successful transition from one job to another can play an integral part in decreasing distress and increasing coping abilities. The ABA study showed that 29% of the lawyers surveyed in 1984 had changed

positions by 1990; during the course of their entire career, 97% of the subjects had changed jobs three times or more. Job dissatisfaction appears to be part of practicing law, and lawyers tend to move regularly until they find a comfortable niche. LAP provides career services so that transitions from one job to the next can be launched in ways that reduce the levels of distress and increase coping abilities.

LAP Career Services provide evaluation, referral to competent career counselors and peer counseling from other lawyers. In addition, beginning Tuesday, September 3, 1991 at noon in the Presidents' Room, WSBA (4th Floor, Westin Building), Career Services will sponsor a job hunters' support group for WSBA members who are actively involved in the search for a new position. This will be a drop-in support group focusing on the exchange of ideas, job leads and job-finding discussions. It is open to all WSBA members at no charge. Weekly meetings are planned.

In addition, the Lawyers' Assistance Program provides free professional assessment and referral for problems related to mental health and substance abuse. Call LAP collect at (206) 448-0605.

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

Trusts. Trust directed that income should be paid to widow "after deduction for the costs and expenses of the succeeding trustee." A remainderman argued that this required deduction of all trust costs and expenses from income alone. *Held*, trust language was ambiguous. Therefore, Uniform Principal and Income Act, RCW Chapter 11.104, controls and requires that expenses be allocated between income and principal, as trustee did. *Venables v. Seattle-First Nat'l Bank*, 60 Wn.App. 941, 808 P.2d 769 (Div. 1, 4/22/91).

—T.R. Andrews

Wills and estates. (Case 1.) Will contestants settled will contest with legatees, deliberately deleting from settlement agreement language relating to testator's mental competence and undue influence by legatees. Contestants later filed tort action, alleging fraud and undue influence. *Held*, summary judgment for defendants in tort action affirmed. Settlement of will contest settled tort claims as well and was res judicata as to most of the tort issues. *Hadley v. Cowan*, 60 Wn.App. 433, 804 P.2d 1271 (Div. 1, 1/28/91).

(Case 2.) Nonintervention personal representative filed timely petition for court review of attorneys' fees and expenses. Personal representative argued that court could not reassert jurisdiction absent showing of faithlessness by personal representative. Court of appeals rejected this argument, holding that it was based upon judicial decisions that were superseded by legislation in 1974. *In re Estate of Bobbitt*, 60 Wn.App. 630, 806 P.2d 254 (Div. 2, 3/8/91).

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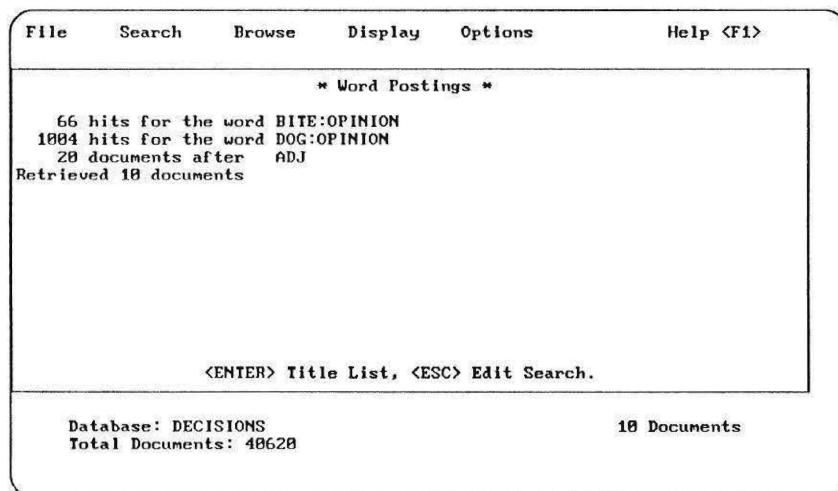
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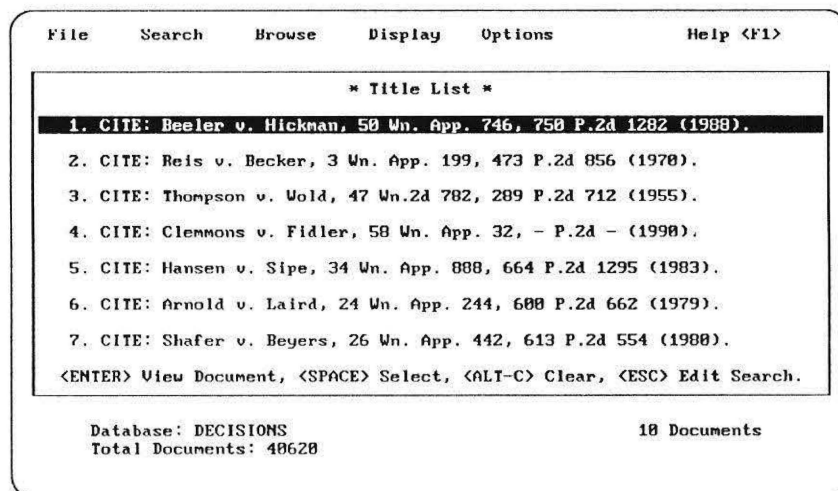
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Cursor down (with the down arrow key) to the "Opinion" section and type in the words DOG BITE, then press the ENTER key. Watch the little light flicker on the CD-ROM drive and *in less than 10 seconds* an index to every word in every case from 1952 until March of 1991 is searched for the concurrence of those two words!

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Beeler v. Hickman, 58 Wn. App. 746, 750 P.2d 1282 (1988).
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1988

      [No.8294-6-III. Division Three. March 8, 1988.]
      KATHERINE BEELER, as Guardian, Appellant, v. DALLAS D.
      HICKMAN, ET AL, Respondents.

Mar. 1988      BEELER v. HICKMAN      747
                58 Wn. App. 746, 750 P.2d 1282

      Trial Court: Superior Court, Yakima County,
      No. 86-2-01010-5, Howard Hattinger, J., November 7, 1986.

Database: DECISIONS      Document: 1 of 10
DocID: 10929      Page: 1
  
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Pressing the TAB key brings you directly to those portions of the selected cases where the search words occur in the opinion.

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the motion can be granted only if the pleadings, affidavits,
depositions, and admissions on file demonstrate there is no
genuine issue as to any material fact and the moving party
is entitled to judgment as a matter of law. Wilson v.
Steinbach, << 98 Wn.2d 434 >> , 437, 656 P.2d 1030 (1982); CR 56(c).
This court must consider all the facts and reasonable
inferences in the light most favorable to the nonmoving party;
the motion should be granted only if reasonable persons
could reach but one conclusion. Wilson, at 437.
RCW 16.08.040 provides:
The owner of any dog which shall bite any person
while such person is in or on a public place or lawfully in
or on a private place including the property of the owner
of such dog, shall be liable for such damages as may be
suffered by the person bitten, regardless of the former

Mar. 1988      BEELER v. HICKMAN      751
                58 Wn. App. 746, 750 P.2d 1282

Database: DECISIONS      Document: 1 of 10
DocID: 10929      Page: 2
  
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MARITIME PERSONAL INJURIES

Many vessel owners have defaulted on vessel mortgage loans and mortgage foreclosure proceedings have been commenced against them. An injured seaman has a priority over a preferred ship mortgage and can intervene in a foreclosure proceeding. Many injured seamen have received settlements for their injuries from the holders of preferred ship mortgages.

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your trial brief? Easy. Just hit the Alt-F keys; a menu pops down, and you select the "Print" option. You are then asked whether the decision is to be printed out to your printer or onto a disk.

Highlighted in every decision are the citations to other cases. Under a feature CD Law calls "CITSEARCH" you need only press the ENTER key to be taken directly to a cite highlighted in the opinion. If two or more decisions are cited on the same screen, you can switch highlighting among them by using the arrow keys and then pressing ENTER to access the currently highlighted decision.

CD LAW features advanced search techniques, including wild cards ("negligen*" will search for all words starting with those letters), Boolean logic (such as "dog AND bite" or "dog OR bite"), and proximity searches (responses limited to instances where words are within a specified distance

from each other). There are also a number of shortcuts available to further simplify the search process.

If you are like me, you find other commercial search programs too slow, too expensive (I feel as if I'm in a cab watching the meter run every time I "go on-line"), and so rich in command possibilities that it's easy to make a mistake. This is why CD LAW is a particularly attractive alternative. It's fast, compact, portable (imagine having all the law at your fingertips with CD LAW plugged into a laptop!) and simple: you don't have to guess where some indexer put your much-needed case.

The tyranny of somebody else's index came home to me in a recent computer seminar I chaired in Seattle. One of the speakers, an assistant librarian at the University of Washington School of Law, told how she and others had been trying to track down a case they knew

existed concerning the right of a surviving parent to sue for the wrongful death of a fetus killed in an automobile accident. They looked under West Key Words for "Negligence," "Automobiles," "Torts," and "Wrongful Death." No luck. Guess where they finally found it? Under "Minors." Okay, yeah.

Using the search criteria "Wrongful Death AND Fetus" CD LAW had no trouble coming up with the case the law librarian had such difficulty in finding. It took 28 seconds.

Times are a-changin', and it may be malpractice not to have something like CD LAW near at hand. In a case going all the way back to 1980, *Wehr v. Burroughs Corp.* 619 F.2d 276, 284 (3rd Cir.), the court chides all legal research slackers with the observation that "use of computer-aided legal research, such as Lexis, WestLaw or similar systems, is certainly reasonable, if not essential, in contemporary legal practice." See also *United Nuclear Corp. v. Cannon*, 564 F.Supp. 581, at 591 and 592, (R.I.; 1983).

"What we're finding with our customers," notes Wetzel, "is the increase in frequency with which lawyers do legal research with CD LAW because it's so simple; there's no reason not to do a quick check on what you think you know."

CD LAW sells for \$3,395, which includes a year's worth of upgrades. Quarterly upgrades are made for the Decisions Disk and periodically as needed for the Statutes Disk. In October there will be a new disk released with legislative changes in the 1991 WACs and RCWs.

The product can also be leased at \$50 a month for the Statutes Disk and \$150 a month for the Decisions Disk, or \$175 a month for both.

The software to access CD LAW runs on IBM compatible computers, either in plain-vanilla DOS (Disk Operating System) or under Microsoft Windows 3.0. And you'll need a CD-ROM drive, the cheapest of which is now being sold by Tandy (Radio Shack; Model CDR-1000) for \$399.95. NEC sells a portable CD-ROM (Model CDR-36) for laptops for \$599. CD LAW and other CD-ROM products (including several for lawyers) make the purchase of one of these drives a good buy. □

Larry G. Johnson is a Seattle attorney and president of Lawyers Computer Consultants. He is a frequent

contributor to the ABA Journal and legal publications on law office automation.

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NEWS FROM HOME

• **Andrew H. Salter** has become a partner in the Seattle office of Miller, Nash, Weiner, Hager & Carlsen. A member of the WSBA since 1981, Salter joined the firm in 1989. He holds a B.A. from Harvard and his law degree from Georgetown, and concentrates his practice in the areas of commercial and environmental litigation.

• **Peter S. Holmes** has joined the same firm as an associate in its Seattle office. Formerly associated with Culp, Guterson & Grader, he is a graduate of Yale and the University of Virginia School of Law. A member of the Washington and Ohio bars, Holmes concentrates in the areas of creditors' rights in insolvencies and reorganizations.

• **Robert M. Schaefer** of Vancouver has been named to the Clark County Hall of Fame. A former Clark County deputy prosecutor, Schaefer was a member of the Washington Legislature from 1959 to 1967 and served as speaker of the house from 1965 to 1967. He has been a trustee of the Federal Bar Association, president and director of St. Joseph's Hospital, chair of Southwest Washington Independent Forward Thrust and the Clark County Economic Development Council, and a director of the Southwest Washington Hospital Foundation.

• Prosser city attorney **Dwight Halstead** announced his resignation in March after 32 years' service. He continues in private practice. **Joe Schneider** was named to succeed Halstead by the Prosser City Council.

CLARK COUNTY REPORT

by JOHN F. NICHOLS

CORRECTION: Last month's report described certain actions of a secretary-receptionist for attorney **Stan Horak**. Some may have mistakenly attributed said actions to Horak's present secretary when they actually pertained to one of her nameless predecessors. Any confusion is deeply regretted.

More moves: Just when you thought it was safe to update your personal Rolodex file, another change of address

came forth. **Joe Mercer**, late (and often) of Wolf, Mullins, Hannan, etc., is soon to be occupying space with **Bill Baumgartner** and **Paul Henderson**. The office hours will be seasonal. That is, closed during the fishing, hunting and vacation seasons. Aside from the above, the office will continue to furnish quality legal services to those whose schedules comply with the stringent standards of the firm. In other words, if you show up and they're there, then chances are that someone will talk to you. The attorneys will be the ones with the optic orange hats and flannel suits. Good hunting.

Spring cleaning: Attorneys are notorious for accumulating physical evidence, worthless paper and junk. Ever paranoid of throwing away anything that might in some lifetime become relevant, they hoard stacks of minutiae. Fearful that someone will, while their backs are turned, try to clean their office. Such fears came to fruition for the unsuspecting **Irwin Landerholm**. While he was on vacation, his staff, armed in equipment reminiscent of that worn by the "Ghostbusters," attacked his office. Among the treasures discovered were various files from the clerk's office; books from the law library (Blackstone on Curtsey); and tickets to an Elvis concert. But the most surprising item,

discovered hanging from his curtains, was Irwin's pet bat. Yes, the real-life rodent type as opposed to that sometimes used by the Mariners. The origin of the bat has been attributed to the famous belfry of the "Landerholm, Memovich, Lansverk" offices and explains some of the unique arguments sprouting from the firm. Those wishing appointments with Batman Landerholm should keep in mind his sunset to sunrise rates.

The New Regime: June's meeting saw the installation of a new crew of shining faces: **Scott Horenstein**, president; **Kurt Wyrick**, vice president; **Gimi Page**, secretary; and **Jerry Eline**, treasurer. Also elected as trustees: **Marla Ludolph** and **Robert Schaefer**. With the election, a note of sadness surrounded the meeting as it marked the departure of president **John Nichols**, who took over the controls a young, vibrant man with ideas and a vision. A photo comparison of John before and after his term shows a broken, prematurely aged man limping along with the look of a lobotomized jellyfish. Yet he brought a tear to the eye with his address of how fulfilling the year had been. The meeting was cut short as he forgot the rest of his speech and had to be carted off for his denture fitting. Good luck, Scott.

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EAST KING COUNTY REPORT

by RANDOLPH I. GORDON

All around us, we daily see the stuff of parables. Let us consider, first, one modern-day sword in the stone: the budget deficit in Massachusetts. The Massachusetts Miracle is consumed by its intractability. Presidential candidates stumble over it. Governors falter and then depart office under a cloud of obloquy and public execration. Legislators are confounded. Then, like a modern-day King Arthur, **Kathy Betts**, a part-time employee of the state's department of welfare, pulls forth from the adamantine stone of federal enactments a sword: a regulation that results in Medicaid payments to Massachusetts of \$489,000,000, enough to erase the state's entire budget deficit with a surplus of \$39,000,000 left over. The Commonwealth is saved.

Of the citizens of his *Utopia*, Sir Thomas More wrote:

They think it against all right and justice that men should be bound to those laws which either be in

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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.

number more than be able to be read or else blinder and darker than any man can well understand.

In the unsurpassed darkness and blind depths of the Medicaid regulations, a tortuous labyrinth of laws, we find hope: how many other such statutes exist? Even a modest finder's fee would put Lotto to shame and provide incentives for service of the public good. Kathy Betts receives \$10,000 for her service. Too little for such a public benefaction, or too much for someone simply doing her job? Or was it her job?

Yet, in the heart of that hope we also find darkness; for why is it that we must trust to fortuity to learn of laws capable of achieving such an astonishing public interest? Why is the public trust so mismanaged that the honest industry of a single part-time servant can overbalance the cant and rant of hundreds of politicians? Was **Henry Adams** correct in *The Degradation of the Democratic Dogma* when he wrote:

Democracy . . . has insisted on degrading the public service to a

common level of incapacity, thereby throwing the management of all difficult public problems . . . into private hands, in order that they might escape ruin . . .?

Or, for once do we find in **H.L. Mencken's** notebooks the more optimistic explanation:

Mankind has failed miserably in its effort to devise a rational system of government. Some of the best intellects the race has produced have tackled the problem, for example, Aristotle, Hobbes and Locke, but they have all failed. Perhaps they have failed largely because they have not resorted to the lowly weapon of common sense. Government does not present an esoteric problem, but a highly practical problem.

This, of course, brings us to the King County Council's process of site selection for a regional justice center which appears to partake of the above-referenced constitutional infirmities.

It appears the county executive is

leaning toward selection of a south King County site. The rationale: the high cost of land on the Eastside. Not considered: the prospect of over a third of the county's citizenry having to negotiate the Renton S-curves during rush hour in order to avail themselves of necessary courthouse services; the increased burden placed upon witnesses, clients, jurors, attorneys and the effect of the skyrocketing cost of litigation; police personnel required to transport each prisoner to a relatively remote south King County location for booking and administrative processing, compelling the expenditure of an entire day on each prisoner transfer, and the resultant burden on the public purse and public safety. Henry Adams, were he alive today, would ask if a private business (say, McDonald's) could afford to choose its location based upon the expense of the land without regard for the convenience of the public it serves. Apparently government can.

Ron Dickinson, EKCBA vice president and president-elect, proposed, and the EKCBA board of trustees submitted to the council, that consideration be given to the possibility of

WE DID IT AGAIN!

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

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

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

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

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

For more information please contact Karen Jo Hensley (206) 624-9365
Young Lawyers Division, Seattle-King County Bar Association.



utilizing a mutual benefit air space lease to construct a regional facility above an on- or off-ramp to I-405 in downtown Bellevue, similar to that of Seattle's Gateway Tower. This enterprising use of existing resources may open the door to a centrally located facility closer to the population intended to be served. An Eastside facility, endorsed by EKCBA, SKCBA, the city of Bellevue and the Eastside Police Chiefs' Association may yet be a possibility. Whether the council will consider it, and whether Dickinson will prove to be the Kathy Betts of King County, remains to be seen.

SPOKANE COUNTY REPORT

BY MIKE PONTAROLO

Robert B. Henderson, **Les Weatherhead** and **Cynthia Imbrogno** are lawyer representatives from the Ninth Circuit Judicial Conference, Eastern District. **Stan Schultz** has relocated his practice to Witherspoon, Kelley, Davenport & Toole. **Charlie Rohr**, back from the Persian Gulf, has opened a solo general practice.

Local lawyers who continue to defy age among Spokane's revered include **Kathleen Taft**, **Bill Davenport** and **William Kelley**. **Bill Hyslop** has been appointed United States Attorney. **Mark Dennis Rotchford** sports a new Cadillac purchased in Florida. **Jim Workland**, a self-described clothes horse, is quoted as saying, "Well, what the heck. Why not be oneself. That is the whole secret of a successful appearance. If one is a greyhound, why try to look like a Pekingese?" (Jim, you have to guard against speaking more clearly than you think.)

Spokane officers for the Federal Bar Association, Eastern District are: **Cynthia Imbrogno**, **Dutch Wetzel**, **Patricia Williams**, **Bob Henderson** and **Les Weatherhead**. **Gene Annis** is honored for 21 years of service by Catholic Charities. Spokane's own **Tom Foley** was the featured speaker at the local bar association's June luncheon. Litigator par excellence **Frem Nielsen** has been sworn in as the newest U.S. Judge for the Eastern District of Washington.

Twenty-four new attorneys were sworn in on May 31.

New officers for the Spokane County Bar Association for 1991-1992 are **Michael C. Ormsby**, president; **John T. Powers, Jr.**, vice president; **William F. Etter**, secretary; and **Patrick E. Connelly**, treasurer. Trustees elected for the first term are **Pamela DeRusha**, **Jonathan G.K. Lee** and **John T. Rodgers**. Trustees served a second term are **George Critchlow**, **John M. Riley, III** and **Greg A. Smith**.

WASHINGTON STATE LAWYERS' CAMPAIGN FOR HUNGER RELIEF

Update:

The Washington State Lawyers' Campaign for Hunger Relief welcomes **Joseph P. Delay**, Delay, Curran, Thompson & Pontarolo, W. 601 Main Avenue, 1212 Washington Mutual Bank Bldg., Spokane, WA 99201, (509) 455-9500, to the advisory committee.

The campaign has compiled an information packet which will soon be circulated to 65 Washington law firms. It will be delivered to specific liaisons of each firm in an effort to inform them and firm members about our fund-raising campaign. In the next few weeks, campaign members will be scheduling appointments with these firms in order to make presentations.

We are requesting that each lawyer in this state donate at least the amount equal to one billable hour. We sincerely hope that all Washington lawyers will support this effort by making a contribution.

All interested persons may contact any member on the committee. (See pages 49 of May and 48 of July *Bar News*.)

Hunger Relief Committee meetings are currently being held on Wednesdays from 12 noon to 1:15 pm at the law offices of **Mussehl & Rosenberg**, 1111 Third Avenue Bldg., Seattle; (206) 622-3000. Committee members also meet on the first Saturday of each month at **Chinook's** (at the old "Wharf" at Fisherman's Terminal), 1735 W. Thurman from 9:30 to 11 am.

WASHINGTON STATE TRIAL LAWYERS ASSOCIATION REPORT

by **LETHA J. OWENS**

The 1991 WSTLA Special Recognition Awards, known as the "Brandeis Bust," were awarded at this year's annual convention at Whistler, B.C.

Recognized as Judge of the Year was the Honorable **Faith Enyeart** of the King County Superior Court. In addition, a Special Judicial Recognition Award was presented to the entire Clark County Superior Court Bench in recognition of their highly successful program of pre-assignment in civil cases.

The Trial Lawyer of the Year was awarded to two fine trial attorneys, **William S. Bailey** and **Elaine Houghton**. Bailey was honored for his state-of-the-art trial work in *Washburn v. Veatt Construction Co.*, where the plaintiff's presentation of their case took only three and a half days for an \$8 million suit and for his innovative use of maritime jurisdiction in the *Madison and Hay v. Washington State Ferry System*. Houghton was honored for her work in *Casteel v. United Bank*, which capped a series of highly successful and innovative cases handled this year. In *Casteel*, she and co-counsel **Monte Hester** successfully excluded an intentional tort-feasor from the empty-chair position under the joint and several liability rules of the Tort Reform Act.

Outgoing president **Keith Kessler** presented the President's Award to **Mary Ann Ottinger**, WSTLA v.p. of finance, in recognition of her thousands of hours and unending devotion to the WSTLA organization. Kessler also made a special presentation to **Robert K. Dawson** and his firm Pence & Dawson for authoring the highly successful WSTLA Civil Trial Forms Book, now available for purchase from the WSTLA office; (206) 464-1011 or (800) 732-9251.

People's Law School Rides Again... With the end of summer comes the beginning of school terms, and the People's Law School (PLS) is no exception. Now entering its sixth year,



it will bring its curriculum of basic legal information to the public in over 20 locations throughout the state. In classes taught by volunteer attorneys one night a week for six to eight weeks, PLS participants learn the basics of our legal system, including such topics as: the Constitution and your rights, consumer law, criminal law, personal injury law, worker's compensation, estate planning and wills and probate. To date, approximately 10,000 people have attended these classes, and WSTLA hopes to continue expanding locations and enrollment. If you are interested in helping to organize a PLS in your community, or if you are available to teach a subject, please contact the WSTLA office as soon as possible. The number is (206) 464-1011 or (800) 732-9251.

WHATCOM COUNTY REPORT

by MICK MOYNIHAN

Time goes by, as they say,
 And Tomorrow flows into Yesterday.
Burkett and **Chance** passed the bar;
 Now it's expected they will go far.
Aaby and **Proller** sponsored a school
 For the People to use law as a tool.
 The City Council will now present
Mark Asmundson as its president.
Starck Follis has returned to the land
 of his birth,
 And hopes Resick & Hansen will pay
 what he's worth.
 Receiving plaudits as the "Boss of the
 Year,"
Deborra Garrett is now a mother of
 the year.
 And when all the ballots were in, it
 Appears **Leslie Hamilton** did win,
 As the Legal Secretary above all
 For **Shepherd, Abbott** and **Goodall**.
 Three new attorneys came into the fold
 With numbers in excess of 20 grand,
 I'm told.
Paul Piem, David Hunter and
Michael Schact
 Will certainly be giving job offers some
 thought.
 May 1, our Law Day, came and went,
 And with so much time well spent
 Our attorneys, because of preparation,
 Have earned the community's
 admiration.

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IS PLEASED TO ANNOUNCE

STANLEY R. SCHULTZ

has joined the firm as a partner and
will be resident in the firm's Spokane Office.

Stanley R. Schultz was formerly a partner
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and will continue to practice in the areas of
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Co-author: "Debts," Chapter, *WSBA Family Law Deskbook*, 1989. "Interstate Custody Disputes," *WSBA Bar News*, Vol. 41, No. 11, November 1987.

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and

F. Douglas Tuffley

has become associated with the firm,
continuing his practice in civil litigation
with an emphasis on personal injury,
real property, insurance and business issues.

Martin Silver

has become of counsel with the firm,
continuing his practice emphasizing
federal and Washington State tax
planning, tax litigation and estate
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William Beresford
Wayne C. Booth
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Bradley D. Fresia
Donald P. Lehne
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Ronald J. Trompeter
F. Douglas Tuffley

For sale: Washington Lawyers Practice Manual \$450 (SKCBA sells them for \$534.79 with Tax and Shipping). (206) 275-5723.

Law books, complete and updated sets: AmJur 2d; C.J.S.; ALR; ALR2; ALR3; ALR4; AmJur Pleading & Practice, Revised; and Washington Reports 1st and 2nd. All offers considered. (206) 259-7188.

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Experienced trust and estate attorney (LL.M - estate planning) with a tax and business background desires a position or affiliation with Spokane law firm; would consider compensation based upon new business/revenues or office share with other attorneys. Admitted WSBA 10/87. B.A. accounting/finance. Reply to Box No. 334, WSBA.

Former judicial clerk to Washington Court of Appeals available for appellate work, full- or part-time. Experience in U.S. Court of Appeals. References and writing samples available: 6845 47th Avenue N.E., Seattle, WA 98115.

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ington, D.C. 20005. (202) 393-3311. Visa/MC.

Lawyer with trial experience for immediate WSBA opening. Minimum three years' active practice of law. Private practice experience a plus. Must be a team player with ability to work with and/or supervise legal assistants. WSBA membership required. Must have excellent writing skills, an ability to meet time deadlines and manage a large caseload. Submit resumé, writing sample and salary requirements to Chief Disciplinary Council, WSBA, Suite 500, 2001 Sixth Avenue, Seattle, WA 98121-2599.

Established, small law firm is seeking an energetic associate. Practice emphasis in commercial, family, real estate, estate planning and probate. Trial skills and experience preferable. Small community offers civic and recreational activities, while only two hours to Seattle or Portland. Please respond with resumé to: Box #330, WSBA, 2001 Sixth Avenue, Seattle, WA 98121.

Seattle office of law firm with litigation, maritime, commercial and insurance practice in Washington and Alaska has an immediate opening for lawyer with minimum of one to three years' experience in insurance litigation. All responses will be treated confidentially. Please address inquiries with resumé to Box 331, WSBA.

Tribal Court Public Defender — Suquamish Indian Tribe. Prefer license to practice in state or tribal court, criminal law experience, knowledge of/interest in Indian law. Estimated 325 hours/year; may contract fewer hours. \$35 per hour, negotiable. Send resumé, statement of qualifications, and proposal for compensation and hours to be contracted to Tribal Administrator, P.O. Box 498, Suquamish, WA 98392. P.L. 93-638 requires Indian Preference. W/M/H encouraged.

Attorneys — paralegal instructors needed: Nationally accredited paralegal training program is accepting resúmes from members of the bar interested in part-time instructor positions in the Seattle, Spokane, Federal Way & Bellevue areas. Please send resumé to Mary C. Wagner,

NAPS, PO Box 907, Middletown, NY 10940.

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 and 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.

Applications invited for U.S. Magistrate Judge position at Seattle, Washington:

The Judicial Conference of the United States has authorized the appointment of a fourth full-time United States Magistrate Judge for the Western District of Washington to be stationed in Seattle for an eight-year term beginning the fall of 1991. The duties of the position are demanding and wide-ranging and will include: (1) trial and disposition of misdemeanor cases; (2) conduct of preliminary proceedings in felony cases; (3) assisting district judges in disposition of prisoner petitions and Social Security appeals; (4) conduct of various pretrial matters and evidentiary proceedings on reference from the judges of the district court; (5) the trial and disposition of civil cases upon consent of the litigants; (6) trial of petty and misdemeanor cases at outlying government facilities such as Fort Lewis, Bangor Naval Submarine Base, Whidbey Island Naval Air Station, Mt. Rainier National Park, and Bremerton Naval Shipyard. This responsibility will require travel to each of these military enclaves.

The basic jurisdiction of the United States Magistrate Judge is specified in 28 U.S.C. § 636. To be qualified for appointment an applicant must: (1) have been engaged in the active practice of law for a period of at least five years (with some substitutes authorized); (2) be competent to perform all the duties of the office; be of good moral character; be emotionally

stable and mature; be committed to equal justice under the law; be in good health; be patient and courteous; and be capable of deliberation and decisiveness; (3) be less than 70 years old; and (4) not be related to an active judge of the district court.

A merit selection panel composed of attorneys and other members of the community will review all applicants and recommend to the judges of the district court in confidence the five persons whom it considers best qualified. The court will make the appointment, following an FBI full-field investigation and IRS tax check of the appointee. An affirmative effort will be made to give due consideration to all qualified candidates, including women and members of minority groups. The salary of the position is \$115,092 per annum.

Application forms and further information on the Magistrate Judge position may be obtained from the Clerk of the District Court: Bruce Rifkin, Clerk, 308 U.S. Courthouse, 1010 Fifth Avenue, Seattle, WA 98104, (206) 553-5598 or Janet Thornton, Deputy in Charge, Room 240, U.S. Courthouse & Post Office, 1102 "A" Street, Tacoma, WA 98401, (206) 593-6313.

Applications must be submitted only by potential nominees personally and must be received no later than September 20, 1991. All applications will be kept confidential unless the applicant consents to disclosure, and all applications will be examined only by members of the Merit Selection Panel and the judges of the district court. The panel's deliberations will remain confidential.

Associate: Small, downtown corporate firm with interesting and diverse client base seeks highly motivated associate. Experience in sophisticated commercial transactions and/or commercial litigation essential. Must have excellent skills in research, writing, communication and problem-solving. Competitive salary D.O.E. Send resumé in confidence to John G. Young & Associates, P.C., 2010 Westlake Center, 1601 Fifth Avenue, Seattle, WA 98101.

MacDonald, Hoague & Bayless seeks an attorney with commercial

and/or real estate experience and a client base in those areas. Applicants should have outstanding academic and professional accomplishments and involvement in community and/or public-interest work. Confidential inquiries welcome. Written applications to: Kathleen Wareham, 705 Second Avenue, Suite 1500, Seattle, WA 98104.

Insolvency and reorganization practice: Prominent Pacific Northwest firm seeks a lawyer at the associate level to work with its Seattle insolvency and reorganization group. We are looking for motivated, creative, and academically well-qualified applicants who enjoy working with people and meeting challenges. Although a background in insolvency and reorganization practice is helpful, applicants with an interest in this practice area who have strong commercial litigation and/or business backgrounds are urged to apply. Please send your resumé in complete confidence to: Nancy L. Barnes, Recruiting Coordinator, Miller, Nash, Wiener, Hager & Carlsen, 4400 Two Union Square, 601 Union Street, Seattle, WA 98101.

Real estate developer seeks attorney with minimum one year's experience in civil litigation. Real estate/negotiation experience a plus. Admitted to practice in Washington state. Salary negotiable. Reply to: Personnel, 3605 132nd Avenue, Suite 300, Bellevue, WA 98006-1323.

Position available: Sole practitioner in Bellingham seeks associate interested in general practice of law with emphasis on bankruptcy, domestic law and litigation. Salary negotiable DOE. Replies confidential. Reply to Box 333, WSBA.

Established downtown Seattle law firm is seeking a lawyer with excellent academic credentials and writing skills. Areas of practice include insurance defense, real estate, corporate and civil litigation. Send resumé to Box 332, WSBA.

Yakima firm looking for an associate with a minimum of three years of experience to assist in general practice, wrongful discharge and personal injury litigation. Please send resumé to Putney Mazzola Law Of-

fices, 402 North 4th Street, Suite 202, Yakima, WA 98901. All responses confidential.

Staff attorney sought for busy corporate legal department of a major Catholic healthcare system. Requirements are WSBA admission and minimum of one year of practice. Health care or health law experience is preferred. Send resumé to: Sisters of Providence; Attn: Human Resources; P.O. Box 11038; Seattle, WA 98111-9038.

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.

Associate, partner, of-counsel placements; firm mergers; corporate counsel: Kerr Stores - Van Ess. Skinner Building, 1326 Fifth Avenue, Suite 628, Seattle, WA 98101. Serving major law firms and corporations throughout Pacific Northwest, Alaska, Hawaii and California. Thirty plus years' legal experience. Member NALSC.

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. WEST-LAW 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/

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

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).

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WILL SEARCH

Henry Behrens: Anyone having information regarding will of Henry Behrens who died at Seattle on or about January 20, 1991, please contact Patrick R. Burns, Attorney, 932 Auburn Way S., Auburn, WA 98002 (206) 939-7660.

Mary Catherine Gray: Anyone having knowledge of a will executed by Mary Catherine Gray of Seattle, Washington, deceased October 11, 1990, please call Jennifer Knight at (206) 451-1400.

Norris Eugene Murphy (DOD 5-18-91);

Donald John Nutting (DOD 3-26-91);

Desmond Glen O'Connor (DOD 2-13-91);

Suzy Hallman (DOD 2-10-91);

Roy Sherberg (DOD 4-2-91);

Genaro Negrete Roa (DOD 12-18-87). Anyone with information regarding wills or heirs, please contact: A. Stevens Quigley, Attorney at Law, 2200 Sixth Avenue, Suite 1122, Seattle, WA (206) 728-0220.

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.

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

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Determine if a debtor is financially worth pursuing.	
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