Washington State Bar News

Vol. 45, No. 9, September 1991

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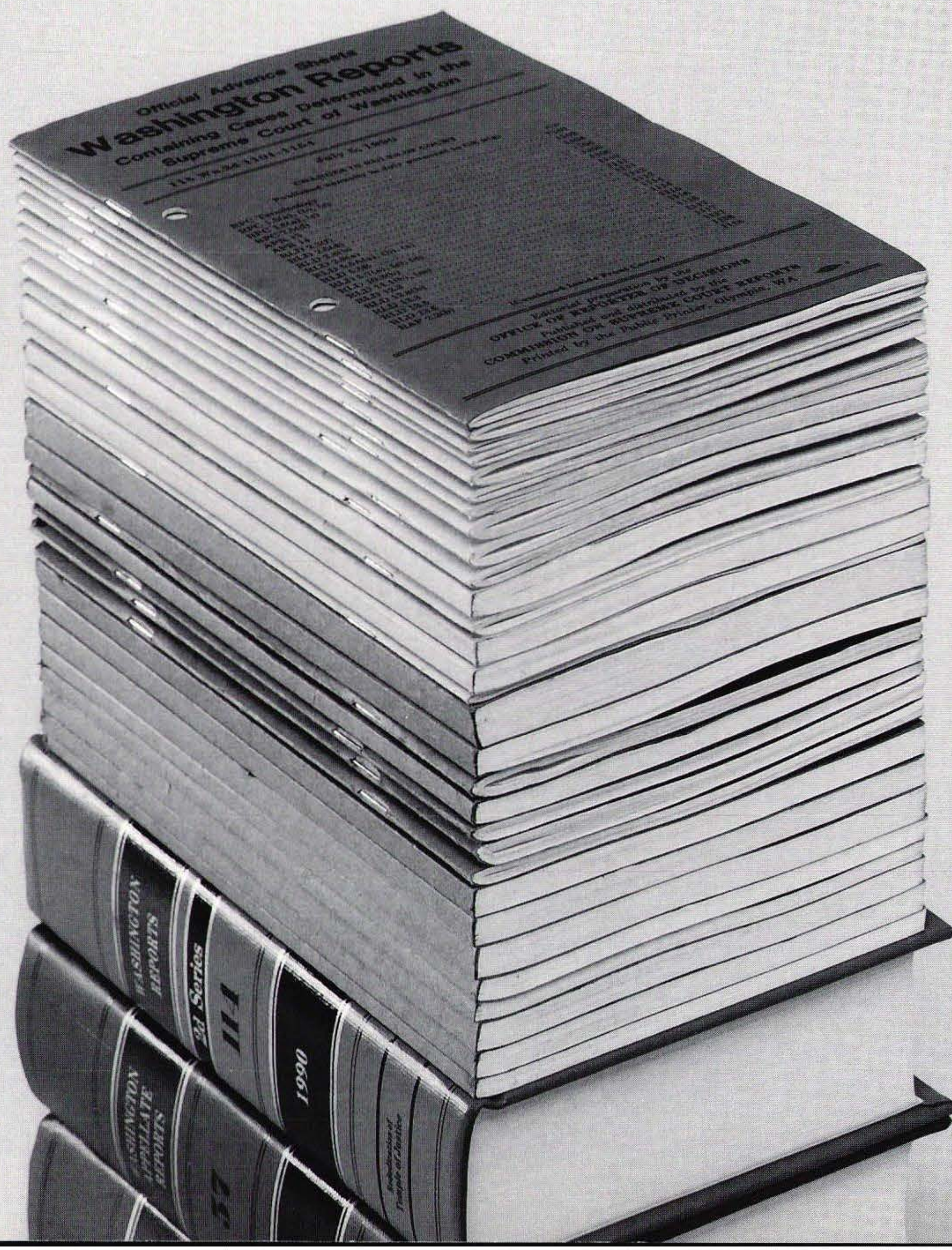
So Many Cases, So Little Time.



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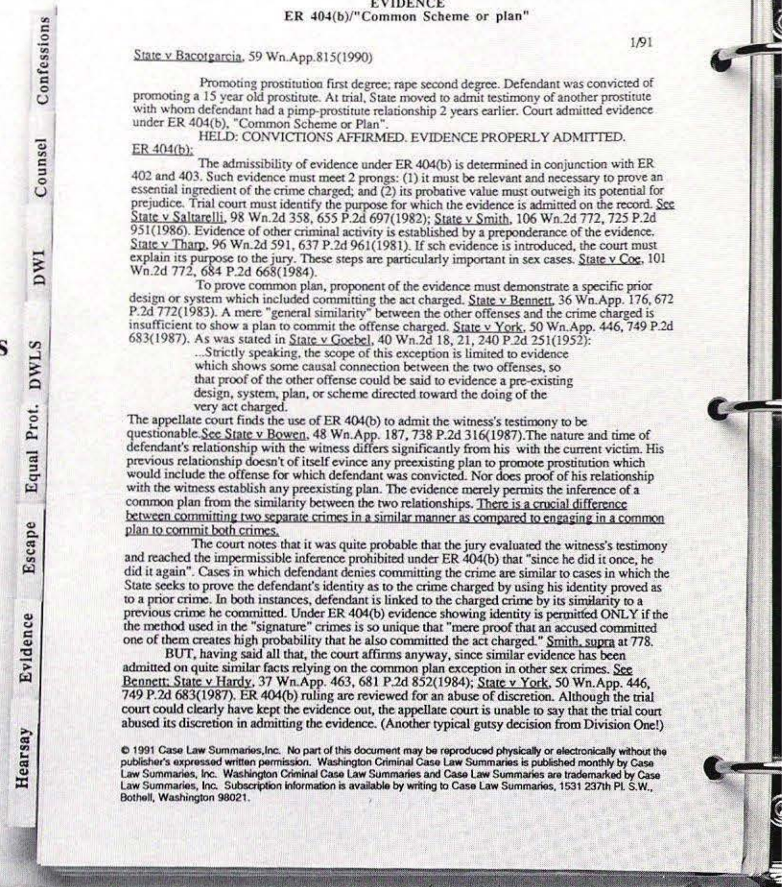
The Facts

The Findings

The Court's Rationale



EVIDENCE
ER 404(b)/"Common Scheme or plan"

1/91

State v Bacotgarcia, 59 Wn.App.815(1990)

Promoting prostitution first degree; rape second degree. Defendant was convicted of promoting a 15 year old prostitute. At trial, State moved to admit testimony of another prostitute with whom defendant had a pimp-prostitute relationship 2 years earlier. Court admitted evidence under ER 404(b), "Common Scheme or Plan".

HELD: CONVICTIONS AFFIRMED. EVIDENCE PROPERLY ADMITTED.

ER 404(b):

The admissibility of evidence under ER 404(b) is determined in conjunction with ER 402 and 403. Such evidence must meet 2 prongs: (1) it must be relevant and necessary to prove an essential ingredient of the crime charged; and (2) its probative value must outweigh its potential for prejudice. Trial court must identify the purpose for which the evidence is admitted on the record. See State v Saltarelli, 98 Wn.2d 358, 655 P.2d 697(1982); State v Smith, 106 Wn.2d 772, 725 P.2d 951(1986). Evidence of other criminal activity is established by a preponderance of the evidence. State v Tharp, 96 Wn.2d 591, 637 P.2d 961(1981). If sch evidence is introduced, the court must explain its purpose to the jury. These steps are particularly important in sex cases. State v Coe, 101 Wn.2d 772, 684 P.2d 668(1984).

To prove common plan, proponent of the evidence must demonstrate a specific prior design or system which included committing the act charged. State v Bennett, 36 Wn.App. 176, 672 P.2d 772(1983). A mere "general similarity" between the other offenses and the crime charged is insufficient to show a plan to commit the offense charged. State v York, 50 Wn.App. 446, 749 P.2d 683(1987). As was stated in State v Goebel, 40 Wn.2d 18, 21, 240 P.2d 251(1952):

> ...Strictly speaking, the scope of this exception is limited to evidence which shows some causal connection between the two offenses, so that proof of the other offense could be said to evidence a pre-existing design, system, plan, or scheme directed toward the doing of the very act charged.

The appellate court finds the use of ER 404(b) to admit the witness's testimony to be questionable. See State v Bowen, 48 Wn.App. 187, 738 P.2d 316(1987). The nature and time of defendant's relationship with the witness differs significantly from his with the current victim. His previous relationship doesn't of itself evince any preexisting plan to promote prostitution which would include the offense for which defendant was convicted. Nor does proof of his relationship with the witness establish any preexisting plan. The evidence merely permits the inference of a common plan from the similarity between the two relationships. There is a crucial difference between committing two separate crimes in a similar manner as compared to engaging in a common plan to commit both crimes.

The court notes that it was quite probable that the jury evaluated the witness's testimony and reached the impermissible inference prohibited under ER 404(b) that "since he did it once, he did it again". Cases in which defendant denies committing the crime are similar to cases in which the State seeks to prove the defendant's identity as to the crime charged by using his identity proved as to a prior crime. In both instances, defendant is linked to the charged crime by its similarity to a previous crime he committed. Under ER 404(b) evidence showing identity is permitted ONLY if the the method used in the "signature" crimes is so unique that "mere proof that an accused committed one of them creates high probability that he also committed the act charged." Smith, supra at 778.

BUT, having said all that, the court affirms anyway, since similar evidence has been admitted on quite similar facts relying on the common plan exception in other sex crimes. See Bennett; State v Hardy, 37 Wn.App. 463, 681 P.2d 852(1984); State v York, 50 Wn.App. 446, 749 P.2d 683(1987). ER 404(b) ruling are reviewed for an abuse of discretion. Although the trial court could clearly have kept the evidence out, the appellate court is unable to say that the trial court abused its discretion in admitting the evidence. (Another typical gutsy decision from Division One!)

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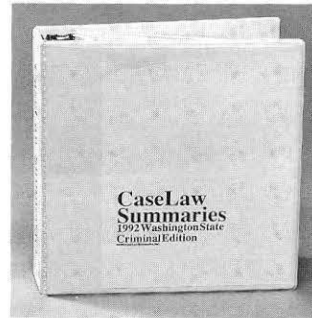

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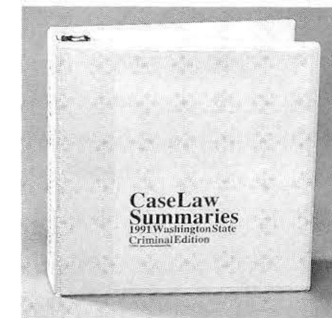

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ART CREDITS

Michael Held, Snohomish County deputy prosecuting attorney and illustrator, contributed our theme cover. Long-time readers may remember his delightful seasonal cover on the December 1982 *Bar News.*

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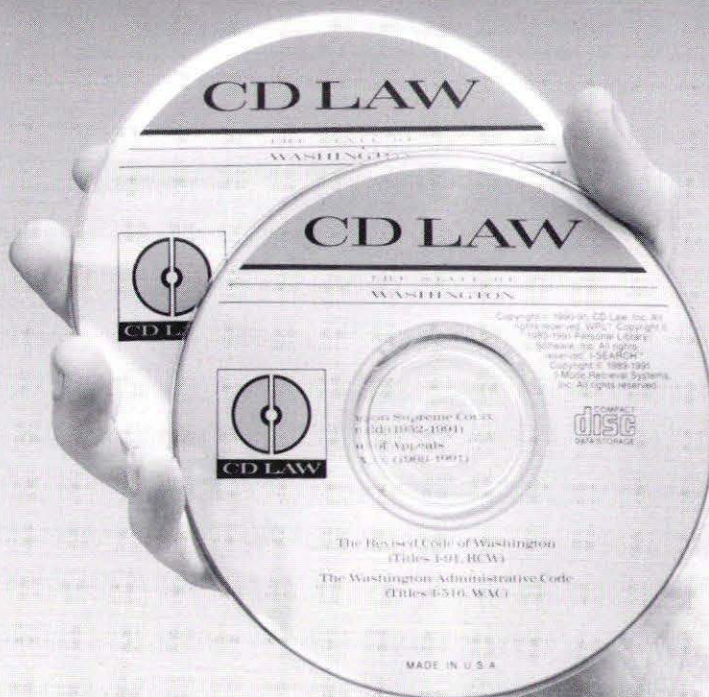

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Letters to the Editor of reasonable length are invited. Such letters should be typed and signed. The Editor reserves the right to select communications or excerpts therefrom for publication, and to edit any letter as may be appropriate.

A Colloquy on Letters to the Editor, Or, Nausea Ad Nauseam

May 15, 1991
Dear Lindsay Thompson:

I have read with interest the multitudes of letters recently published in the last two or three months of *Bar News* regarding the matter of AIDS. I have always been interested in the opinions and perspectives of others. I have found even when I disagree with the particular point being expressed, if I am attentive there is always something for me to learn which ultimately expands my understanding and refines my capacity to make a judgment.

However, I am greatly disappointed in the letter of Douglas J. Ende of the University of Washington School of Law and other letters from bar members of a similar tone. Mr. Ende's letter provided nothing to the Bar Association except to inform us of his urge "to vomit" over the ideas and opinions of attorney Olmstead. It was apparently not enough for Mr. Ende to carefully and intelligently express his difference of opinion as I think letters to the editor should. His preference for opprobrious characterization of the thoughts and opinions of others lacks intelligence and a sense of human decency. I always thought that lawyers were the ones who could strongly disagree with one another but at the same time defend each other's rights to hold to their opinions.

One of the most discouraging experiences that I have witnessed in the practice of law is to see lawyers fail to intelligently explore the issues of a given question because they feel their best argument is an indecorous comment about their opponent.

Frankly I do not think that anyone in the Bar Association really cares what physiological reaction any given attorney may have to an opinion expressed in the *Bar News*. However, all of us should be interested in intelligent and thoughtful responses of other attorneys even if they are diametrically opposed to our own. I think the editor to the *Bar News* should be more careful to ensure that letters that are solely vitriolic in their nature are excluded from publication. I want to read letters that enlighten my understanding and expand my knowledge of the issues. Sarcasm and vituperation do not interest me nor do they add to my understanding.

Sincerely,
KELLY R. GEHRET
Everett

* * *

June 15, 1991
Dear Kelly Gehret:

Thank you for your letter of May 27, 1991 regarding the recent controversy in the letters section of the *Bar News*. It is not clear to me whether you intend the letter for publication. If you do, will you let me know at your early convenience?

What constitutes an intelligent and thoughtful response to a letter varies widely from reader to reader. My view is that the First Amendment guarantees bad taste and any person's right to put theirs out to the public for viewing at any time. So I print all letters that are not actionable or unsigned. It has been a source of some surprise to me that over the last year a number of people have written me urging, in effect, that I censor the views of others whose views offend them or fail to hew to a correct line of thinking. I'm sorry you find my standards for the letters section wanting, and regret that I cannot give you any hope of their improvement in the future.

Very truly yours,
LINDSAY T. THOMPSON

* * *

June 25, 1991
Dear Lindsay Thompson:

Thank you for your response of June 15 to my letter of May 27. I think it would be well for you to publish my comments because I do believe that the Bar Association as a whole should be reminded there are some of us who do not think that "intelligent and thoughtful responses" include letters that have as their only contribution sarcasm and disgust. I agree that the First Amendment guarantees bad taste and the right to express that taste to the public but I know of no provision in constitutional law that requires the Bar Association to print "bad taste letters" free of charge for those who wish to use the *Bar News* as their tool of dissemination.

This really is not a First Amendment question. It is a policy consideration. I believe the Bar Association has a responsibility to help members of the Bar follow principles of decency and

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respect in the methods we use to express our opinions not only before the courts of Washington but in the official publication of the Washington State Bar Association. And when our opinions amount to no more than expressing disgust and disbelief at the opinions of others, and add nothing substantive to the argument, I think the Bar Association policy should exclude those letters from publication.

Douglas J. Ende's letter was precisely the kind of letter that I am speaking about. Mr. Ende contributed nothing to the Bar Association except to inform each of us that he was nauseated with the opinion of attorney Olmstead. This, mixed with a sarcastic impugning of Mr. Olmstead's character, seemed clearly outside what I would call "intelligent and thoughtful response." I am glad these letters are not published in the local newspapers because I would not want the public to get the impression that the Bar Association condones this kind of behavior between lawyers.

I am not suggesting that you exclude any letter just because you disagree with the opinion that is expressed. However, I think you need to revise your policy and exclude those stories that have as their sole purpose the demeaning of other lawyers. After all, what does a lawyer do if he no longer edits?

Sincerely,
KELLY R. GEHRET

P.S. It might be well for you to consider publishing my original letter of May 27, your response of June 15, and my further response herein.

Spend on Staff, Not Sunshine

Editor:

I was surprised and disappointed that the WSBA administration "has declined to voluntarily recognize a union." It seems to me that fundamental fairness (if not the law) requires unionization where the employees want to unionize. It also seems to me that unionization is a policy decision for the membership and not a day-to-day decision for the administration.

I urge the Board of Governors to adopt a resolution mandating a binding employee vote on the issue. The Association has often lamented the public's perception of lawyers, and lawyers running their own association like a sweatshop is not an image we should foster.

I've worked in both union and non-union environments. My experience has been that unions act as a significant safeguard to employer unfairness. My experience in representing employees is the same.

As a member of the Association, I would be far happier to see my dues used for decent employee working conditions rather than for out of state conventions and perks for the brass.

JAMES R. HARDMAN
Seattle

Insurance Costs, Like the Sky, Are Always Up

Editor:

I know that several years ago the bar associations were trying to do something about legal professional insurance and the cost of it. However, I have not heard anything recently as to developments.

I think that attorneys should be given a list of companies that supply such insurance. I only had one which had insured me for several years. About four years ago I think I paid about $500 a year, then $600, and last year about $1,400. This year they have quoted $1,354 plus an additional $154, which they had forgotten to quote. This last figure includes a $10,000 deductible.

As I have never had any claims filed against me in more than fifty years, I do feel that this tremendous increase is not warranted. Apparently they do not pay any attention to the record of the applicant.

It would help if we knew of other insurance carriers that furnished this coverage. The company that I have been with seems to increase their premiums with no particular regard for the individual.

THOMAS D. KELLEY
Seattle

Remembering Distinguished Lawyers

Editor:

Two fine people who made significant contributions to the profession have passed away—Irving Paul and Fran

Holman. I write to mention that I had the opportunity to work with both of them and am enriched by the experience.

Irving Paul practiced his ideals by representing many people scorned by society. As an intern in his office during one summer of law school, I admired the emphasis he placed on integrity in dealing with the judiciary. He was an iconoclast, but a real gem.

Fran Holman was a reflective thinker, careful in speech, very deliberative. I had several trials before him and came to respect his innate sense of fairness. He displayed a neat balance of analytical skills and compassion—traits that were so appropriate for the bench.

The profession was well-served by these colleagues. They helped many of us point the way. They each made a genuine contribution.

LAWRENCE WATTERS
Olympia

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 affected by a Qualified Domestic Relations Order.

CLAY R. RANDALL
Spokane, Washington

Court Proceedings, Always Terse, Sometimes Prompt a Note in Verse.

Editor:

The enclosed verse was penned by one of our clients observing some proceedings in local bankruptcy court a few years ago. I thought your readers might appreciate his observations:

In the ballroom of the court
The lawyers move, gavotte—they dance
To the music of their voices
Singing words planned in advance.

The songs they sing have all been writ
And stored in books that line the wall
And though the singers number many
No new songs come—we've heard them all.

The music teacher on the bench
Does listen to them sing their song
And when the singers leave the ballroom
One sang it right—One sang it wrong.

DENNIS JOHNSON, 1987
(Submitted by MARK M. HOUGH
Seattle)

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Editor:

I was shocked when I read a report of "The Board's Work" in the July edition. The report reads as follows:

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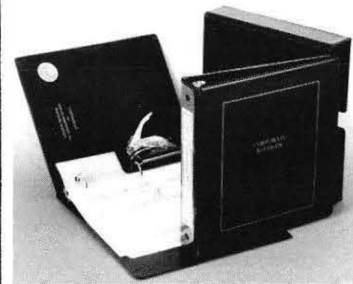

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Check your math: WSBA Disciplinary Counsel Lee Ripley told the Board the new rule requiring banks to notify the Association of trust account overdrafts had triggered twenty more notices since last month, for a total of 62 since it went into effect in March. Of the 62 cases, 52 were found to be due to bank errors and other minor mistakes and were resolved without further proceedings.

Our firm was one of the 52 who received a notice from Mr. Ripley because of a mistake by the bank. The bank (who will remain nameless, and no longer handles our account) failed to record a substantial deposit. Luckily, we kept the deposit slip and apparently satisfied Mr. Ripley's inquiry.

It is shocking to believe that the banks, who have experienced tremendous crises and appear to have difficulty following their own banking regulations, have control over our livelihood. To permit banks to notify the Bar Association of an "alleged" violation prior to investigation or contact with the customer is wrong. Receipt of Mr. Ripley's notice, whether or not true, chills one's spine. We have to respond promptly. There is no reason why the bank cannot contact its customer first to try to determine what the problem is. If the problem cannot be determined within 48 hours or so, then it may be appropriate to notify the Bar Association. Surely this "new rule" needs to be modified.

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Some Thoughts of a Juror

Editor:

Having recently served on the jury for a rather lengthy trial, I have done a lot of thinking about the experience.

The following are my thoughts on the rule restricting jurors from discussing the daily testimony while they are confined to the jury room, before the final deliberation.

While I'm sure there were legitimate reasons for setting up this system, I can't help feeling it is not the best, particularly during a long trial.

For one thing, the testimony is clearer in the mind on the day it is presented than it will be several weeks later. If one juror missed something, the others can point it out. The supposed danger here is that jurors will make their decisions before all the evidence is presented. This is going to happen to a certain extent anyway, but the next day's evidence may reverse those decisions. An open discussion would help remind everyone just what the testimony was, and to judge its importance. Although we were permitted to take notes, we were not allowed time to go over them until the end of the trial. This was almost too late. No one wanted to take time to read several weeks' worth of notes when we had waited so long for a chance to discuss things.

The rule also puts a great deal of stress on the jurors. At the end it is like an explosion, a bottle that has been suddenly uncorked. It is hard to maintain a rational discussion under those circumstances. Had these opinions been brought out gradually

over a longer period, it would have been easier to evaluate them.

As for having the alternates present, I see no problem with that, since they would simply be going over the same things everyone else heard in court. Besides, no one knows who the alternates will be, and they will have no vote on the final verdict.

The main reason for this rule, I assume, is to try to keep some jurors from influencing others. How many trials are there where a jury turns in a unanimous verdict in a few minutes? Not many, I imagine. So it would seem that when a verdict is reached, someone has probably been influenced by someone else, regardless of the circumstances. Instructions to the jurors advise them to judge the credibility of witnesses, to take into account their memory, manner, reasonableness, and possible bias. They will do the same with their fellow jurors. After spending five weeks in very close quarters with the other jurors, we felt we knew them pretty well. But we got some surprises when deliberations started. Everyone suddenly became serious, and a completely different personality emerged from some. We could have been better able to handle that, and to weigh their opinions wisely, if we had had more time to observe them under these circumstances.

My idea may be impractical, or even impossible. But I thought you might appreciate hearing a juror's viewpoint, and I hope you will at least consider it. Thank you.

MARIAN GIBSON
Spokane

In re: Odd John Solnordahl

Editor:

Everyone wants in the act. My partner, Wally Aiken, now retired, was also involved because he represented the "more experienced man" who marked the seacock to be opened in order to sink the vessel. (Yes, Wally did practice law as well as play semi-pro croquet.) Our client, whose identity will not be disclosed (because I forget his name), had the misfortune of having lost a hand which had been replaced with a hook. As a consequence, he tied knots in some rather unusual and readily identifiable manner. As the vessel was being sunk where it "could never be raised," Odd John apparently considered it unnecessary to remove the yarn as he was sinking the ship. Wally was sufficiently astute to negotiate a plea bargain for his client, who was initially charged along with Odd John.

I know it is not possible to embellish on one of John Rupp's stories, but for completeness, I thought your readers might like this additional information.

ROBERT C. ST. LOUIS
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has joined the firm. Mr. Kantor practices in the areas of general business and corporate law, commercial litigation, and housing and real estate matters. He has been in the private practice of law for eight years. Mr. Kantor returns to Reed McClure after an association with the Ginsberg, Stanich & Dufford law firm.

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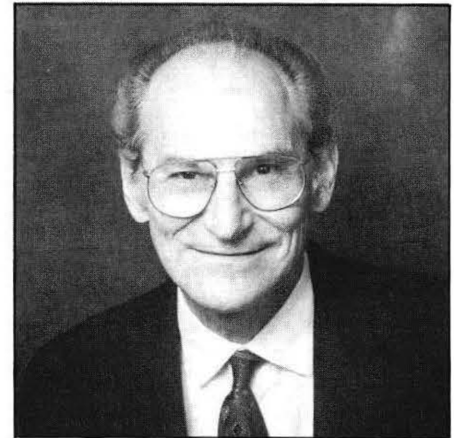
Meet Joe Delay



Joseph P. Delay

In his essay on William Strunk, Jr., creator of *The Elements of Style*, E.B. White quotes Strunk on getting to the point in writing. Strunk took only a paragraph where others have used pages. "Vigorous writing is concise," Strunk began, concluding 59 words later with the admonition that "every word tell."

"Sixty words were a lot of words in the tight world of William Strunk, Jr.," White observes.

There seems something of Will Strunk in the Washington State Bar Association's new president, Spokane lawyer Joseph P. Delay. When we phoned him for some biographical information, he readily agreed to provide it, but warned, "It won't be a lot. I don't like to go on about things." Later in the day, a fax message a third of a page long arrived, but every word told. In only 102 words, here is Joe Delay.

> Joseph P. Delay, born April 10, 1926 in Sandpoint, Idaho.
> Graduated from Sandpoint, Idaho High School in May, 1944.
> Served with the 101st and 182nd Airborne Divisions in the European Theater in 1944-45.
> Attended University of Idaho, 1946-47, and Gonzaga University School of Law 1948-52. Admitted to practice 1952.
> Sole practitioner in Spokane 1952-62. Became partner with J. Donald Curran 1962, and the firm is now known as Delay, Curran, Thompson & Pontarolo, P.S.
> Practice is limited to litigation in commercial matters.
> Served as an adjunct professor in business law at Gonzaga University-Florence, Italy branch.
> Served on various Washington State and Spokane County bar association committees, and on the Board of Governors from 1982-85.

"It's true. He is a person of unusual modesty," says his law partner and brother-in-law, J. Donald Curran. To hear Curran tell it, Delay is also a hard worker. "He's been showing up for work at 6:45 a.m. for at least 30 years. He's even gotten me into the habit."

Delay's thriving business practice seems to take a lot of time, making those early-morning hours all the more useful. Delay likes, and is well-known for being good at, complex cases involving bales of documents. He has won the devotion of his clients, many of whom have been with him 30 years or more, by getting to the heart of matters promptly. "He quickly focuses on the cost of litigation for his clients," Curran told us. In another part of the conversation he jokingly explained part of this bent. "Joe is a very economic-minded person. He joined the Airborne in 1944 to earn an extra 20 dollars a month jumping out of airplanes."

"But if a client decides it's worth pursuing a matter, Joe is a tenacious but accommodating advocate," Curran adds, seriously. "There are few lawyers in eastern Washington as well-regarded in their field as Joe."

The son of Italian immigrants, Delay tended sheep as a child. Though blessed, Curran says, with an appreciation of good food, a prodigious appetite and an apparent inability to gain weight, he'll have nothing to do with mutton.

His philosophy is that satisfaction in the practice of law is a journey, not a destination, Curran told us. "He'll stop to smell the flowers along the way." Or, at a recent Board of Governors' meeting recess, lend his height and vigorous serve to a volleyball match.

Delay and his wife, Helen, have two sons who are lawyers, one in Seattle, the other in Spokane. A thoughtful, attentive person who's been sitting in on the Board of Governors' meetings since the first of the year, Delay will doubtless hit the ground running as president. His columns begin in this space next month.

Unmanageable

by **Lindsay Thompson**
Editor, Bar News

Over the last ten years I've read a lot about management. I have run several small publishing ventures and two nonprofit corporations. I've come across a lot of law firm management material, both in practice and in putting together this law office management issue of the *Bar News* each September. You can find out how to be Managing Attorney, or the Management—or Executive—Committee. Different ways to handle staff, and how to adapt the bombing run requirements of *Catch-22* to associates' partnership requirements—all that I've read piles of material about. But one thing I've never found much information about is how to be Supervising Attorney.

You can't really identify them, according to the Nature or Nurture Theory ("Supervising attorneys are born, not made"). First, considered objectively, the term is oxymoronic. They're more like parents: they happen. One day they are handed a new associate and are expected to do something with the unformed creature.

Approaches vary. There's the ever-popular Scrooge/Cratchit Variation. Some take the Sherlock Holmes approach ("No, Watson, you have missed the point entirely"). Others opt for the King George V Doctrine ("My father was afraid of his father. I was afraid of my father. And, by God, my children are going to be afraid of me"). Those in touch with their feelings and the trends of the day want to be the new associate's friend: they will be, mentor and, God help the language, mentee.

A few, genuinely horrified by this visitation on them, wonder aloud (with or without religious invocations), "WHY ME?"

Though he is too much the gentleman ever to admit such a possibility could ever have crossed his mind, my last supervising attorney, Sam Gunn, struck me as the "Why Me?" type. There he was in Vancouver, minding his business and, outside work, looking after six kids, when one day, in a firm reorganization, he was given a seventh child: me.

I had been with the firm a couple of years then, and so occupied the bureaucratic equivalent of the terrible twos. I had plenty of ideas and surplus opinions. I didn't like being supervised. Nevertheless, my business practice, the small tail of the large firm dog, had to be routed into some sort of conformity with the overall goals of the practice: for example, showing an occasional profit. (I once heard of a lawyer who wore it as a badge of pride that he'd reached $100,000 in receivables: a sort of theoretical annuity. My practice was not unlike that).

I was different. We liked different sports. I didn't get interested in baseball until the playoffs each year. I loved basketball, but not particularly professional or west-coast ball. The Atlantic Coast Conference was my passion from afar. I got worked up about oddball events like the Henley Regatta and the Oxford-Cambridge Boat Race. Not even our musical tastes coincided. He loves jazz, and more particularly, the blues. I like classical.

I was also hard to pin down. I was involved in lots of things outside work, and I was constantly gadding off to political events, *Bar News* meetings, editorial conferences, civic club meetings, lectures on restoring Victorian churches, and black-tie fundraising events in Portland. When at work, I tended to take cases that were interesting rather than practical. Going over receivables, Sam would patiently hear my description of a case and say, "Sounds like another one of those esoteric legal theories." Back to earth I came, and rightly so. You can't skimp on the basics.

Besides rounding me up as I frequently strayed from the herd, Sam was a useful soundingboard. ("Am I being esoteric?" "Yes, I think so." Or "No, but there's an easier way to accomplish the same thing.") He ran interference for me with people I considered difficult clients, reviewing work and, where necessary, guiding things back on track. As time passed, he gave me increasingly complicated and interesting corporation problems to sort out. (Like a child with a set of building blocks, I could find hours of contented employment in a badly out-of-date corporate record book or a sale and exchange of assets.) He trusted me with some of his larger clients and smiled politely at my more obscure jokes.

By and by, I decided to do something else. While not much of what I did in private practice translated into my work as a prosecutor, I find some habits of mind and approaches to work have accompanied me from my days as Sam's pain in the neck: an increased appreciation, mainly, for the simple. The direct approach can be crisp and cleanly logical, more aesthetically appealing than the more baroque models of my youth. A certain calmness of mind evens out the highs and lows of practice and keeps stress at manageable levels, however satisfying treating a meeting over accounts receivable as a scene from a Verdi opera may have been.

So, in this annual *Bar News* issue on law office management, I pause to doff my hat to Sam Gunn and the legion of supervising lawyers like him in Washington. Like teachers, parents and sculptors, they take the material they're given and try their best to make something presentable out of it. It's a trial-and-error life in which success is by no means assured, and signs of even the most modest accomplishment may not be evident for years.

They make a significant contribution to who we are as a profession.

A Time of Transition

This month represents another transition in WSBA leadership. Lowell Halverson completes his year as president while Joe Delay begins his. Ron Gould, Don Curran, and Jeff Tolman leave the Board of Governors while we welcome Mike Larson, Joe Nappi, Jr., and Wayne Blair.

At the time the WSBA began its search for a new executive director last year, Jim Vander Stoep was president. Jim—who resembles and acts like everyone's favorite Dutch uncle—already knew me slightly from his visit to the Idaho State Bar Annual Meeting the year before. By the time the search committee had interviewed finalists, Lowell Halverson was president. Don Curran chaired the search committee, which consisted of Jim Vander Stoep, Lowell Halverson, Jeff Tolman, Ron Gould, and Don Curran. By the middle of this month, they will all be gone from officialdom.

Having been in the bar exec business for a number of years, I have survived a number of these transitions, but there is always something frightening about losing the people who hired you. To begin with, it's harder for them to admit they made a mistake!

Lowell Halverson

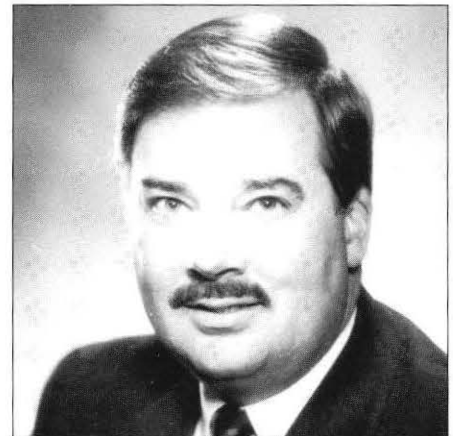
One of the greatest pleasures and biggest challenges this past nine months has been working with Lowell. Either it was a match made in heaven or a match made in hell. Lowell is an idea person who actively creates chaos. He once used an analogy about "French intensive gardening—where you throw a handful of seeds into the ground, fertilize, water, and see what comes up." Lowell is the original French intensive gardener.

Lowell's agenda could be summed up in one word—*people*. He was a strong advocate for encouraging pro bono work. He labored diligently for access to justice. He created the Lawyer to Lawyer program to mentor young lawyers. He created the Long-range Planning Task Force to create the "book of ideas" for what the WSBA might be. He brought together a consortium of all the people dealing with public relations for the legal profession. He brought together the various groups who were interested in bringing technology to the distribution of law-related information. He believed in the politics of inclusion—even when most of us thought it would create chaos (and it usually did).

Lowell has the uncanny knack of making you feel as if even your most far-fetched idea might be a good one (even when it isn't). Most importantly, he made those who felt disenfranchised feel as if he cared—because he did.

Fortunately, or unfortunately, depending on your point of view, I am nearly the opposite in style. Part of my "personality profile" says that I prefer to work "from a detailed plan of action which has been developed in an orderly progress." I have been, literally, the groundskeeper for the French intensive gardener. In retrospect, however, it is clear that Lowell created an environment where new ideas could sprout. Not all of them would live, but they could sprout. He wasn't worried about how things were done before. How could they be done today?

He touched a lot of people in one short year. He did much good. A little chaos was worth it.



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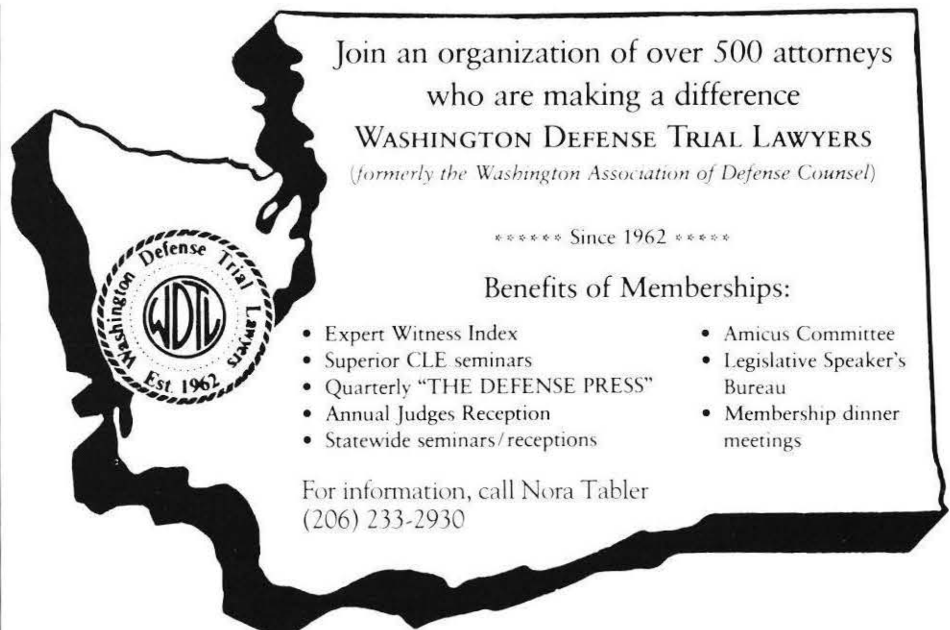

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Nonclient Phone Memos

by **Gregory S. Morrison**

It is common for lawyers to receive phone calls from potential clients, who will usually be asking for either specific legal advice or a fee quote. Effectively handling these calls will help the lawyer to gain good, new clients and prevent unnecessary time loss. Here are a few suggestions to help you better manage these types of calls.

First and foremost, *WRITE IT DOWN*. It is imperative that you take copious notes of all your telephone conversations. Without thorough notes, you will have nothing to refer to should the potential client call back. Furthermore, if the caller ultimately hires you, most of the preliminary information will be ready to be put in the file immediately.

At a minimum, each new phone call memo should contain the following information:

1. Name, address, phone number. Occasionally, some people refuse to identify themselves. In that event, you should refuse to continue talking to them.

2. Why is this person calling you? The answer to this question will assist you in thanking your referral sources and identifying the strengths and weaknesses in your personal marketing efforts.

3. Questions asked. Always try to identify exactly what the caller is asking. Frequently callers will engage in long narratives that are mere preambles to their questions. You will save a lot of time by going straight to the crux of the matter.

4. Answers given. If you feel comfortable in providing a specific answer to a question, be absolutely sure to write it down. However, the best approach is to avoid giving specific legal advice over the phone to nonclients.

5. Disclaimer. The caller should always be advised substantially as follows: "I do not represent you at this time. Therefore, I am unable to give you any specific legal advice. In order to get specific legal advice, you will need to make an appointment, at which time I will consider being hired by you."

6. Estimated fee. Any discussions concerning your potential charges should be carefully noted. Additionally, any fee quotes or structures should be clearly set forth to the caller as estimates only. You should always reserve the right to adjust your estimate following full determination of the facts and issues involved.

The completed phone memo should be filed in an expandable, alphabetical file in your office. This will allow you quick access to your records if the potential client follows up on your initial conversation.

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

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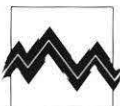

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The Beatings Will Continue Until Morale Improves, and Other Helpful Hints on the Practice of Law

by **Randolph I. Gordon**

As it is universally true that the greatest wisdom appears to be trite and simpleminded to the uninitiated, it is only with great trepidation that I put forward suggestions to my peers as to how their success in legal practice may be enhanced. If my ideas are wise, they will appear simpleminded. If, on the other hand, they appear novel and brilliant, they will undoubtedly be wrong. This conforms with the First Principle of Sociological Research which holds as follows: if the study yields results contrary to expectation, the study is wrong; if the study conforms with expectations, it is obvious - and unpublishable.

The challenge before me is clear: I must present wisdom in a form that appears folly. For the reader the choice is likewise clear: if the ideas which follow appear foolish, you are mistaken.

With these thoughts in mind, I offer the following seven principles to enhance success in legal practice and law office management.

1. The Skills Used By the Average Lawyer in Litigation Are Well-suited to Law Office Management.

Litigation involves many skills useful in the management of the law office, particularly insofar as personnel are concerned. Employees enjoy having lawyers show interest in their lives and activities. Questioning staff about their lives and such areas as how they spent their lunch hour, when they arrived in the morning, what took so long, whether they have seen certain pleadings, whether they have a boyfriend or girlfriend, whether they plan to have children and when, are, as one might expect, appreciated as an expression of interest. In gaining this information, there is no more effective method than the use of cross-examination and leading questions. For instance, not long ago, I heard a colleague asking of the receptionist: "You really don't want to keep this job, do you?" There can be little doubt that the receptionist appreciated the lawyer's concern over her vocational aspirations.

If staff ask questions of the attorney, basic principles of trial also apply: the staff member in question should be calmly and firmly instructed that you are the one asking the questions. Such a response is essential to establishing a sense of leadership within the office and to foster the development of appropriate relations which ought properly to parallel those manifested within the well functioning dog team.[1]

2. "Everything Not Mandatory is Prohibited."

In T. H. White's *The Book of Merlin,* King Arthur is transformed into various members of the animal kingdom in order to gain wisdom. Above the entrance to the ant colony, King Arthur notes the inscription: "Everything not mandatory is prohibited." This is a worthy aspiration for any law office. Ants, after all, are among the most industrious of all creatures. Any law firm fashioned after such a colony would be a model of productivity. There is simply no such thing as too many in-house memoranda or subject matters too small for regulation. This principle has apparently already been understood and implemented by a number of large Seattle firms, so I will not dwell upon it at length here.

3. The Receptionist Must Impress Upon the Client the Importance of the Attorney and Help Establish the Attorney-Client Relationship.

The initial impression created by the receptionist is of the utmost importance in establishing the appropriate lawyer-client relationship. As a professional, the lawyer must not only command the client's respect, but the client's unquestioning obedience. After all, the respect of a client is without value if the client does not do precisely what the lawyer asks of him or her.[2] If clients are given the impression that they are important individuals or, even worse, that the lawyer "needs" them for "financial" reasons, a seed of self-worth is placed in the client's mind that interferes with the healthy dynamic of the lawyer-client relationship.

The importance of the receptionist, no less than the furniture and decor, cannot be overstated, yet this is overlooked in many offices. There is space here to address only a few of the most common situations.

The client who requests to see or speak with the lawyer.

Any client who wishes to speak to the lawyer should be informed that the lawyer is "busy" without apology or explanation. Explanations serve only to encourage the client in the mistaken belief that he or she has some right to know the lawyer's whereabouts and activities. The truth is that there are many matters, far more important than that with which the client is concerned, which place demands upon the lawyer's time.[3] It is especially important that the client be told that the lawyer is "busy" if the lawyer is, in fact, available. To do otherwise is short-sighted and will lead to future problems.

The client who expects the lawyer to be available to address his or her problems.

Such a client has an inflated perception of importance which must be promptly and clearly addressed. A well-trained receptionist will prove invaluable here. By keeping the client waiting in the entry area, refusing to interrupt important conferences, and generally snubbing the client, the client comes to understand that the lawyer's time is far more important than the client's own. Under some circumstances where the client becomes increasingly agitated, it is helpful for the receptionist to firmly and clearly explain to the client: "You must understand that Mr. or Ms. [Attorney] has many matters which are far more important than yours. You should consider yourself

fortunate that he or she is taking your case at all." After stating this the receptionist should decline to respond to any further inquiries or expressions by the client. I have observed this precise technique used to good effect on any number of occasions. Invariably, the client will be seen leaving the reception area shortly after being informed of these facts, no doubt with the clear realization that it is inappropriate for the client to trouble such an important individual with the client's petty concerns.

The client who calls by telephone.

All telephone calls should immediately be placed on hold. This creates the favorable impression that business is booming and the client is indeed fortunate to have a lawyer or law firm that is sought after by so many. All telephone calls should be disconnected at least once. Although this may seem arbitrary,[4] disconnecting callers, preferably after placing them on hold, is effective at screening out the casual inquiry which is not suitably urgent to trouble the lawyer. Studies uniformly report that a large proportion of the lawyer's time is spent on the telephone and the profitability of the firm requires that all telephone calls be screened. As the client is transferred first to the lawyer's legal assistant, then to the lawyer's secretary (who should be instructed to leave the work area), and back to the receptionist (or the person covering for the receptionist), the client should be asked by everyone with whom the client speaks: "What do you want? Why do you want to speak to the lawyer? What is this about?" This procedure never fails to impress the client both with the number of staff working for the lawyer and just how important the lawyer is. If the lawyer does not have adequate staff for this approach, modern "voice mail" technology can be employed to good effect.

4. As a Member of a Learned Profession, the Lawyer is Under No Obligation to Explain the Client's Case to the Client.

The very language of the law is impervious to the understanding of the uninitiated with good reason. Our predecessors, over the centuries during which the Common Law was refined, well understood that the health of the profession and respect for legal authority depended upon the law remaining an area of occult knowledge. Attempts to explain the client's case and the basic legal principles applicable to it to the client, will undoubtedly leave the client with only a partial understanding of the situation. As Alexander Pope noted in his *Essay on Man*, "A little knowledge is a dangerous thing," particularly if it encourages the client to exercise his or her own judgment or, even worse, to second guess the lawyer's decisions in the case. A lawyer who attempts to keep his client informed literally opens a Pandora's box of woes: the lawyer may find himself or herself having to seek authorization respecting the disposition of the case, respecting scheduling of hearings and trials, or even, in extreme cases, may find that the client will conclude that the matter ought to be settled or mediated. All of these consequences have a deleterious effect on the lawyer's control, convenience, and revenues.

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5. Laughter Has No Place in the Properly Run Law Firm.

Jean-Paul Sartre once wrote that the one thing a man condemned to be executed wanted to hear was that the next day the earth would be struck by a comet and everyone on it would perish. Misery loves company. The reader will no doubt be surprised to learn that some law offices provide their services in an environment of easy good humor and laughter. This is a totally wrong-headed approach to the practice of law. Law is a serious business. Any person involved in the legal system has "problems." These sorely afflicted individuals rightfully expect individuals working in the legal system to be grim and humorless. Fortunately, this expectation is met by most legal professionals.[5]

Still, it is true that some misguided individuals find themselves drawn, like moths to the flame, to so-called professionals exhibiting levity. This is dangerous to the profession at large for two reasons: first, it would lead to a concentration of clients in the hands of those with inappropriate demeanor; second, it may inject a sense of perspective into the context of legal disputes which is inconsistent with their prolongation.[6]

In the interviewing process, staff should be selected whose demeanor is in keeping with the seriousness of the matters at hand. Jokes should be administered during the initial interview. If the candidate smiles or laughs, their unsuitability has been revealed. Remember it is far easier not to hire an individual than it is to terminate them once inappropriate demeanor is displayed in the workplace. If, as ought properly to be the case, the hiring partner does not have a reservoir of jokes for the interview, I recommend the simple expedient of entering the room with one's suitjacket reversed and glasses upside down as a substitute. If the candidate is of a sufficiently serious nature, they should be closely questioned in the following manner: "You do not find estates and probate a matter for levity, do you? A human being suffering an injury is no laughing matter, is it?"

6. The Beatings Will Continue Until Morale Improves.

Basic principles of behavior modification reveal that positive reinforcement alone does not induce as rapid a learning curve as the systematic use of both positive and negative stimulus. Law firms all too often administer a surfeit of cloying positive reinforcement: employees are paid, given weekends off, paid vacations, and even given medical benefits. On top of this, all too often staff employees are praised for work done well. Obviously, a lawyer with an active practice should have no time or patience for incessant rewards whenever an employee performs his or her work properly.[7] After all, doing things properly is simply that for which salary has been paid. It rapidly becomes apparent that it would be impractical to reward each correct action without an adverse effect on productivity. This practice is extremely detrimental to the interests of staff members who may cease to perform work without the accompanying positive reinforcement much as a dog who will only roll over when rewarded. To provide this sort of reinforcement is

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a disservice to the highly trained legal staff member who, like the lawyer, should be prepared to perform the work required without any positive reinforcement whatsoever.

7. A Lawyer Should Never Discuss Billing.

Law is a learned profession as has been established by case authority. Business, on the other hand, is not a profession because it concerns itself with mercantile pursuits. The esteem and respect commanded by lawyers in the eyes of the general public would be gravely compromised should the lawyer at any time concede that the practice of law is a "business." If the client gets wind that you too are in business for profit, the client will lose all respect for you, not least of all because you failed to obtain any credit application or security to assure payment for services rendered to the client, itself a notorious scofflaw.

It follows that any advertising or marketing is below the dignity of a practitioner in a learned profession. Case intake and selection should involve only the intrinsic interest to the lawyer. Under no circumstances should the amount in controversy, the client's ability to pay, and whether or not the lawyer is able to provide any service of value, be considered. These factors are irrelevant to practitioners of a learned profession.

The word "bill" must never be used. When a client raises the issue of "billing," the lawyer's countenance should reflect mild surprise that there are charges being accrued for services, and dismiss the matter with the wave of a hand as being of no interest, mumbling inaudibly about a "statement." Certainly, no lawyer should ever broach the subject directly; in the face of persistent inquiries, after all efforts to change the subject have failed, the lawyer should throughout maintain an affect of imperfectly disguised disdain, if necessary referring the matter to "the bookkeeper." This has the added benefit of preempting a discussion of such notions as "value added" billing, a concept impossible to explain to the uninitiated or reduce to writing.

Fortunately, as a member of a learned profession and by virtue of superior education and training, lawyers have no difficulty handling the minor business aspects associated with the collection of fees. Consequently, as may be readily ascertained by inquiry among our peers, it is a demonstrable fact that no law firm ever has had a collection problem.

The foregoing principles are not intended to be exhaustive, but rather a distillation of experience. Patient and strict application will assure that the practitioner will ultimately be free from any concerns respecting the practice of law. □

Endnotes

[1] *See* London, *Call of the Wild*, Chapter II: "The Law of Club and Fang," (1903).

[2] This is of vital importance in the litigation context. Many are the times when a client left to his or her own devices would testify to things as the client believes they occurred, with potentially disastrous legal ramifications. It is the lawyer's task to prevent this from occurring. In the split-second timing of the courtroom, the lawyer must train the client to instant obedience, preferably by the use of subtle hand signals (e.g., drawing the attorney's flattened hand (fingers

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together) with a horizontal motion just below chin level for the distance of about nine inches.)

[3]One exception where revealing the lawyer's whereabouts is appropriate is the instance when the lawyer is at the golf course, playing racquetball, or is out to lunch and has not arrived for a scheduled appointment with the client. In such circumstances, the client should be informed that the stresses and demands of legal practice require that the lawyer engage in such activities and that the client must surely appreciate that the lawyer's health and relaxation is far more important than the matter with which the client is concerned.

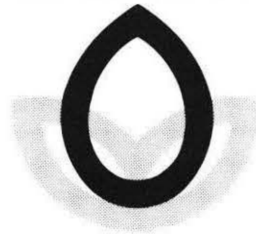
[4]Although some firms have adopted the practice of disconnecting callers twice, field studies have established that there are diminishing returns, since the client who will call back after having been disconnected once will often call back after the third or fourth disconnect.

[5]Sociological studies demonstrate that of those lawyers who do engage in occasional levity, fully 92 percent reserve such activity for nonbusiness hours. As to the 8 percent who admit to levity during business hours, the incidence broke down as follows: laughing at one's own jokes (7 percent); polite response to humor from the bench (25 percent); giggling with opposite sex staff members behind closed doors (54 percent); other (4 percent). These figures are particularly encouraging when, in a subsequent study, it was revealed that the largest category of offenders consistently reported virtually no levity with their spouses during nonbusiness hours. Such individuals apparently are able to maintain the proper demeanor while in the home environment and should, with appropriate intervention, become totally humorless.

[6]Sociological studies reveal that such individuals will often find alternatives to full adjudication of their legal issues. The notion that there are more efficient alternatives to resolution of disputes than the full panoply of procedural due process which inheres in a jury trial undermines principles basic to American Constitutional Law and must be discouraged. Only by the grim, relentless workings of the legal system can legal authority be generated by the appellate courts. These accretions to the Common Law are the highest contribution that any lawyer can make to the legal system. It is for this opinion that such authority forms nearly the entire basis of study in law school. Shortcuts such as mediation, arbitration and negotiation before trial have no place in the properly focused legal practice and, appropriately, are seldom the subject of instruction in law schools.

[7]Likewise, efficiency dictates that any corrective action taken be done in an open and public fashion so that all can benefit and so that undue repetition may be avoided. Many offices find it helpful to convene a staff meeting for public correction of an employee. Efficiency dictates that, to avoid disruption of the office, such corrections take place at office social functions whenever possible. Such functions should be scheduled during nonbusiness hours with attendance mandatory.

Randolph I. Gordon, Bellevue attorney, is author of the regularly published "East King County Report" in the Bar News.



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The Pro Bono Survey: What We Found Out

by **George W. Scott**
WSBA Director of Public Affairs

Lawyers are in the only profession involved in every question and issue before society. They are also engaged in every facet of our community, governmental, charitable and nonprofit life as pro bono service providers. Last year over 4,000 WSBA members volunteered time to the 23 pro bono programs either operated by Evergreen Legal Services and its adjuncts or through the county bars. Thousands of others quietly helped needy persons at no charge.

In 1989 the BOG recommended that each member do 30 hours of free legal service annually. The WSBA had already hired a full-time director of local bar affairs (Now Nina Harlan) to develop training materials and videos to help pro bono providers. Neither the upswing in volunteerism nor $3 million in IOLTA funds has offset the halving of Evergreen Legal Services' federal funding since the '80s and immigration to the state. Data from Evergreen and the local bars on needs all say the same thing: dissolution, landlord/tenant, and consumer problems head the list of grief.

At its July meeting, the Board of Governors heard the report of the WSBA's Long-Range Planning Task Force chaired by Bill Gates, and endorsed its primary recommendation: "The WSBA should accept the challenge of making our system of justice accessible to every Washingtonian." This commitment "is part of what distinguishes us as a profession. A government based on equal justice is a hoax if large segments of its citizens are denied access to the system."

As an incentive, the 1991 budget contains 400 "50% off" vouchers for CLE courses for pro bono lawyers.

Findings

In the spring, Board-ordered surveys were sent to a random sample of 3,500 (20 percent) of the members, 1,190 firms, and 23 pro bono programs; 23 percent, 19 percent and 66 percent, respectively, responded. The results are indicative, if not inclusive, of the pro bono world in Washington.

Lawyers volunteered a minimum of 16,411 hours for the organized programs in 1990, valued at $1.4 million, most of which was done by individuals taking on family law, landlord/tenant, real estate, and debt problems.

Two-thirds of the firms responding were composed of fewer than five persons (five percent had more than 41); 77 percent of the firms responding gave between 100 to 300 hours; 3.9 percent gave over 1,500 hours. The Fourth and Fifth congressional districts led with aggregates of at least 2,500 and 1,500 hours. The headliners among medium-sized firms include Spokane's Turner, Stovey, which won a commendation from the Spokane County Bar for giving over 1,000 hours in 1990. The clear leader among the major firms is Seattle's Lane, Powell, Spears, Lubersky which, between 1975 and 1990, has given over 4,500 hours. Seventy-eight percent of the respondents' firms underwrite all or part of their work—a policy that plainly worked. Mid-sized firms (five to 30) were underrepresented in the survey.

The highest producing attorneys also gave the most; 72% of respondents work between 41 and 60 hours a week; the mode for pro bono time is 22 to 25 hours per year. It can be safely said that over one-third of the WSBA's membership gives a significant amount of its time to the needs of the poor.

"From the first hour the (Long-Range Planning) Task Force met, there has been a unanimous feeling that the loss of the sense of pride which lawyers felt, and deterioration of public attitudes toward lawyers, are the central problems of the Bar," says its report. There is also no doubt as to the depth of those genuinely in need, or that, as the pro bono activity appraisal puts it, "Word of mouth about lawyers helping those most in need in our society, thousands at a time, will do more for the profession's image than all the public relations generated by the organization in its 102-year history."

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The Full-Time Part-Time Legal Practice

by **Michael Anderson**

In recent years many commercial lawyers have looked for ways to make their work more satisfying, rewarding and less all-consuming, as the competition for business clientele has increased to frantic proportions. Firm attorneys, in particular, are increasingly seeking alternatives to the standard associate-to-junior partner-to-senior partner routine: this traditional evolutionary process appears to grow longer, more selective and more political with every year.

Despite such impetus, practical solutions to this quest have been slow to emerge. Moving to a position as in-house attorney is reportedly becoming easier as more corporations see this position as a cost-effective alternative to soaring legal bills. Yet finding the company with a defined, permanent role for a full-time general counsel is still not an easy task; moreover, once the attorney is ensconced, there is still the risk of being cast into the street with no clientele the day the "big merger" ushers in ill-disposed "new management."

Then there is the concept of working freelance as a "contract attorney," which has gained notoriety as well as increasing acceptance in legal circles in recent years. While this path certainly provides the flexibility for scheduling that long-awaited sabbatical to Rio de Janeiro, it is frequently not possible to secure a continuous succession of sustaining contract jobs. Some attorneys have been successful negotiating (or renegotiating) employment with their firms on a part-time basis or in establishing a "job-sharing" arrangement with another lawyer within the firm. The standard trade-offs here, however, are a retrogressive move on the partnership track and a schism with ambitious colleagues of the "you don't work, you don't eat" mentality. I tried blending the core concepts of "in-house," "freelance" and "part-time" together in 1986, and a surprisingly functional form of legal practice emerged. My "blend" seems to avoid the principal drawbacks inherent in the aforementioned individual approaches. For lack of more artful nomenclature, I have styled myself as a "part-time, in-house legal counsel" during the past five years. Now, after service to six different corporations in this capacity, I believe I have sufficient experiential foundation to comment on the novel vocation of a "PTIHLC" (please, don't even try to pronounce it) with the hope other lawyers may find the concept as intriguing as I have.

"PTIHLC" in a Nutshell

There is little mystique about the metamorphosis to full-fledged PTIHLC status. An attorney should have a pre-existing attorney-client relationship with two to four companies whose respective managements each feel they are spending way too much money on legal fees, but who recognize (at least dimly) that certain forms of legal work are a necessary adjunct or byproduct of their commercial operations. The prospective PTIHLC proposes a basic bargain to each company's management in turn, trading the attorney's services, charged at a discounted rate, for the company's provision of an office, secretarial services and other common support functions, and the distinction of serving as the company's "staff counsel" on some form of regular basis. I favor working two four-hour time blocks a week for a company (i.e, a guaranteed minimum of eight hours of work per week). I charge about half the customary hourly rate of attorneys of comparable seniority in the large Seattle-area law firms. The PTIHLC then can jettison office and support peripherals, which ordinarily comprise the lawyer's overhead. With further minor refinements, that's about all there is to the concept.

Frequently-Asked Questions About "PTIHLC"

No. 1: Ethics

"Can you actually be the staff attorney for more than one entity?"

When I myself asked this question to the WSBA some years ago, I received the following reply from the WSBA RPC Committee:

> The Committee considered your inquiry concerning providing in-house legal counsel for more than one client. The Committee was of the opinion that nothing in the Rules of Professional Conduct would prohibit the offering or providing of such services by a lawyer. The Committee was of the opinion that the ethical considerations and attorney-client relationship are not changed whether the employment relationship is defined as that of an independent contractor or as a company employee.

Washington State RPC 7.5(d) states: "[L]awyers may state or imply that they practice in a partnership or other organization only when that is the fact."

I use a short employment agreement to expressly confirm the fact that my part-time employer and I agree that I act on behalf of the business as its staff attorney; I sign my name to corporate letterhead in the representational capacity of "staff counsel," and I appear on company business cards as the "staff attorney" or "staff counsel."

No. 2: Status

"Are you an independent contractor or an employee?"

In theory, a PTIHLC can be either or both (that is to say, the PTIHLC can be an independent contractor to one company, while a true part-time employee with another), depending on the preference of the PTIHLC and the part-time employer. As lawyers know, the distinction between an independent contractor and an agent (employee) is not a bright-line test; for instance, the Internal Revenue Service has established

twenty criteria to assist in determinations for the IRS' purposes concerning wage taxation. And, as if to confuse matters further, even traditional full-time general legal counsel do not meet one of the IRS' more fundamental "employee status" requirements, that of "employer's control" (insofar as the RPC's require an attorney to always exercise independent professional judgment and to withdraw from representation when warranted; see, e.g., Washington State RPC 1.15 and 2.1).

Thus, I should not appear too equivocating in saying that a PTIHLC may be even harder to segregate into defined roles of part-time employee vs. independent contractor. I like to be thought of as a "quasi-employee," and I actively try to become a useful member of the corporate management team, as opposed to being viewed as just another "consultant." Nonetheless, I state I am an independent contractor for payment and taxation purposes in my employment agreements, and I disclaim entitlements to standard employment benefits. In the end, perhaps the most fundamental consideration for the prospective PTIHLC to remember is that if the part-time employer pays the attorney a gross fee, without deducting taxes, the PTIHLC is responsible for making tax payment arrangements with the IRS, including the payment of self-employment tax. The state will want its business and occupation tax, too, just as with any other self-employed individual.*

No. 3: Advantages

"What's so good about this idea?"

I see a number of advantages for both the employer and the employed in the PTIHLC arrangement.

Advantages from the PTIHLC's Perspective

Compensation. Working for two, three or four companies, on a regularly scheduled basis (say for a guaranteed eight billable hours per week for each company, using my own example), permits the PTIHLC to enjoy a comfortable and reasonably consistent income, even at half the hourly rate of the big urban firms. The establishment of a regular billing schedule, wherein the PTIHLC is paid as a quasi-employee, coupled with the fact that most work is done "on-site" with the full knowledge and participation of the employer, promotes prompt payment of billings and few, if any, questions about bill content. Admittedly, if the PTIHLC works as an independent contractor, with no entitlement to employee benefits, the PTIHLC must pay out-of-pocket for health care insurance, vacations, retirement planning, etc., but I have found these expenses are outweighed by the other

* The employee/independent contractor distinction still is of importance, however, to the national organization for in-house legal counsel, the American Corporate Counsel Association, located in Washington, D.C. To be eligible for membership with the ACCA, the prospective member must be a salaried employee of the company, and can only work for the one employer.

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advantages.

Flexibility. If the PTIHLC calendars wisely, it is possible to keep a flexible schedule with some free time. (Since the employers are accustomed to seeing the PTIHLC only occasionally in the course of the part-time arrangement, and they do not pay for vacation time, they seem more disposed to accept "time-off.")

Independence. With two or more employers, the PTIHLC is more likely to be insulated from the shock of job loss than is the full-time in-house counsel (who presumably no longer maintains the resource of a client base to fall back on, and who may have worked in a legal field which is infrequently in demand). In addition, the PTIHLC's entire professional career is not at stake when counseling an employer, and the PTIHLC should be more free of mind that an adverse management reaction to unfavorable legal advice will not spell a stint in the unemployment line.

Stimulation. The PTIHLC working with two or more employers is less prone to be stuck doing repetitive legal work in a single subject area and will likely come in contact with a greater variety of people. There also may be a greater opportunity to be in on "the big picture" of the employers' business operations and goals than appears to be the case for firm lawyers (especially associates, who often get assigned only a portion of a particular project to work on, and may never even meet or know the client).

Less Administration. With no office or support personnel to oversee, the PTIHLC has more time to devote to regular law work and has measurably fewer headaches (not to speak of bills) associated with law office management.

Advantages From the Part-time Employer's Perspective

Cost. Obviously, a PTIHLC who has no overhead to support and who can pass these savings on to the part-time employer can be attractive to those CEOs and CFOs determined to decrease corporate expenditures for the legal billings of outside counsel. And, weighing against the hiring of full-time counsel, are the considerations that no employee benefits need be paid to the independent contractor PTIHLC, and the part-time employer only pays for the time directly attributable to the performance of legal work (clearly important if the employer does not have a full week's legal work each week).

Efficiency and Proactivity. The same efficiencies which have been traditionally associated with employment of full-time, in-house counsel are inherent in the PTIHLC arrangement: regular appearances by the PTIHLC at the part-time employer's offices allow easy scheduling of conferences, document reviews, etc.; clarity of understanding is promoted through face-to-face discussions of problems and hands-on examinations; and the need for the employer's staff to take time off to travel to urban law firms for meetings is curtailed, as is the

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difficulty of trying to reach parties by telephone. The PTIHLC obtains the chance to more intimately learn the employer's business, know the personnel and become more knowledgeable about the realities of the employer's industry. Given the PTIHLC's increased understanding of the part-time employer's business and the more immediate contact with problems as they arise, the PTIHLC is also in a position to deal with problems at an early stage, before they blossom. The PTIHLC, like full-time, in-house counsel, should ultimately be in a solid position to aid in forecasting business difficulties and to plan legal defenses against them.

Confidence. Just as with full-time staff counsel, a direct, continuous working relationship with the PTIHLC puts the part-time employer in a good position to assess the true skills and abilities of the lawyer and to gain trust in the lawyer's work product.

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Disadvantages

There are surprisingly few disadvantages to working as a PTIHLC that are not otherwise intrinsic drawbacks to the practice of law in general.

Conflicts of Interest. It is possible for a PTIHLC to run afoul of conflicts situations, especially if the part-time employers are all engaged in the same form of commercial enterprise and are business competitors. Nonetheless, this consideration is really no different from that for the outside attorney. To some degree, by narrowing clientele to a discrete (and more permanent) group, the PTIHLC lessens the likelihood that conflicts will occur and actually may be in a better position to recognize them if they do arise.

Time-Scheduling. It is easy for the PTIHLC to over-book commitments and to be unexpectedly hampered by an inordinately time-consuming project. Since the PTIHLC depends upon being visible and accessible to all the part-time employers, a large project which takes time away from the other employers' activities can be damaging to the PTIHLC's relationship.

Hourly Billings. For attorneys who want to escape the chains of time slips, full-time work as a salaried in-house counsel may be preferable to the PTIHLC's routine. While it may be possible to arrange for payment of flat fees for dedicating time blocks to different employers, thereby dispensing with the need for incessant time recording, I have found that my own employers still want me to provide time breakdowns for their own internal purposes.

Financial Planning. Since the PTIHLC usually foregoes employee benefits as part of the PTIHLC's contract with the part-time employer, it is incumbent on the PTIHLC to

establish insurance and retirement plans, and to fund vacations. Consideration should also be given to the acquisition of professional malpractice insurance, since this risk-protection ordinarily is not provided by part-time employers.

Other PTIHLCs

Despite the utter simplicity of the PTIHLC concept, I have been unable to discover any appreciable number of attorneys who have implemented this idea, even though I have maintained a search of national scope, combing the records and publications of various legal organizations in the hope of finding others. I have even joined organizations such as the Association of Part-Time Professionals (based in Falls Church, Virginia) and the now defunct Lawyers for Alternative Work Schedules, a/k/a "LAWS" (formerly located in Chicago). I have found attorneys who work part-time exclusively for one company, simply to achieve a more personally satisfying lifestyle; I have also met sole practitioners who effectively work as the "general counsel" for different business entities they represent through their law offices. Yet PTIHLCs, as I describe their profile here, apparently are still a rare breed.

I have, however, discovered George Brunt and Jonathan Blau, two attorneys of the California bar practicing in Los Angeles, who both represent high-tech corporations situated in Silicon Valley. Brunt, formerly a full-time general counsel for a large East-coast corporation, has been successfully practicing as a PTIHLC since 1986, and in 1988 he formed Corporate Legal Consulting with Blau, to better promote awareness and usage of the concept in the marketplace. Brunt, too, believes that the role of the PTIHLC will soon be the wave of the future (although he eschews the reference to the rather banal phrase, "part-time, in-house legal counsel" in favor of his own nomenclature, corporate legal consulting).

Similarly, Minnesota attorney Kent Larson has established a six-attorney law firm in Minneapolis, under the name The General Counsel, Ltd., which has provided PTIHLC services to corporate employers in his area since 1985. I learned of Larson's firm through Barry Myers, an attorney in Austin, Texas, who describes his own practice as that of a "time-share" corporate counsel. Both Larson and Myers have developed sophisticated marketing tools for the PTIHLC concept.

Former full-time general counsel Bill Sargeant and Myrna Friedman now provide PTIHLC services from the headquarters offices of one of their employers in Arlington, Virginia. They call their version of PTIHLC practice simply The Law Department. I also found Warren Hernand, an attorney who practiced in the greater San Francisco area for many years as both full-time general counsel and PTIHLC, but who now specializes solely in the placement of "supplemental interim professionals"

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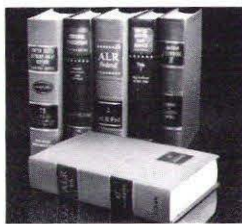

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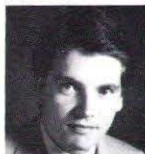
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into existing major corporate legal departments. His business, Hernand & Partners of Corte Madera, California, will place attorneys into legal departments only when the oversight of other established counsel is available, although he agrees the market for services of PTIHLCs as stand-alone counsel at smaller corporations is vast indeed.

Within Washington, I currently know only of Jerome Cohen, who serves as vice president and general counsel to Washington Management Company in Seattle, and PTIHLC to three other construction and engineering firms in the Seattle area. (Jerry, by the way, uses the phrase "contract corporate counsel" in his brochure as his *nom de guerre.*)

I will welcome information from the *Bar News* readership about other PTIHLCs and the nature of their practices, wherever they are located.

Conclusion

In George Brunt's advertising materials, he accurately comments:

> The laws and regulations affecting corporations are far more complex than the rules of accounting, yet many corporations still have CEOs or CFOs who manage the legal function. They do not do so by choice. [To date,] there have been few alternatives offered by the legal community . . . .

Now the PTIHLC alternative is burgeoning and I earnestly hope other attorneys will seriously consider this new means of serving corporate clientele in the role of part-time, in-house legal counsel. I firmly believe this novel approach to legal representation can well embody the enjoyable legal career so many business lawyers seek to achieve. □

Mike Anderson is a Bellevue attorney who is currently part-time staff counsel to ECOVA Corporation and Videodiscovery, Inc.

by **Lindsay Thompson**
Editor, Bar News

Leavenworth, August 23-24

Present: president Halverson, president-elect Joe Delay, the governors and governors-elect, Wayne Blair, Mike Larson and Joe Nappi. Also present: C.C. Bridgewater, Jr. (Prosecuting Attorneys' Assn.); Judge Joseph Coleman (Court of Appeals); Walter B. Dauber (WSTLA); Frank Edmondson (Government Lawyers' Assn.); Judith Eiler (SKCBA Trustees); Dennis P. Harwick (WSBA executive director); Grant Johnson (WSBA/YLD); Leland G. Ripley (WSBA disciplinary counsel, Saturday); Judge T.W. Small (Legal Foundation of Washington); Kristin Stred (Washington Women Lawyers); Judge Thomas Swayze (Superior Court Judges' Assn.); Lindsay Thompson (*Bar News* editor); and Robert Welden (WSBA general counsel).

The Board started its meeting by completing the appointment of WSBA committees, delayed from last month by objections to their appointing committee chairs in executive session after years of doing it in public. Appointing committees is a hated task. As an American president once commented, every time you make an appointment you get ten enemies and one ingrate in return. While the ingrate may not be guaranteed, the frustration of those not chosen is clearly heard year after year. So far, a solution seems elusive. But they soldiered on, and were done in time to get in the usual executive session for about an hour before resuming the public work with reports by the president and the executive director.

Comes the Revolution, Part III: The Board took up whether to refer a resolution championed by Governor Lem Howell to the Resolutions Committee for possible consideration at the Annual Meeting in September. The resolution calls for the WSBA "president-elect" to be chosen by popular ballot of members "in convention assembled."

Howell told the Board the change would open up the Association and bring some life and interest to the Annual Meeting. Among Board members, responses tended to be geographical; the great fear is that such a plan would mean control of the Association by Seattle lawyers forever. But since all the Board can do is decide whether a resolution is germane to the purposes of the Association, their hands were tied. There was a run at it on grounds of timely filing and for some drafting faults, but in the end it was referred to Resolutions, 8-2, Governors Schultz and Slater opposed. Howell, playing Madame Defarge, noisily recorded the names of the opponents for future use.

Not Even Pete Wilson Wants to Go: This fall's bar convention in San Diego is struggling, Dennis Harwick told the Board. Projected attendance is 350, tops. Since WSBA contracted to book more rooms than that, there are penalty clauses in the contract which will be triggered once the final registration figures are in. Governor Howell read a letter from an assistant to the Governor of California thanking him for the invitation to attend but declining.

Pragmatism in the Service of the Greater Good: The Board considered nominations to the Board of Judicial Administration, a coordinating body composed of the heads of each level of the state courts and lawyers appointed by the Association. Citing his past, productive involvement with the appellate courts, Board members elected outgoing Governor Ron Gould to one seat, 9-0, Gould abstaining.

On similar grounds, Governor Don Curran then nominated former WSBA president Jack Dean. Wait a minute, said Governor Lem Howell. Without reflecting adversely on any nominees, he thought the Board was enshrining the common-law concept of mortmain—the dead hand ruling from the grave—in appointing senior bar members to certain types of posts all the time. We need some new ideas and faces, he said. Governor Jeff Tolman thought a woman or minority lawyer would be a good choice, and had one in mind.

Well, that's a good idea, commented Superior Court Judge Thomas Swayze, but maybe not the right Board to make an example of. These are leaders of the courts, and they prefer dealing with one of their peers from the private bar. A former governor or president will carry more weight for the bar, he said.

"So it makes more sense politically to do it that way?" asked Governor Alva Long. "Yes," replied Swayze. So the Board elected Dean on a written ballot. Consideration of some appointments to the State Judicial Council was put over a month.

News From the Cutting Edge: Two hot ideas, transported from the ABA meeting in Atlanta, were approved unanimously. The name of the WSBA Unauthorized Practice of Law Committee was changed to the Consumer Protection Committee, and the Court Congestion and Delay Committee will hereafter be the Court Congestion and Improvement Committee. "We have a distinction without a difference that will help us move into the future," Governor Alva Long intoned.

Court Rule Changes: The Supreme Court has all of the various court rules on a cycle of review. The Court Rules and Procedures Committee does the heavy lifting; the Board of Governors considers its handiwork and pronounces some or all of it good, and the Court then puts the suggested changes out for comment every January. Committee chair Charles K. Wiggins of Seattle brought his group's final report for the current review cycle. Here's what came up:

Evidence Rules: A recommendation to amend ER 406 and 608 to permit opinion testimony of character and bring the rule in line with its federal counterpart was defeated, 10-0. Civil and criminal lawyers alike worried that the rule would bring in a lot of contentious but unilluminating testimony and provide little advantage to anyone.

Amendments to ER 501, 803 and 804 to add the federal rule "catchall" hearsay exception to the 23 already there. There was Board concern about how much notice would be required to be given to opposing counsel that evidence falling under the rule would be offered. Governor Ron Gould noted that such matters are dealt with in pretrial orders in federal court, but

Governor Steve Tubbs replied that in state courts pretrial conferences outside the family law area are relatively rare. Judge Swayze said from the sidelines, "This will set up another time when you have to send out the jury." The Board adopted the rule 8-2, Curran and Tolman voting no.

But first thing Saturday, Governor Lem Howell moved to reconsider the vote—after some additional thought and discussion with colleagues, he said. Governors Alva Long and Monte Hester raised a variety of potential problems the rule could elicit in criminal proceedings, and Governor Don Curran wondered if some of the WSBA's constituent and affiliate groups should have a look at the rule. A motion to reconsider the amendment of ER 803 and 804 passed unanimously. Curran then moved to refer the amendments out for comment; Alva Long wondered by that was necessary, at least with respect to 804. "Why send them both when we only object to one?" Ron Gould thought the usual suspects' opinions could have and should have been anticipated by the committee and/or Board, and urged voting it up or down. Monte Hester wanted to vote it down and then refer it. Curran thought that would send the wrong signal to the groups being asked to review and comment. Curran's motion failed 1-9.

Gould then moved to affirm the Friday vote. It failed 4-6, Chambers, Gould, Schultz and Slater on the short end. Howell then moved to reject the amendments, and the president ruled the motion out of order.

A new Evidence Rule, 904, would amend the process of admission of documents along the lines of MAR 5.3 to reduce the need for witnesses to authenticate basically undisputed facts. A clause allowing for sanctions under CR 11 caused the Board problems, as did other words here and there. After some amending, the Board approved the new rule 6-4, Curran, Gould, Slater and Tubbs opposed. Saturday afternoon Governor Tom Chambers moved to amend the rule further on the CR 11 question, deleting the whole sentence. It passed unanimously.

Other matters moved more easily. A new RAP 16.18 was approved to set a procedure to the Department of Corrections to get involved in sentencing appeals; a bale of technical changes to "degenderize" the rules was approved. An amendment of CR 5 to allow service by telecopier (fax) was greeted with a chorus of boos. "This just keeps coming back," said Alva Long. "It never dies. I want to drive a stake through its goddam heart." Which is more or less what they did, rejecting the rule 1-9. John Schultz was the Lone Ranger.

Amendments to CR 8 and 12 to allow "fault of a non-party" as a defense since its creation by the Tort Reform Act were approved, as were changes to CR 26 to require a conference before the bringing of discovery motions. A change to CR 32 allowing a party to give notice of intent to use deposition testimony in trial got the boot, 10-0.

Changes to the Justice Court Traffic Rules intended to broaden them for use in a variety of infraction cases were also considered by the Board.

Sisyphus' Last Bow: Governor Ron Gould brought up the subject of judicial polls again and recommended that the Judicial Recommendations Committee be asked to look into whether the WSBA ought to get involved with them. After a short discussion, the Board voted 2-8 for Gould's motion, Gould and Slater in favor.

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But Better Luck Follows: Gould and Ellen Dial finally got the Board to endorse a new rule allowing law firms to construct "Chinese walls"—methods of screening a lawyer from a case he or she had contact with in a prior employment. Previously, the slightest contact was ground for disqualification of entire firms. Governor John Schultz told the Board it was putting lawyers' economic interests ahead of clients' rights, but the prevailing view was that this is an increasing problem which needed a solution. The rule passed 8-2, Long and Schultz opposed.

But It Means Fewer "Board's Work" Columns: Citing expense and time considerations, the Board voted to reduce the number of 1991-1992 Board meetings from 12 to 10.

Steps in the Right Direction: Washington Women Lawyers brought up a proposal to amend RPC 8.4 to include as disciplinable professional conduct engaging "in invidious discrimination or harassment on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation or marital status in connection with a lawyer's professional activities." A comment defined invidious discrimination or harassment as, but not limited to, statements or actions which imply physical, emotional or intellectual limitations based on group membership; unwelcome sexual advances or requests for sexual favors; statements implying that a member of another group is better qualified for the performance of professional activities solely based on group membership; statements implying that a person should be limited to stereotyped professional activities; unwanted touching; and use of words or symbols which historically connote hatred or insult to a group.

WWL president Kristin Stred, president-elect Linda Moran, and WSBA Opportunities for Minorities in the Legal Profession Task Force co-chair Richard Jones spoke for the proposal, which was well-received by the Board. There were problems expressed with possible First Amendment restrictions in the list of examples, as well as some other drafting disagreements, but all agreed those could be worked out and the important thing was to get the ball rolling on a rule to deal with the discrimination and harassment recent state task force studies have shown to be abundant in the legal system. The concept was approved in principle and referred to the RPC Committee..

Wrap-up in Leavenworth: In other action, the Board approved some more disciplinary process changes and policies to expedite case handling and heard a report from disciplinary counsel Leland Ripley on progress in moving cases to conclusion; approved the removal of reinstated attorney John Rosellini from probation; sent out a set of
Alternative Dispute Section guidelines for lawyers serving as mediators or arbitrators for comment; assigned WSBA general counsel Robert Welden the task of dealing with some Keller dues rebate requests; approved a recommended modification of bar exam eligibility rules to allow certain foreign lawyers to sit the state bar exam; voted to recommend adding lay members to the Character and Fitness Committee; and spent Sunday in their annual retreat, this year considering the implications of the Long-range Planning Task Force Report described in this space last month.

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Notices of Interest to Association Members

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 August 1991 is 5.85%. The maximum allowable interest permissible for **September 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 1984-1989; on page 51 in June 1990 for 1985-1990 and on page 55 in June 1991 for 1985-1991.

Fax Filings Accepted in King County Starting August 1, 1991:

In cooperation with the National Center for State Courts, King County's Department of Judicial Administration has begun a pilot program to study the feasibility and impact of fax filing in a large urban court. The program will continue through 1991.

Persons filing court documents by fax must pay a $1 per page fax fee to cover the costs of receiving, collating, stapling and accounting associated with the use of faxes. A standard cover sheet is required for every fax filing. When a document also requires a filing fee (e.g., case-initiating documents), the filing fee must be paid by MasterCard or VISA.

Those wishing to use the fax filing service must call in advance to (206) 296-7795 and register. Registrants will be sent detailed instructions, a copy of the required fax cover sheet, and the fax phone number to be used. The clerk's fax unit will accept transmissions only from fax numbers which have been registered in its memory.

Persons or firms planning to file by fax more than once per week will be registered as "frequent filers," and persons or firms planning to use the service only occasionally will need to call (206) 296-7795 prior to any fax transmission.

The clerk is using a high-quality plain paper fax machine. Documents received by fax are treated as originals and filed in the court file. The original documents must be kept by the sender until at least 60 days following case disposition.

Only documents to be filed in the court are accepted by fax. No original wills or dissolutions may be filed by fax.

Fax filing should be of particular use to persons or firms at a distance from the downtown Courthouse or in instances where a filing cannot be made in person, by messenger, or by mail.

Fax filings will be accepted only between 8:30 a.m. and 4:30 p.m. Monday through Friday, except holidays.

The clerk cautions against relying on fax to meet tight deadlines. Since only one phone line and one fax machine are in use during the pilot program, the court cannot guarantee that the fax service will be available at peak use times.

For more details about fax filing, please contact the DJA fax clerk at (206) 296-7795.

Noncourt Day Set for December 6, 1991 in King County:

King County Superior Court will observe December 6, 1991 as a noncourt day. The court will spend the day in long-range strategic planning. The only matters which will be heard that day are status conference calendar; ex parte and family law matters already scheduled, and walk-in matters, mental-illness hearings, criminal arraignments, and juvenile-shelter care hearings. Juvenile probable cause hearings will be heard on the weekend.

As a result, there will be no hearings or motions (civil, family law, juvenile, criminal, summary judgment or other) on December 6. All matters already noted for December 6 should be renoted. All notes for hearings or motions on that day will be returned by the clerk as faulty.

Trials set for December 6, 1991 should be adjusted by the parties under the case schedule for "final date to change trial" and KCLR 40(e)(2) for rules on changing dates. Trial dates not adjusted by the parties will be set by the clerk within 28 days of the original trial date.

No matters will be scheduled on the RALJ, SRA, sentencing, contested juvenile matters, or domestic violence

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returns dockets. District courts have been requested not to set domestic violence transfers for December 6, 1991.

1991 Legislative Changes Affecting Recording and Filing Documents:

King County superintendent of records Carolyn Ableman has issued notice of some changes made by the Legislature:

A) House Bill 1716, the Recording Omnibus Bill, clarifies the definition of "file, filed and filing" to mean the act of delivering an instrument or document for recording into official public records. "Record, recorded, or recording" means the process used by the recording officer to incorporate the instrument or document into the public records.

Effective July 29, 1991 King County records and elections division will return all instruments/documents to the presenter after the recording process is complete. They will no longer maintain any "filed document" files.

B) To comply with RCW 36.18.010(2), requiring that fees for recording multiple transactions contained in one instrument be calculated individually for each transaction requiring separate indexing as required by RCW 65.04.050, the following rules went into effect in King County July 29, 1991:

1) All transactions within a document will be charged a separate $7 recording fee. An additional-page fee will be charged only once for each document.

2) The document title should reflect the transactions within the document. If the transactions are not clearly represented in the title, they will be returned for better titling before being recorded. An alternate procedure is to break such documents into separate documents.

3) No document will be recorded until payment is received for all transactions contained in it.

4) Common multiple transactions documents include blanket satisfactions of mortgages, blanket full reconveyances, assumption agreements with release of liability, substitution of trustee with full reconveyance, resignation and appointment with full reconveyance, deed of trusts including an assignment on back, blanket assignments of deed of trust, blanket resignation and appointment of successor trustee, and declaration of trust, deed and stock transfer agreement.

C) If there are questions about recording, contact Danene Millard, recording supervisor, before bringing them in, at (206) 296-1591.

D) Amendments to RCW 82.45.180 by the 1991 Legislature require the collection of a $2 fee on all excise tax affidavits filed in King County where there is no tax paid. Such collection fees must be paid to King County Records-Excise Tax Section before document-processing can occur. For further information on nontaxable excise affidavits, contact the Excise Tax Section at (206) 296-1590.

Rules Committee Seeks Your Comments:

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

Goldmark fellowship announced:

Northwest Immigrant Legal Services (NILS) has received a $12,500 grant from the Goldmark Foundation to establish a Goldmark Fellowship at the organization. NILS, located in Seattle, was formed as the result of a recent merger between the Joint Legal Task Force and the Washington Immigration Project. The organization provides immigration legal services to low-income immigrants and refugees throughout the state. It is the only project in the region offering such services, free of charge, to people of all nationalities.

The Goldmark fellow will be an attorney placed at NILS by area law firms on a full- or part-time basis for a three- to six-month period. The fellow will remain on salary with the firm, and the grant will be devoted to training expenses. During the fellowship period, the attorney will receive training in immigration law and advocacy skills, and will represent indigent immigrants and refugees in immigration proceedings. The work will include substantial administrative hearing practice, preparation of appellate briefs and oral arguments before the Ninth Circuit Court of Appeals. Selection of the first Goldmark fellow will take place in late 1991.

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The fellowship bears the Goldmark name because it embodies ideals which were of value to Chuck Goldmark, a Seattle attorney who was killed in January 1986. The Goldmark Foundation was created in his memory, and the fellowship serves as a lasting memorial to his ideals, among which was a strong commitment to the provision of pro bono assistance to poor and underrepresented people. Chuck Goldmark expressed his own commitment to this goal in many ways, including his sponsorship of the Country Doctor clinics and his successful advocacy for an IOLTA fund in Washington. Chuck also believed strongly in training associates in a broad range of legal skills, including valuable courtroom experience.

Further information on the Goldmark Fellowship can be obtained by contacting NILS staff attorney Sarah Ignatius at (206) 587-4009.

Trial Run:

Washington Women Lawyers, Seattle-King County Chapter, is sponsoring an 8K race October 19 at 9 a.m. in Seward Park.

The emphasis of Trial Run is to promote health and fitness to help relieve stress. For those participants interested in women's health issues as well as improving their running skills, a pre-race workshop conducted by Gail Kingma has been scheduled for Tuesday, September 10 from 6:30 to 8 p.m. at the Green Lake Community Center. Additional training runs will be held on Tuesday evenings prior to October 19.

Participation in Trial Run is $15, (which also entitles the runner to a long-sleeved T-shirt). Signup is at Super Jock 'N Jills, Green Lake. The pre-race workshop is free.

Certificate of good standing:

Effective October 1, there will be a service charge of $25 for a certificate of good standing from the WSBA.

Notice to WSBA Members and Sponsors of CLE Seminars

By order entered July 3, 1991, the Supreme Court of Washington approved the following amendments to Regulations 101, 103 and 104 to Admission to Practice Rule (APR) 11:

Regulation 101
(a) through (j). (No Change)
[New Section]
(k). "Attending" an approved continuing legal education activity shall include and encompass (1) presence in an audience of two or more persons being addressed by participants in an approved continuing legal education activity, and (2) viewing or listening individually to video or audio tapes approved by the Board.

Regulation 103
(a) through (f). (No Change)
[New Section]
(g). An active member shall receive a maximum of one-third of the continuing legal education credit required under APR 11.2A by viewing or listening individually to video or audio tapes approved by the Board.

Regulation 104
(a) through (e). (No Change)
(f). ~~No course will be approved which involves solely television viewing in the home or correspondence work or self-study. Video, motion picture or sound tape presentations may be approved provided a teacher is in attendance at each presentation to comment thereon and answer questions.~~
[Reserved]
(g). (No Change)

The effect of these amendments is to allow attorneys, each year, to earn five of the annually required 15 credit hours of continuing legal education by self-study, that is by watching or listening to audio or video tapes approved by the Board of Continuing Legal Education.

At its July 12, 1991 meeting, the Board of Continuing Legal Education established policies, consistent with APR 11 and the regulations to APR 11, regarding the Board's duties in evaluating applications for approval of video or audio taped seminars and in monitoring attorney compliance with APR 11.

With regard to attorney compliance with APR 11 as affected by the 1991 amendments to Regulations 101, 103 and 104 to APR 11, the Board has adopted the following policy:

(1) Effective July 3, 1991, attorneys may begin earning CLE credit through self-study consistent with the amended regulations.

(a) Attorneys cannot earn continuing legal education credit for time spent watching or listening to repeat playing of a tape.

(b) Generally, no credit can be earned for watching tapes five or more years after the date the tape was originally recorded, unless the tape is a skills-training tape.

(c) Attorneys who have not complied with the 1990 requirements and who have received an extension of time in which to complete their 1990 requirements may complete up to five credits through self-study, consistent with the regulations.

(2) Of the 15 credit hours currently required by APR 11, attorneys can claim for one calendar year one-third of the required credits by watching or listening to video or audio tapes approved by the Board ("self-study").

(a) To claim CLE credits earned through self-study, attorneys are required to report on their CLE Affidavits the number of credit hours for which the tape was approved, the sponsor, the title of the taped seminar, and the date the tape was originally recorded.

(b) Self-study credits earned in excess of the annual five-credit limit may be carried over to either or both of the next two succeeding years, consistent with APR 11.2A. In effect, an attorney can still carry over a maximum of 30 credits, but 10 credits of those 30 credits can be self-study credits. Two separate categories of carry-over credits will be reported.

(c) By signing the CLE Affidavit, attorneys will declare that they have not violated any copyright laws in earning credits reported in the Affidavit.

(3) An attorney can watch or listen to a tape not yet approved by the Board and then submit an application to the Board for approval of the tape. As with live seminars, the attorney runs the risk that the tape may be only partially approved or entirely denied accreditation.

With regard to sponsors' applications for approval of audio or video tapes for continuing legal education credit, the Board has adopted the following policy:

(1) Sponsors are required to affix on the outside of each audio or video tape approved for credit by the Board, the name of the sponsor, the name of the program, the date originally recorded, the length of the tape in hours and minutes and the number of credits for which it has been approved.

(2) Sponsors are not required to submit copies of audio or video tapes with applications for approval. The Board, however, reserves the right to obtain on demand a copy of any tape submitted for approval.

(3) If a live seminar is approved by the Board, the video or audio tape of that seminar is deemed approved without the sponsor submitting a second application for approval. Written materials distributed at the live seminar must also be distributed with the taped seminar.

(4) Regulation 104(d) regarding the distribution of written materials applies to taped seminars as well as live seminars.

(5) As a general rule, the accreditation of all tapes, except skills training tapes, expires five years after the date the tape was originally recorded.

Notice of Hearing on Petition for Reinstatement

A petition for reinstatement after disbarment has been filed on behalf of **Thomas M. Baker, Jr.**, who was disbarred on October 21, 1985. At the time of his disbarment, Baker practiced in Tacoma.

Hearing on Baker's petition will be conducted before the Board of Governors on Saturday, November 16, 1991, beginning at 1 p.m. On or before the date of the hearing, anyone wishing to do so may file with the Board of Governors a written statement for or against reinstatement, such statements to set forth factual matters showing that the petitioner does or does not meet the requirements of RLD 9.6(a). Except by its leave, no person other than the petitioner or petitioner's counsel shall be heard orally by the Board of Governors.

This notice is published pursuant to RLD 9.5(a).

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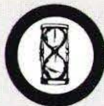

CALENDAR

September

3 Job Hunters' Support Group, Seattle. *Sponsored by:* WSBA LAP. *For information:* (206) 448-0605.

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

6 Robin Morgan at NW Women's Law Center Gala Dinner, Seattle. For information: Lindy Cater (206) 682-9552.

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

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

7 First Annual Alternative Dispute Resolution Conference, Seattle. *Sponsored by:* UW School of Law CLE and WSBA ADR Section. *For information:* (206) 685-3050.

11 Confidential group discussion with attorneys looking for new careers, Seattle. *Sponsored by:* WSBA LAP. *For information:* (206) 448-0605.

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

12 Major Land Use Laws in Washington, Seattle. *Sponsored by:* National Business Institute, Inc. *For information:* (715) 835-7909.

12 Initiative 119 Forum (Right to Die), Seattle. *Sponsored by:* CityClub. *For information:* (206) 682-7395.

13 Criminal Case Management Council meeting, SeaTac Marriott Hotel. *For information:* Gil Austin, (206) 753-3365.

15 *Bar News* deadline, November issue.

16 Keys to Success in the Practice of Law, Seattle. Sponsored by: WSBA LAP. *For information:* (206) 448-0605.

16-17 Aging-in-place, Seattle. *Sponsored by:* U.S. Gov't, states of WA and OR and Washington Association for Homes for the Aging. *For information:* (206) 244-4800.

18 Trial Advocacy in Washington, Seattle. *Sponsored by:* National Business Institute, Inc. *For information:* (715) 835-7909.

20 Arbitration: UIM & MAR, Seattle. Sponsored by: WSTLA. For information: (206) 464-0111.

20-21 Fifth Annual Western Regional Indian Law Symposium, Seattle. *Sponsored by:* UW School of Law CLE. *For information:* (206) 685-3050.

October

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

2-4 WSACA Fall Conference, Nendel's Inn, Bellingham. *For information:* Dee Denton, (206) 855-0366.

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

4 Securities Regulation for the

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

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.

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.

9-11 1991 Crime Stoppers Jail & Bail, Seattle. *For information:* Melissa May, (206) 281-1044.

10-12 Annual Affirmative Action Briefing, Seattle. Sponsored by: National Employment Institute. *For information:* (415) 924-3844.

11 Introducing the Washington Growth Management Act, Including the 1991 Amendments, Seattle. *Sponsored by:* UW School of Law CLE. *For information:* (206) 685-3050.

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

15 *Bar News* deadline, December issue.

16 Limited Practice Board meeting, Carvery, SeaTac. For information: (206) 753-3365.

18 Court Management Council, SeaTac Marriott Hotel. *For information:* Jude Kryderman, (206) 753-3365.

18 WSBA ADR Section Exec. Comm., Seattle. *For information:* Claude Pearson, (206) 383-5461.

19 Introduction to Computer-assisted Legal Research, Seattle. *Sponsored by:* UW School of Law CLE. *For information:* (206) 685-3050.

19 Trial Run (8K) and pre-race workshop on women's health and fitness issues, Seattle. *Sponsored by:* Seattle-King County Chapter of Washington Women Lawyers. For details, see "Around the State" in this issue of the *Bar News*. *For information:* Betsy Rogers, (206) 386-8691.

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

21 Finding Your Niche in the Legal Profession, Seattle. *Sponsored by:* WSBA LAP. *For information:* (206) 448-0605.

23 Tax Planning with S Corporations, Seattle. *Sponsored by:* UW School of Law CLE. *For information:* (206) 685-3050.

25-26 Ethics Committees, Legal Counsel and the Courts: Handling Hard Cases in Health Care (1991 Annual Meeting), Cambridge, MA. *Sponsored by:* American Society of Law & Medicine. *For information:* (617) 262-4990.

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

31 Third Annual Commercial Law Institute: Chapter 13 Bankruptcy Cases, with Emphasis on Representing Creditors, Seattle. *Sponsored by:* UW School of Law CLE. *For information:* (206) 685-3050.

November

1 Annual CLE, WSBA Section on Consumer Protection, Antitrust & Unfair Business Practices, Seattle. *For information:* (206) 448-0433.

1-2 National Asian Pacific Bar Association 3rd Ann. Convention, Seattle. For information: Mai Nguyen, (206) 682-9932.

2 Superior Court Judges' Association Judicial Education Committee meeting, Seattle. *For information:* (206) 753-3365.

8 Tenth Annual Federal Tax Conference, Seattle. *Sponsored by:* UW School of Law CLE. *For information:* (206) 685-3050.

9 Effective Courtroom Techniques: Making and Meeting Objections, Seattle. *Sponsored by:* UW School of Law CLE. *For information:* (206) 685-3050.

14-15 Ninth Annual National Fishery Law Symposium, Seattle. *Sponsored by:* UW School of Law CLE. *For information:* (206) 685-3050.

15 WSBA ADR Section Council, Seattle. For information: Claude Pearson, (206) 383-5461.

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.

15 Court Management Council meeting, SeaTac Marriott Hotel. *For information:* Jude Kryderman, (206) 753-3365.

16 Reinstatement hearing, Thomas M. Baker, Jr. *For information:* (206) 448-0307.

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

19-22 County Clerks' Fall Conference, Bellevue Hyatt Regency. *For information:* Pat Swartos, (206) 427-9670, x346.

22 Third Annual Professional Responsibility Institute, Seattle. *Sponsored by:* UW School of Law CLE. *For information:* (206) 685-3050.

December

6 Noncourt Day in King County Superior Court. For details see "Digest," this issue of the *Bar News.*

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

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

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

15 *Bar News* deadline, February 1992 issue.

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

January, 1992

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

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

15 *Bar News* deadline, March 1992 issue.

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A Law School Course in Law Practice Management

by Professor **David C. Cummins,** *Texas Tech University School of Law*

Some lawyers are uncomfortable with the business aspects of providing a professional service. C James Frush's August 1990 *Bar News* article was titled "Business or Profession?" Happily, the author realized and clearly stated that the question is inapposite, for lawyers must be in business and be professional. Happily also, the author also concluded "... but we must first be professionals." At a point in the article the author disapproved an obnoxious flamboyance that leaves the impression that financial gain is paramount for the lawyer, but then acknowledged a universal healthy concern for "the bottom line."

Whatever is troubling for the legal profession must necessarily be of concern to academics. In this case that concern is manifesting itself in a number of law schools offering a course in law practice management or law office management. I teach such a course and believe in its appropriateness as a part of the curriculum. If this article triggered constructive suggestions, that appropriateness might be enhanced and the skeptics converted. *

What is the purpose of this course? To help the student, after graduation, make money? And/or to help the student deal with administrative matters that law firms typically delegate to nonlawyers? If those answers were correct many would believe that the course is about business management and not lawyering. What I think the course is about are the essentials of law practice management; viz., marketing, production, personnel and finance in the context of lawyering. To that end we want to make business concerns and effective, ethical lawyering work together. The practice of law is both a profession and a business. We are in business in order to practice law, not vice versa, so professional aspects will necessarily dominate over business aspects but they can and must coexist. They cannot be allowed to be serendipitous. Both must be managed. Law practice management then involves ways of thinking and ways of acting about the practice of law in order to assure the delivery of high quality legal services to clients who need them.

A law school has always been a training ground for acquiring legal competence. That includes more than analytical skills (thinking like a lawyer) and procedural skills (adaptation of law to the environment for its application). Delivering a legal service might include many different activities; e.g., counseling clients, advocating causes, negotiating agreements, drafting documents, preparing cases, finding and organizing evidence, deposing witnesses, undertaking research, etc. Such delivery scenarios require the proper organization of people to accomplish an objective. How do marketing, production, personnel and finance support these delivery scenarios?

Marketing involves choices by the provider as well as the consumer. Law students might well be asked to examine both themselves and the legal profession to reveal the kind of legal service and environment in which each student would most enjoy providing that legal service. Marketing includes ethically helping clients who need a specific legal service, to find and then select one lawyer from among a host of apparently indistinguishable lawyers. Production involves performing ably and sometimes expertly rather than just competently. Law students might well examine the factors that distinguish high quality services from lesser services. That means that the lawyering process must be dissected. Production involves many units of legal services and law students might examine the components of systems which deal with units in the aggregate, systems which operate automatically unless the manager decides that this particular unit is exceptional in some regard, systems which don't depersonalize the client but actually respond to his/her personal needs and concerns about the legal service. Personnel and finances might be managed differently depending on the type of legal services offered. For instance, both office design and cash flow management would be organized and managed differently between a personal injury firm and a real estate conveyancing firm. All of this lawyer management might occur haphazardly whenever crises occur and the learning curve jumps or spikes, but most would want to plan in advance and make modest adjustments as events unfolded. How to plan and how to monitor, evaluate and adjust to unexpected reality are management skills that lawyers don't and won't delegate to others when the lawyer's present and future are at stake.

Computerization is the modern technique for information management. First year law students learn how to access distant electronic databases such as LEXIS and WESTLAW. In this course most of the databases which are used are those which the law office has created and maintained. Each office has a collection of information databases; e.g., calendaring, docket control, conflict of interest screening, timekeeping and billing, word processing, document construction, accounting, administrative support, marketing, litigation support, work product retrieval, etc. The integration of several databases and simultaneous usage renders each more functional. In total they allow managers to keep informed, they influence decision making, they invite innovation and they provide a means for evaluation. Law students are invited to mechanically construct a system after setting goals for usage of the information, and then test the system by operating it. After basic adjustments it's ready to be computerized by a programmer. Law students are invited to boot up and gain familiarity with commercial software.

Law students aren't invited to take this course in order to become expert in law practice management. Exposure and a superficial academic experience with

* The desirability of exploring this matter and the format for doing so is suggested by R. Lisle Baker in "Enhancing Professional Competence and Legal Excellence Through Teaching Law Practice Management," 40 *J. Legal Educ.* 375 (1990).

NOTES FROM THE ACADEMY

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

Creditor-Debtor Law. (*Case 1.*) In decision that casts doubt on constitutional validity of at least some applications of RCW 6.25.070 (which permits attachment of real property without prior notice), unanimous United States Supreme Court held that in action for damages for assault and battery, due process was not accorded defendant under Connecticut statute that authorized attachment of real property without prior notice or hearing, without showing of extraordinary circumstances, and without plaintiff's posting bond. Eight justices expressly held that attachment of real property is significant taking for due process purposes, even though it results only in lien rather than physical deprivation or interference with possession. This holding is contrary to alternative holding in ***Thompson v. DeHart***, 84 Wn.2d 931, 530 P.2d 272 (1975). Washington statute may be distinguishable from Connecticut statute because it requires bond, but attorneys considering attachment of real property without notice should read the opinions in the new Supreme Court decision. ***Connecticut v. Doehr***, ___ U.S. ____, 111 S.Ct. 2105 (1991).

(*Case 2.*) Where judgment was reversed after property of defendant had been sold on execution under the judgment, plaintiff was required, under RAP 12.8, to make restitution in amount of proceeds received on execution sale. ***State v. A.N.W. Seed Corp.***, 116 Wn.2d 39, 802 P.2d 1353 (1/10/91), *reversing* 56 Wn.App. 763, 785 P.2d 838 (1990), which held that fair market value was measure of restitution.

—*M. D. Rombauer*

Planning and zoning. Phasing out of nonconforming uses is policy of zoning, even if zoning ordinance does not explicitly so state. Therefore, quarry operator that operated quarry as nonconforming use was not entitled to permit that would have authorized expansion of quarrying activities. ***Meridian Minerals Co. v. King County***, 61 Wn.App. 195, 810 P.2d 31 (Div. 3, 5/7/91).

—*W. B. Stoebuck*

Real property. (*Case 1.*) RCW 36.80.040 provides that county engineer's office "shall be an office of record" for recording of county road easements. Nevertheless, court holds that recording of county road easement in engineer's office does not give notice of easement to bona fide purchaser of land. Notice of record of such easement exists only by its being recorded in county auditor's office, pursuant to recording act, RCW Chapter 65.08. ***Ellingsen v. Franklin County***, ___ Wn.2d ____, 810 P.2d 910 (5/23/91).

(*Case 2.*) Landowner brought action under RCW Chapter 8.24, to condemn roadway of necessity over neighbor's land. Plaintiff proposed particular route, defendant burdened owner-proposed alternative route. Trial court granted easement over plaintiff's particular route. *Held*, trial court abused its discretion to fix route after weighing benefits and burdens of possible routes. Court did not give sufficient weight to defendant's testimony that plaintiff's proposed route would impose burden; such testimony should be given "considerable weight." Moreover, person seeking a proposed route must show that benefits from that route are substantially greater than those from alternative route or that alternative route is prohibitively more expensive. ***Williamson v. Wagle***, 61 Wn.App. 474, 810 P.2d 1372 (5/30/91).

—*W. B. Stoebuck*

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these management activities will provide a context in which the graduate will better appreciate his/her initial employment and what is occurring that breeds success or failure. Orientation and compatibility with the workplace will be enhanced and the young lawyer, colleagues and clients will all benefit. The prospect of a role to play in management, will likely be influenced more by on the job experiences than by a single semester's elective course. □

David C. Cummins *teaches taxation and professional responsibility. He formerly practiced in Seattle, with the Attorney General in Olympia and was a municipal judge in the City of Lake Forest Park.*

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James J. McArdle - Celebrating 31 Years of Professional Service

by **Annetta Lawson**

When Jim McArdle accepted the position of Law Librarian at the King County Law Library in March of 1960, many of those who now use the library were chewing up books rather than reading them. So when Jim recently announced plans to retire, the Board of Trustees of the Library were in shock. For 31 years King County Law Library has been Jim McArdle. It is hard to imagine entering the Library without a cheerful wave from Jim, or without taking a moment to exchange greetings and enjoy his wry comments on the world in general. Never at a loss for a joke, an off-beat anecdote or an entertaining yarn, Jim has provided many a weary counselor with relief from the tedium of research.

Always frank and unequivocal, Jim is quick to let you know exactly where he stands and why. But there is usually a twinkle in his eye. Everyone who has worked with Jim has a favorite story to share and chuckle over. One of his colleagues remarks, "Unfortunately, so many of the good things about working with Jim don't lend themselves to being written down!" Another recounts the time when she asked Jim for some help finding legislative history material. "Legislative history," snorted Jim. "Legislative history is the last resort of rascals!"

Noted for his generosity, Jim is always available to listen to an attorney with a difficult question. He is equally ready to share his knowledge of the law and his experience in librarianship with his staff and colleagues.

Librarianship is a profession of service and not one of high visibility. People tend to take a library, its services and its staff for granted. And that has always seemed to be just fine with Jim. "Librarians should get the books out there where people can find them and then get out of the way," he informed one budding library student. And that, in a nutshell, is Jim's style.

It sounds easy. Jim has made it look easy. But there is a lot of behind-the-scenes hard work involved in providing the books. Jim has been committed to the development of a strong, broad-based legal collection, both accessible and accommodating to the busy practitioner. Providing that kind of library has become increasingly difficult in recent years, as library funding has become inadequate to cover costs and legal materials have proliferated. In an era of spiraling costs and dwindling budgets, Jim's efforts have kept the County Law Library a valuable resource for the legal community. And through it all, he has also managed to keep his sense of humor. "King County Law Library only has two problems," he points out. "Space and money." At other times he has remarked, "We could solve all our problems if we'd just get rid of these books."

Because of Jim's dislike of the limelight, many people are unaware not only of his patience and dedication in sticking with an increasingly difficult job through the years, but also of the interesting path he took in getting to King County Law Library. Viola Bird, a colleague of Jim's for many years, was asked to help fill in some details of his background. Her reply was, "I have known Jim since the mid-fifties, but when I began asking him about his background, I was so surprised to find how little I knew. He started out telling me about his L.L.B. and I said, 'Where did you go to undergraduate school?' He replied, 'That comes later.' "

This is her account of what she learned.

"Jim served for three years in the armed forces in World War II. When hostilities ended in Europe, he was sent out from Marseilles to help settle the conflict in the Pacific. When he returned to the U.S. he entered the University of Montana. In those years some law schools required only two years of undergraduate work and three years of law school for the L.L.B. degree, which he received in 1949.

For the next three years he practiced law in Montana as assistant county attorney. In 1954 he earned his B.A. in history from the University of Washington. In 1955 he completed work for his M.A. in political science from the University of Wyoming. He then returned to the University of Washington to earn his Masters of Law Librarianship under the direction of Marian Gallagher in 1956. That fall he accepted the position of Law Librarian and Professor of Law at the Dickinson School of Law at Carlisle, Pennsylvania. He remained there until March 1960 when he became the Librarian of the King County Law Library, the position he has held for 31 years."

She finishes by saying, "James J. McArdle is no ordinary man, as his education and his life reveal."

All who have had the pleasure of knowing and working with Jim would agree.

__Annetta Lawson__ is librarian for the Eastside Tax and Law Library in Bellevue and Ferguson and Burdell in Seattle. *For their contributions to this article she thanks: __Viola Bird__, freelance librarian; __Amy Madigan__, library consultant; __Rick Stroup__, King County Law Library; and __Vicki Moore__, UW Gallagher Law Library*

Two Tough Jobs: Parent & Lawyer

Janet Leigh once said, "There aren't words yet invented to define the emotions a mother feels as she cuddles her newborn child." I couldn't agree more. As I held my newborn baby and experienced the full spectrum of emotions I thought, "How can I ever go back to work? How can I let someone else take care of my baby--take my place?" My feelings deepened when my baby became sick and was hospitalized during her early life. Yet, as her health improved, I realized that I missed work--the interaction and the challenge.

I took several months off before returning to my job; my husband took the "second shift" and stayed home. Initially, I worried about everything: How would my husband do? Would he *really* make sure our baby didn't fall off the changing table? Not only did she not fall, she thrived with my husband as primary caretaker. I'm convinced that their time together has forever changed their relationship for the better. We've now started the "third shift" and returned to work full time. We share a nanny with another family. We hope and pray she won't leave. Finding loving, responsible, and affordable child care was nearly an impossible task and a frequent topic of converstion among our friends.

Now that I have my sea-legs back, I have several reflections about being both a parent and lawyer. In many ways, parenting is the antithesis of lawyering. Fine lawyers predict the future, control the present and reinterpret the past. Good mothers suspend judgment about the future, experience the present and appreciate the past. I've tried to carry some of these valuable lessons of motherhood into my law practice: to be present in a renewed way; to make that call I've avoided; to treat time as a gift.

Motherhood is a spiritual reprieve. I've never actually had to live in the moment the way I need to as a mother. Mothering is the ultimate "one foot in front of the other" experience. I just do the next indicated thing. The belly laugh or first steps of my baby are more significant and real experiences than any I've had so far. The concerns are far greater as well. I never read the newspaper without asking, "What if that had been my child?" I must leave the room when starving Kurdish children are on TV. I guess I just feel more in touch with life.

Law and motherhood combined is a tough role. I used to believe that I was objectively busy. Now I would kill for the time I used to have. I still wouldn't change my life. I want to be a good mom, but I don't have to be mother-of-the-year. I want to be a good lawyer, but I don't have to make the cover of *American Lawyer*.

A lawyer friend told me before our daughter was born that parenting was the toughest job I'd ever love. He was right.

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CAREER SERVICE EVENTS

Tuesday, September 3, 1991, at 12:00 noon. First of a weekly *Job Hunters' Support Group* for WSBA members who are actively involved in the search for a new position. This will be a drop-in group focusing on the exchange of ideas and job-finding discussions. It is open to all WSBA members at no charge and will meet in the Presidents Room, WSBA (Westin Building, 4th floor).

Wednesday, September 11, 1991, 6:30 to 9:30 p.m. Feeling dissatisfied with your career? Meet other attorneys who feel similarly for group discussion and exploration, at Queen Anne Library Auditorium, 400 W. Garfield St., Seattle. Participation is strictly confidential.

Wednesday, October 2, 1991, 6:30 to 9:30 p.m. *Charting a Course in the Legal Profession: Career Planning for Young Lawyers.* CLE-accredited seminar in Seattle's Security Pacific Bank Building, 6th floor auditorium.

Thursday, October 3, 1991, 6:30 to 9:30 p.m. *Lawyers at Midlife: Planning the Second Half of Your Career.* CLE accredited seminar in Seattle's Security Pacific Bank Building, 6th floor auditorium.

Friday, October 4, 1991, 9 a.m. to noon. *What Can You Do with a Law Degree?: A Career Planning Intensive for the Un-, Under-, or Unhappily Employed Lawyer.* CLE accredited seminar in Seattle's Security Pacific Bank Building, 6th floor auditorium.

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Friday, October 25, 1991, 9 a.m. to 4 p.m. *Wake Up from the Billable Hour Nightmare: A Symposium on Innovative Alternatives to the Time Billing System.* CLE accredited seminar. Location in Seattle to be announced.

FREE EVENTS AT THE SEATTLE PUBLIC LIBRARY
(Main auditorium on the fourth floor)

Monday, September 16, 1991, 6:30 to 8:30 p.m. *Keys to Success in the Practice of Law.* This will be an interactional discussion with Lem Howell, Jeff Tolman and Patricia Wagner about their experiences as lawyers.

Monday, October 21, 1991, 6:30 to 8:30 p.m. *Finding Your Niche in the Legal Profession.* Three attorneys will talk about their respective legal interests. Candy S. Marshall, preventive employment law counseling and labor relations; Bill Courshon, Staff Attorney for the U.S. Trustee's Office, Bankruptcy Court; Judge Faye C. Kennedy, Court of Appeals of the State of Washington.

Monday, November 18, 1991. *How to Finance a Job or Career Transition.* Karen Ramsey, a fee-only Certified Financial Planner, will repeat her well-received June program for those of you who received your *Bar News* too late to attend. She'll have you examine how you currently spend your money; what expenses you need to plan for in your job search; additional sources of income you might want to consider; and what to do when all apparent sources of income run dry. As added inspiration, Karen will reveal real life stories of her clients to prove that it truly can be done!

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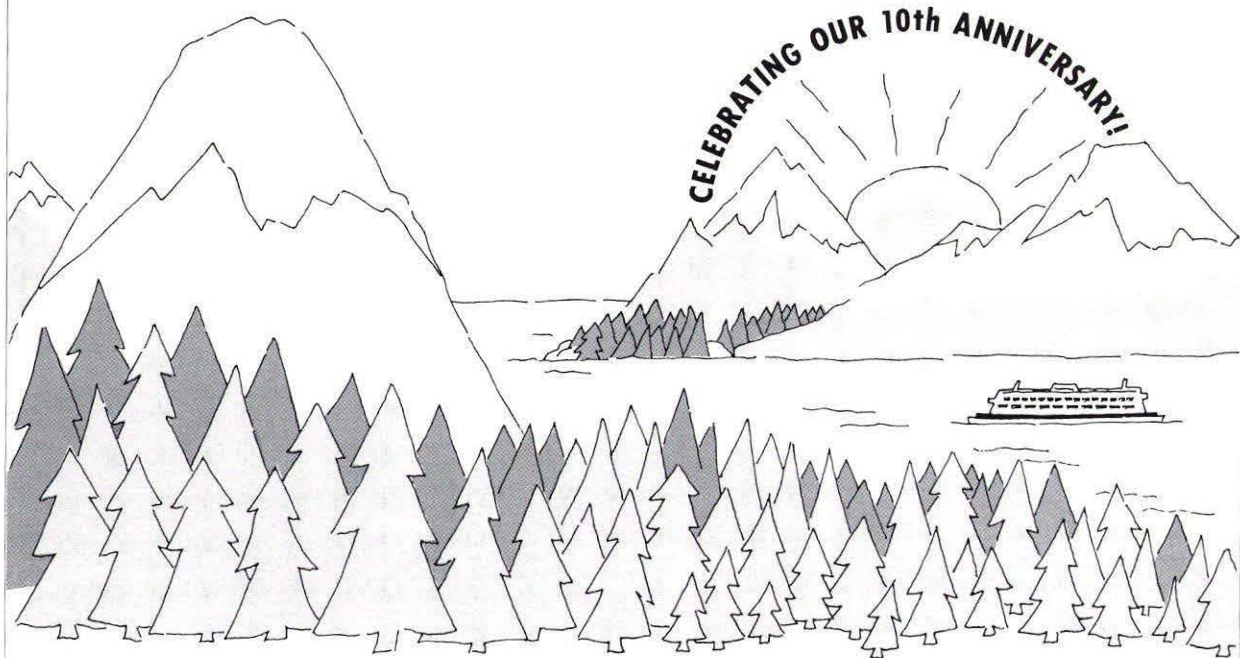

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Russell V. Hokanson

Seattle lawyer **Russell V. Hokanson**, of counsel to the law firm of Helsell, Fetterman, Todd and Hokanson, has been honored by the Seattle-King County Chapter of the American Red Cross for 45 years of volunteer service to the organization. Hokanson started with the chapter in the 1940s, serving on numerous committees, then as a chapter director, as delegate to Red Cross national conventions and legal counsel to the chapter. He has served on the national organization's board of governors and executive committee.

THE JUDICIARY

In an unusual move, the Washington State Trial Lawyers Association has honored the entire Clark County Superior Court bench for their work in case management and expediting case resolution. Judges **Robert Harris**, **Tom Lodge**, **Barbara Johnson**, **Roger Bennett**, **James Ladley** and **John Skimas** make up the Clark County Superior Court bench. Their system of assigning cases to a judge at filing has won statewide praise. Vancouver lawyer **James Sellers**, who presented the award to presiding judge Skimas, told the WSTLA convention in Whistler B.C. that before the system was adopted, "the average time it took to get a civil case to trial was two to three years. Now the average time is three to four months. Tens of thousands of dollars are saved for the taxpayers of Washington."

Governor **Booth Gardner** has appointed two lawyers to the Superior Court bench for Chelan and Douglas counties. **Ted Small** of Wenatchee and **Carol Wardell** will succeed **Fred Van Sickle**, recently appointed a federal judge, and **Charles Cone**, who retired. Small practiced in Wenatchee and was a graduate of Bradley University and the UW School of Law. Wardell practiced in Wenatchee as well, and holds degrees from Central Washington University and the UPS School of Law.

The Supreme Court's senior staff member in the clerk's office retired in July to accolades and a large party in the Temple of Justice. **Virginia Murry** spent 26 years with the Court working as an administrative assistant to former Justice **Walter McGovern** and the late Justice **M.E. Sharp**. Since 1971 she had served as assistant to Justice **Robert Utter**. Utter presented Murry with a certificate of appreciation, quipping, "The only unanimous opinion we've had is that she's done a wonderful job."

King County Superior Court Judge **Faith Enyeart** has been named Judge of the Year by the Washington State Trial Lawyers Association. Presenting the award, Seattle lawyer **Thomas Chambers** praised Enyeart's consistent demonstration of "courage, composure and reason" with her "very strong sense of justice." Enyeart was appointed to the bench in 1983. She is a graduate of the University of Washington and Willamette University School of Law, and was admitted to the bar in 1970. She was a founding member of Washington Women Lawyers and Trial Lawyers for Public Justice.

Judge **Douglas W. Luna**, of the Northwest Intertribal Court System in Edmonds, has completed a comprehensive two-week course to help judges perform efficiently and effectively.

"Special Court Jurisdiction" at The National Judicial College, is designed to

Making A Difference: Two of Seven National Nominees Are WSBA Members

Every year Trial Lawyers for Public Justice, a national public interest law group, looks for lawyers who have made the greatest contributions to the public interest by trying or settling a precedent-setting case. "Such lawyers epitomize the terms 'trial lawyers for public justice,', says TLPJ president Leonard Ring. "They serve as shining examples of how trial lawyers can truly make a difference."

This year TLPJ has nominated seven lawyers from all over America for its Trial Lawyer of the Year Award. Two are from Washington: Hoquiam lawyer **Paul Stritmatter** and Seattle attorney **Michael Withey**.

Stritmatter, 48, is honored for his work in *Buenrostro v. Washington State Apple Commission*, in which he won a $617,000 settlement for over 800 migrant farmworkers lured to Washington with false promises of work and legal help. The settlement was the largest for migrant workers in Washington history.

A former president of the Washington State Trial Lawyers Association and a governor of the WSBA, Stritmatter is a native of Hoquiam who practiced with his father, the late **Lester Stritmatter**. In 1989 he successfully argued for the judicial reversal of statutory limits on jury awards for pain and suffering in Washington.

Withey, 44, is a partner of Schroeter, Goldmark & Bender in Seattle. He was nominated for his work representing a Boeing employee who contracted leukemia and attributed it to work in an electromagnetic pulse lab. Boeing settled the case for $500,000 and agreed to conduct medical monitoring of 700 other workers for ten years. He is also noted for his 1989 lawsuit which found the late Philippines president **Ferdinand Marcos** responsible for the murder of two cannery union activists who opposed his regime.

help judges with all aspects of their professions, from legal research to evidence, to the conduct of a jury trial. Participants from courts throughout the U.S. learned how to solve problems by comparing methods and court procedures used in various areas of the country.

CLARK COUNTY REPORT

by **JOHN F. NICHOLS**

The answer to Clark County's most frequently asked question, "How does one achieve mention in this column?," is as varied as those fortunate attorneys who have appeared herein. Some earn their accolades, others have it thrust upon them by their colleagues. Still others might as well wear a sign saying, "Please poke fun at me, for I deserve any abuse heaped upon my worthless self-esteem." Of course, it would have to be a rather large sign. Into this last ever-growing segment is, once again, our own **Arthur Curtis**. The ever-quotable Art qualified for induction by his statement that appeared in *The Oregonian*, July 4, 1991. The newspaper, in publishing an exposé on the ancient art of barbecuing, cornered Curtis at his courthouse office attired in chef's hat, apron with some inane saying and juggling long-handled utensils. After hours of "grilling," he finally said something that was intelligible and the quote ended up being the hook for the entire barbecue article:

> I think it's the male's protective instinct. After man discovered fire, he realized it could be dangerous to woman, so he kept her away. That—and the fact that the steak he drops on the ground will be hers.

Reached for comment on the above in the local "Y" where he is temporarily frying up burgers for his roommates, Art stated that it was all a misunderstanding. What he in fact was referring to was ESPN. Right, that—and the fact that the only channel Art will be watching is the "Home Cooking Network."

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EAST KING COUNTY REPORT

by **RANDOLPH I. GORDON**

Baron **Karl Drais von Sauerbronn**, chief forester of the Duchy of Baden, devised a two-wheeled vehicle powered by the thrust of the rider's feet against the ground to facilitate his inspection tours. This so-called draisine, or dandy horse (c. 1818), was improved upon by a Scottish blacksmith, **Kirkpatrick MacMillan**, 21 years later, who added foot treadles and handlebars. *Scientific American* (Feb. 1869) speaks of the "bicycular velocipede." Velocipede evolution continued through **Ernest Michaux** (crank-driven) and **Pierre Lallement** (the iron-wheeled, wood-rimmed "boneshaker"), and culminated in the efforts of **James Starley** (c. 1885), an English machinist in Coventry who created the so-called "safety bicycle" with wheels of even size and a sprocket-chain drive linking the pedals to the rear wheels. The following year we learn in the April *Cyclist* that "Matters bicycular appear to be progressing...in Norway." The League of American Wheelmen press for better roads in the United States. The pneumatic tire (**James Dunlop**, c. 1888), freewheel, coaster brake, hand brake, variable drive gear, adjustable handlebars, derailleur gears, "handlebar mustaches," "pedal pushers," and

Redmond velodrome follow.

But why this bicyclical encyclical? Why now this pedantic, pedal-driven panegyric?

I sing the body bicyclic. As **Sherlock Holmes** noted in "The Adventure of the Solitary Cyclist": "At least it cannot be your health, so ardent a bicyclist must be full of energy."

We find in this modest device not only a more important means of transportation worldwide than the automobile, but a distillation of virtues, a vestige of things past and presage of things to come. It is inherently accessible, egalitarian, efficient, economical, utilitarian, unpretentious, nondiscriminatory, healthful, and environmentally sound. To a friend of mine, a cycling enthusiast, it is "sleek, fast, and you can do nifty things with it." (How many things—other than the legal system—can lay claim to such virtues?) Our relationship to it is colored by fond childhood memories, school years, weekends with friends and family. It links us both to our childhood and our children (as I recently learned teaching my daughter, Kate, to ride her two-wheeler). In an age of isolation and detachment, it is open and gregarious. Its operational principles are open to inspection and susceptible to our understanding in a way that telephones, transistors, torts and turbochargers are not. In an age of technical complexity, it may be one of the few devices whose mechanical principles seem within reach and affirm our competence. An optimist could foresee a society which aspired to bicycular virtues.

Here in the Northwest, on the Eastside, in the summer, it is the best of times and places for cycling. Yet, evidently, these charms proved insufficient to hold EKCBA Business Law Committee chair **Ross D. Jacobson** here during the work week: he has left Bellevue, where he was managing partner of Jacobson & Snodgrass, to become of counsel to Ogden Murphy Wallace, where he will practice in the Seattle office's business law department. Maintaining the cosmic balance, however, is **Wendy R. Kaiser**, who has relocated her office from Pioneer Square in Seattle to the Koll Center, 500 - 108th Avenue N.E. #1710, Bellevue, where she shares offices with **Ralph Moldauer**, **Joseph Lawrence**, **Kristi Nobles**, and **Jennifer Gilliam**. Kaiser's practice is limited to family law.

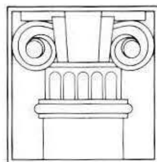
Bellevue resident **Rob McKenna**, a Perkins Coie associate in Bellevue, was honored with the Doug Mason Memorial Award by the Municipal League of King County at its 32nd Annual Award Luncheon. Since 1980, the award has been presented to a person under the age of 35 for special contributions to the people of King County. McKenna, age 28, was selected for his civic leadership in the areas of environmental protection, transportation, and good government; he is currently a member of the City of Bellevue Transportation Commission. Will intractable congestion in the urban hub succumb to a bicycular solution?

KITSAP COUNTY REPORT

by **KATHLEEN M.S. WRIGHT**

New Colleagues. There are 12 new Bar admittees from the February exam who claim Kitsap County as home: **Leonard Angus**, **J. Scott Harlan**,

You Already Belong



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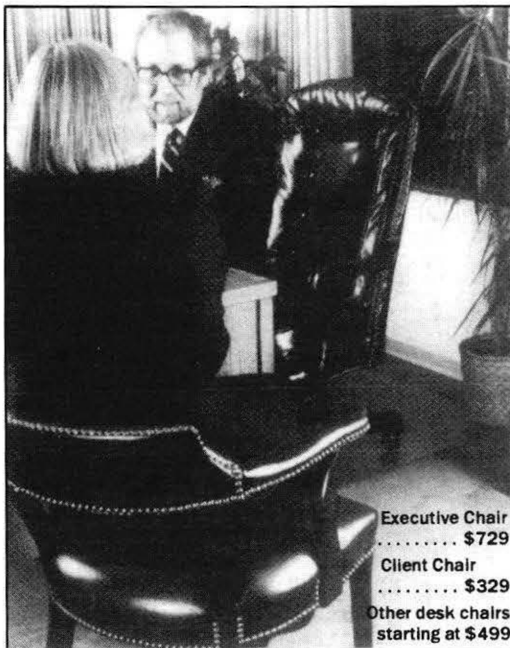
Pro Bono Participation. Kitsap County bar members continue their outstanding performance in the pro bono area. Over the past few months, the Neighborhood Advice Panel included **Kerry Stevens**, **Tom O'Hare**, **Kevin Underwood**, **Keith Buchholz**, **John Jackson**, **Jeff Letts** and **Darrell Uptegraft**. Attorneys accepting pro bono cases recently are **John Jackson**, **Marilyn Paja**, **Tim Botkin**, **Jeff Tolman**, **Susan Daniel**, **Bill Crawford**, **Gordon Reynolds** and **Keith Buchholz**. The fine tradition of volunteerism earned **Russ Hartman** the coveted Pro Bono parking space at the courthouse for the month of August. If anyone has had the misfortune of attempting to park in Port Orchard recently, you will know what a valuable award this is.

Bar Picnic. Sandwiched neatly between two glorious Northwest days, the Bar Family Picnic on July 13 proudly carried on its tradition of crummy weather. Judges **Leonard Kruse** and **William Kamps** gamely flipped burgers and bratwurst and **Karlynn Haberly** organized a rousing session of children's games. **Pete Philley** confessed a secret desire to participate in the "pop the balloon by sitting on it" game. Judge **James Riehl** made a late appearance so the bench was well represented. Approximately 30 attorneys and families attended the best bargain in Kitsap County—$10 for all one family could eat and drink.

Honors and Elections. **David Armstrong** was appointed an alternate to the Judicial Conduct Commission. **Kathleen Quinn Lappi** is the new president of the Kitsap Chapter of Washington Women Lawyers.



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PIERCE COUNTY REPORT

by GEORGE S. KELLEY

The local Bar Association's pictorial directory is finished and selling for a modest price of $10. It purportedly contains photos, office addresses and telephone numbers of all the active Pierce County judges and lawyers. Some of the pictures are a bit overexposed, probably the ones taken one sunny day last winter. You will want to check out the picture of **Leslie Stomsvik**. The director's editor put Gig Harbor attorney **Janice Stonestreet** in Les' place—or he had one of those Swedish operations and didn't tell anyone. In any event, the directory is a good guide to recognizing all those new faces, and some of the old ones, in town.

A hoard of new attorneys were sworn in at ceremonies presided over by Judge **Roseanne Buckner**. **Gerald Snell** was introduced by his brother, **James Snell**. We don't know if James offered Gerald a job, or how many of the other admittees have found employment.

The Bar Association is very careful about verifying the identities of those being sworn in. Several years ago **Ed Lozier** represented a young man who was charged with a felony. Ed told him to dress nicely and to meet him in the courtroom for his arraignment. The

fellow showed up just before the swearing-in ceremonies, and, seeing other nicely dressed people, followed them into the courtroom where he was greeted by Bar Association officials, judges, lawyers and took the attorney's oath. There was quite a hubbub in the paper, and ever since then you have to show ID as the last step in becoming a lawyer. It is believed that Lozier managed to get a good result for the young man in spite of his being a lawyer.

Judge **Waldo Stone**, noted triathlete, placed second in his age group in the Seafair Triathlon in Seattle. His Honor may be ready to expand his athletic endeavors beyond the swimming, biking and running events and take up boxing. Recently, a defendant was found guilty of a felony after a jury trial in Stone's court. After the verdict was read, the defendant attempted an escape through the courtroom door closest to the bench. On the way out he decided to take a swing at the judge, and blows were exchanged. Stone suffered a cut on his nose, and the defendant received several more felony charges. Rumors are now circulating about a George Foreman v. Waldo "Rocky" Stone match, which will be held as the "Battle of the Aged."

In other news of triathletes, we have **Doug Hill** of the prosecutor's office placing third overall in a triathlon in Yakima and then being disqualified for failing to come to a complete stop at a "Stop" sign during the bicycle portion of the event. Doug claims to have, in fact, made a complete stop. The race officials, in the best tradition of traffic court judges, ruled that the DQ will stand, but it won't go on Doug's record.

The 911 Deli across the street from the courthouse has reopened under new management. The sign painted on the window advertises "Groceries - Chinese Food - Hambugers" (sic), which if taken phonetically might make one skip lunch altogether.

Charles W. Dent has joined the Puyallup firm of McCarthy, Dent and Hogan. Burgess, Fitzer, Leighton & Phillips have added **John T. Kugler** and **Raymond W. Schutts** as associates and announced that **Mark W. Bishop** has returned after having obtained an LL.M. in taxation from the University of Florida—and we all thought he was just taking a vacation down there.

SEATTLE-KING REPORT

by JAMES VARNELL

U of W Class of 1971 Revisited. The University of Washington School of Law Class of 1971 held its 20th reunion at the Bainbridge Island estate of **F. Ross Boundy** on September 14. A highlight of the gathering was the presentation of certain awards for outstanding "accomplishments" and contributions by class members. Those awards included: most defense verdicts suffered by a plaintiff's attorney: **Ross Boundy**; most million-dollar plaintiffs' verdicts allowed by a defense attorney: **Carole Coe**; most judges clerked for within three months of graduation: two by **Phil Noble** (judges **Walter McGovern** and **Morell Sharp**); most accurate example of the saying that "you can fool some of the people, etc." by being voted mistakenly, as it turns out, most likely to succeed:

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Nancy Gibbs; greatest difference between undergraduate G.P.A. and L.S.A.T. score (both low in this case) and money made while practicing law (high): **Jim Jessen** ex rel. Fletcher; most basketball played and least law practiced since graduation: **Pat McBride**; lowest profile since graduation: (tie) **Larry Rehkopf** and **Don Woodworth.**

Kitsap County prosecuting attorney **C. Danny Clem** received two (2) awards: most unsuccessful elective attempts for the Washington Supreme Court (one), and most unsuccessful prosecutions of a criminal case (too numerous to mention). **Nels Hansen** was honored for the most unsuccessful defenses of a criminal case (also too numerous). Special recognition was given to **Bob Knies** as being living proof that there is no correlation between the number of classes skipped while in law school with one's subsequent financial success in the practice of law.

The following exemplary feats were recognized in the judicial category: most trial court decisions reversed by an appellate court (minimum four years on the bench): (tie) **Dave Nichols** and **Joe Wesley**; in the same category for less than four years on the bench: **Larry Jordan.**

Above the Rim. The July issue of the *Bar News* reported the election results of new officers for the Washington State Trial Lawyers Association. Not reported, but worthy of note, was the three-on-three, all-tournament basketball team: **Dan Hannula**; **Steve Bulzomi**; **Rob Kraft**; **Mark McCauley** and **Jan** "Nothing But Net" **Peterson**. Noticeably absent from this year's all-tournament team was last year's M.V.P. **Wayne** "Pussycat," fka "Tiger," **Hagen**.

Of Note. The Seattle-King County Bar Association presented the following awards at its annual dinner: **Charles V. Johnson** as the outstanding judge; **Frederic C. Tausend** as the outstanding lawyer; and the Helen M. Geisness award to **Fred R. Butterworth**. New officers and members of the board of trustees of SKCBA are: **Peter Greenfield**, president; **Geoffrey G. Revelle**, first vice-president; **Mary Alice Theiler**, second vice-president; **Kimberly T. Ellwanger**, secretary; **Benson D. Wong**, treasurer. New trustees are **Barbara Heavey, Scott Smith** and **Linda J. Strout**.

Ron Bland, Joanne Maida and **David E. Wilson** have become Fellows of the American College of Trial Lawyers. **Judith M. Runstad** has been named chair of the Seattle Branch Board of the Federal Reserve Bank of San Francisco. **Gary Gayton** has been appointed as a member of the Citizens Commission on Salaries for Elected Officials of the State of Washington. **Jerome Shulkin** has been elected to the American Bankruptcy Institute Board of Directors. **Bruce M. Brooks** was appointed to the Seattle Housing Authority Board of Commissioners. **Bruce Flynn** was appointed to serve as chair of the American College of Trust and Estate Counsel.

The degree of Doctor of Fine Arts was conferred upon **Charles Osborn** at the 1991 Commencement exercises of the Cornish College of the Arts. **Kevin Hamilton** has been selected to be a speaker in the Inquiring Mind Program of the Washington Commission for the Humanities. **Patricia Loera,** a second-year law student at the University of Washington, has been selected as the first scholarship recipient of the Perkins Coie Student Fellowship program. Heller Ehrman White & McAuliffe won first place in the law firm challenge during the first annual Seafair/Texaco Walk for the Homeless, raising more than $2,000 in donations that will go directly to the Seattle Emergency Housing Services. Finally, on the matrimonial front, **John W. S. Acheson, III** (Seattle attorney and stellar softball performer of many years) has married Dr. **Lorraine Robertson**, OB/GYN. For their honeymoon, the couple watched reruns of the Cosby Show and compared the reversal of their respective roles.

SPOKANE COUNTY REPORT

BY DON CURRAN

Handsome litigator, **Dan McKelvey**, wows the locals with golden locks and plush sports cars. It's only the shallow people who do not judge by appearance. **Patti Connolly Walker**, mouthpiece for the city legal department, claims foul when (mis)quoted in the media regarding a dog bite claim against the city. She should know by now that everything you read in the newspapers is absolutely true except for the rare story of which you happen to have firsthand knowledge. **Roger Felice**, coming off a year proving the contingent fee is a poor person's key to the courthouse, has an office next to a funeral parlor. More original thinking by a plaintiff lawyer!

Paul Bastine returns from a three-week vacation in Europe, where he tried his famous echo in the British Museum Reading Room. Bachelor **Jim Kalamon** conducts depositions on the bow of his 42-foot cruiser with a crew of feminine pulchritude.

Bob Henderson, lucky spouse of **Mary Owen**, has lost scores of pounds and is back to being lean and mean. **Mike Connelly** has set up solo practice. He recently married the head bookkeeper in his old law firm and claims if it were not for the presents, an elopement would have been preferable. **Mike Hemovich**, the sports impresario, gets kudos for a splendid local bar golf tournament. For some, however, **Mark Twain**'s refrain best describes the sport: "Golf is a good walk spoiled." **Roger Coombs** joins Evans, Craven and Lackie. **Roger Metz** is associated with Dellwo, Roberts and Scanlon.

WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

Robert W. Whaley of Spokane was elected WACDL's 1991-1992 president at the organization's annual meeting in Chelan June 8. Also elected were **Steve Hayne**, vice president/west; **James E. Egan**, vice president/east; **Lenell Nussbaum**, secretary; and **Rick Troberman**, treasurer. Elected to two-year terms on the WACDL Board of Governors were **Katie Ross, Al Lyon, Rick**

Cordes, **Dan Fessler**, **Cece (Lana) Glenn**, **Judy Mandel**, **Michael Iaria**, **Tim Kosnoff**, **Richard Hansen** and **Jon Zulauf**.

Awards recognizing significant service to the criminal defense bar in Washington were also presented. Certificates of Appreciation were given to **George Bowden**, **David Bukey**, **Kern Cleven**, **Tom Conom**, **Jon Scott Fox**, **Hillery Johnson**, **Mark Muenster**, **Katie Ross**, **Jim Sedney**, **Catherine Smith**, **Steve Thayer**, **Rondi Tiernan**, **Rick Troberman**, **Jim Walker** and **Bob Wayne**.

Jon Ostlund and **Peter Offenbecher** were given the WACDL Distinguished Service Award. Ostlund is a retiring member of the state Sentencing Guidelines Commission and the WACDL Board. Offenbecher has been WACDL's treasurer for two years and a member of the Pattern Jury Instruction Committee.

Mark Vovos of Spokane received the organization's highest honor, the William O. Douglas Award, in recognition of "extraordinary courage and dedication to criminal defense." A 1968 graduate of Gonzaga University School of Law, Vovos has practiced criminal defense at the state and federal levels for many years, and has handled numerous death penalty cases. Recently elected to the American College of Trial Lawyers, Vovos has served on the WACDL board of governors and chair of the WSBA Criminal Law Section. He is a Fellow of the American Board of Criminal Lawyers and taught evidence and trial practice at Gonzaga for ten years. The award, a bust of the late U.S. Supreme Court Justice William O. Douglas, was presented at the annual meeting.

WASHINGTON ASSOCIATION OF MUNICIPAL ATTORNEYS

WAMA held its 35th annual meeting in Spokane June 20-21, and in the course of business there elected the following persons to positions in the organization:

Martin Muench, president; **Larry Winner, Sr.**, first vice president; **Richard Andrews**, second vice president; **Mark Erickson**, **Sandra Driscoll**, **Sandra Watson**, **Wayne Tanaka**, **Daniel Heid**, **Glenna Bradley-House**, **Patricia Bosmans**, directors; **Robert Hauth**, secretary-treasurer.

WASHINGTON STATE TRIAL LAWYERS ASSOCIATION REPORT

by **LETHA J. OWENS**

As another year begins for the WSTLA Board of Governors, this is an excellent time to remind everyone of the benefits and services provided by WSTLA to its members. Perhaps the most visual benefit is a subscription to the *Trial News*, a monthly forum for information on current trends in the law, with regular special focus issues which provide in-depth coverage of one area of law. Another highly visible benefit to members of WSTLA is the discount given to members for WSTLA-sponsored CLE programs. WSTLA's CLEs are some of the most exciting and best-attended in the state and of invaluable use to attorneys looking for information to use in their practice.

Among the less-known WSTLA membership benefits are the monthly roundtables conducted in 20 locations around the state, where attorneys gather to discuss current issues or to ask and answer questions posed by colleagues. WSTLA also has a mentor program to provide new plaintiff's attorneys with contacts among the more experienced bar. WSTLA works as well to keep the public aware of the good that lawyers can do in their communities. By sponsoring the highly successful People's Law School program and by maintaining a Speaker's Forum, WSTLA works to promote public knowledge of the legal system and to provide information on important issues.

Practice aids provided by WSTLA in the never-ending battle to reduce costs include a brief bank, an expert witness directory, which often includes how to obtain prior depositions of experts, and a trial aids program. The trial aids program solicits and makes available to members exhibits used in trial presentations, such as medical illustrations and models. WSTLA also has an arrangement with Jury Verdicts Northwest to provide discounts to members using their services.

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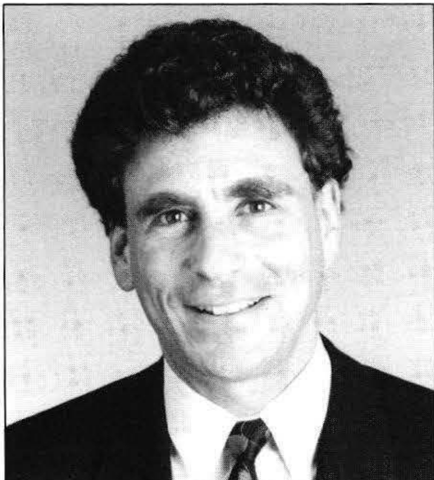
law including: civil rights, criminal law, employment law, environmental law/toxic torts, family law, insurance, maritime law, medical negligence, worker's compensation, and Washington pattern instructions.

For those who want to get involved there are governing committees now forming for the 1992 year. Committees are formed on as diverse topics as amicus, ATLA relations, awards, convention, court rules, development, eastern Washington steering, ERISA task force, finance, Gates Commission, judicial relations, legislative steering, long-range planning, member services, no-fault task force, nominating, public affairs, student advocacy, and the *Trial News* editorial board. If you are interested in any of these committees or the above programs, feel free to contact the WSTLA offices in Seattle, (206) 464-1011; Spokane, (509) 326-6660; or Olympia, (206) 786-9100, or call toll free (800) 732-9251. WSTLA staff will be happy to provide aid and information.



James S. Rogers

Seattle lawyer **James S. Rogers** succeeded Hoquiam attorney **Keith Kessler** as WSTLA president at the association's annual meeting this summer at Whistler, B.C. Actively involved in WSTLA's Board of Governors for over ten years and its national counterpart, the Association of Trial Lawyers of America, Rogers has taught and written extensively on legal issues. In 1988 he hosted a radio talk show, "The Law and You" on a Seattle station, and in the early 1980s was a commentator on National Public Radio's news program, Morning Edition. A graduate of the University of Washington and the University of Arizona College of Law, Rogers concentrates his practice in products liability, personal injury, highway design and medical negligence litigation.

Halleck H. Hodgins of Seattle was chosen president-elect of the Association.

Elaine Houghton of Tacoma and **William Bailey** of Seattle were jointly awarded WSTLA's Trial Lawyer of the Year Award. **Mary Anne Ottinger** of Bellevue was named recipient of the President's Award.

IN MEMORIAM

Alec Bayless, 69, died June 3, 1991, in Seattle. A Texas native, Bayless graduated from Rice University in 1943. After the war he graduated from the University of Washington School of Law and joined **Francis Hoague** and **Kenneth MacDonald** in partnership in 1952.

Bayless was Mercer Island's first city attorney and in the 1950s and 1960s was involved in such large-scale civic projects as the creation of Metro and the Forward Thrust campaign. Later, he became more and more a real estate lawyer and land investor, then moved into the infant wine industry in eastern Washington.

Francis E. Holman, 75, died June 5, 1991 in Seattle. A graduate of Oxford University and Harvard Law School, Holman practiced in Seattle before an appointment to fill a school board vacancy led him into four decades of public office. He served variously as mayor of Lake Forest Park, state representative, state senator, and judge of the King County Superior Court. Holman was known as a true independent, who stuck to his guns on the issues before him and was unmovable by special interests of any stripe.

Irving Paul, 73, died May 17, 1991 in Seattle. A graduate of Dartmouth and Harvard Law School, Paul was approached by King County to set up a public defense corporation in 1974. Associated Counsel for the Accused was the result, and Paul was one of its leaders and inspirations until shortly before his death. *Seattle P-I* reporter **Michael A. Barber** wrote,

> Paul was one of the most popular figures in Seattle and King County courtrooms. Judges, prosecutors, even police officers who arrested the people Paul often sprang from jail were saddened by his death.
>
> His presence in court was conspicuous, with his long, flowing hair and crazy leisure suits adorning his tall frame. A quote he carried with him over the decades from a Dartmouth philosophy class was tacked on his office wall: "Man must strive to protect his own unpredictability."

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David L. De Courcy will be of counsel to the new firm.
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PROFESSIONAL

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Margaret K. Dore
former clerk to
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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.

Joseph William Downham: Anyone having copy or knowledge of will or codicil of Joseph William Downham contact Bruce Hand, (206) 747-0968.

Earl Junior Larrison: A/K/A Earl J. Larrison and Earl Larrison, Jr., of Pend Oreille County, Washington, born 5/11/19 and deceased 10/21/87. If you have information regarding any will or heirs to his estate, please contact Michael D. Kinkley, Attorney, 914 Northtown Office Building, Spokane, WA 99207; (509) 484-5611.

Larry R. Clein

Bernice Robbins Clein: Anyone with knowledge of the last wills of Larry R. Clein and/or Bernice Robbins Clein of Seattle, Washington, contact Eugene D. Seligmann, Suite 200, 216 First Avenue South, Seattle, WA 98104. (206) 682-2616.

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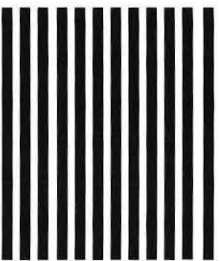

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JUVENILE
Declining juvenile court jurisdiction

State v Massey, 60 Wn.App. 131(1991) 2/91

(See CONFESSIONS; FELONY CRIMES; SENTENCING). A 13 year old participated in an aggravated murder. Juvenile court declined jurisdiction and he was convicted and sentenced to life without parole. On appeal, among other things, defendant claims error in being declined by the juvenile court.

HELD: NO ERROR. CONVICTION AFFIRMED.

A juvenile has no constitutional right to be tried in juvenile court. State v Hodges, 28 Wn.App. 902, 626 P.2d 1025(1981). The State bears the burden of showing that the declination of juvenile jurisdiction would be in the best interest of the child or the public, by a preponderance of the evidence. State v Jacobson, 33 Wn.App. 529, 656 P.2d 1103(1982). The juvenile court's decision is reviewable under an abuse of discretion standard. State v Toomey, 38 Wn.App. 831, 690 P.2d 1175(1984); RCW 13.40.110(2).

The juvenile court should consider 7 criteria before declining jurisdiction. State v Holland, 98 Wn.2d 507, 656 P.2d 1056(1983):

(1) The seriousness of the alleged offense to the community and whether the protection of the community requires waiver;
(2) Whether the alleged offense was committed in an aggressive, violen, premeditated or willful manner;
(3) Whether the alleged offense was against persons or against property, greater weight given to offenses against persons especially if personal injury resulted;
(4) The prosecutive merit of the complaint;
(5) The sophistication and maturity of the juvenile as determined by consideration of his home, environmental, situation, emotional attitude and pattern of living;
(6) The record and previous history of the juvenile;
(7) The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile by the use of procedures, services and facilities currently available to the juvenile court.

These 7 criteria need not all be met; rather, they direct the court's inquiry. In re Burtts, 12 Wn.App. 564, 530 P.2d 709(1975).

Here, the defendant failed to assign error to ANY of the findings of the juvenile court when it declined jurisdiction. Therefore, the appellate court treats them as verities on appeal. See State v Christian, 95 Wn.2d 655, 628 P.2d 806(1981).

Even though the psychological and treatment reports recommended retention of juvenile jurisdiction, the juvenile court determined that these recommendations were based on unreliable information povided by the defendant alone; because he had a high deception scale and antisocial tendencies, the court determined that these evaluations were not reliable.

Defendant also had a below average aptitude of 77, and the mental age of a 9.9 year old. However, this mental ability is only one factor, which must be balanced against the other factors including the seriousness of the crime, the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation.

Because the juvenile court considered and properly balanced all these factors, its conclusion to decline jurisdiction was not an abuse of discretion.

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State v Hoffman, 116 Wn 2d 51(1991)

HELD: NO ERROR; CONVICTIONS AFFIRMED.

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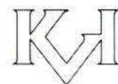

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WASHINGTON STATE BAR ASSOCIATION

1991

ANNUAL REPORT

WASHINGTON STATE BAR ASSOCIATION

Every lawyer should be president of the Washington State Bar Association for 20 minutes. That's about the amount of time this job would take if each of us could job-share it. In that way, also, you could know firsthand the thrills, the joys and the satisfactions this last year has brought. (The terrors and pratfalls you'd probably like me to keep to myself.)

For one, getting to write 11 monthly essays on any subject I choose with virtually no editing (beyond Word Perfect's spell check) to an audience of 17,000 very bright readers can be daunting. While writing these essays, I often felt like a yoyo on a long string in a darkened room—there was lots of wall-bouncing involved in being president. The August "President's Corner" on the law schools is a case in point. It was "off the wall" and only took 20 minutes to write. Yet it drew articulate, emotional, even primal responses from lawyers all over the state. Evidently, the law school cradle was an unpleasant childhood for more than just a few lawyers. Keep writing me about your experiences. We'll both feel better, and I won't feel like such a solitary yoyo.

As presider over the Board of Governors meetings I have had the opportunity to participate firsthand with some of the most talented people in the state. Whenever I have been refereeing the "idea wrestlers," all the interactions have been kind, considerate and courteous. There are no mud wrestlers on this board. In the professional arena, many Governors are, I am told, considered among the elite of their areas of practice. Yet each Governor brings humility and justness to the decision-making process. We hope we have made good decisions this past year.

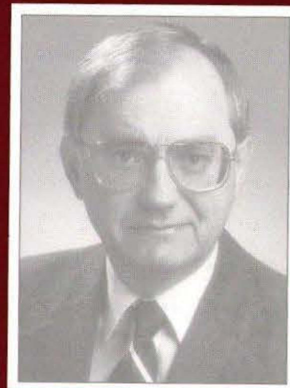
Time ran out on us, however. Our executive director has reflected on the accomplishments of the past year. They are many, thanks to a very hard-working board. But I cannot help keeping my eye on the bow rather than the stern. While I know the wind in this ship's sail has its own momentum, no matter how hard you might turn the wheel, there are a few future ports I hope you will consider.

Ports of Call:

I hope the Board of Governors will keep their eyes on these winds of change:

• Consider adding some lay members to the Board of Governors, even if only as a two-year experiment. During the first year or so they could be nonvoting participants. Particularly during our deliberations on matters affecting the "public interest," it would be nice if some articulate public leaders were able to join us in our debates. These lay members would give us some needed balance and certainly with the public and the Legislature. The Oregon Bar Association has had lay members serve for years and reports well on their contributions. We should add lay members to our Character and Fitness Committee as well, preferably journalists, since they have a strong public interest in who we let into the profession.

• Change the name of the Unauthorized Practice of Law Committee to the Consumer Protection Committee. Annually, the Board wrestles with the idea of abandoning this committee altogether. Its budget is cut to almost nothing. Let us change the "protectionist" focus of this committee by empowering it to look beyond our narrow interests toward the broader public interest of how legal services are being provided to the public generally. The committee should devote itself to championing the protection of consumers from unscrupulous, misleading



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law scams like so-called "living trusts," not shut down cut-rate law clinics or legitimate consumer-oriented legal support groups.

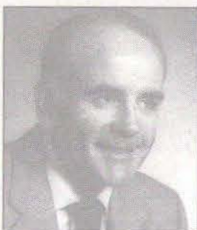
• The whole present elitist procedure for the appointment of lawyers to Bar committees should be abandoned in favor of "open" committees which any interested WSBA member may join, receive copies of minutes and be allowed to participate. Paying $10-$20 qualifies you for membership in any of the Bar's 25 sections. Why should volunteered service on committees be any different? There were 1,500 lawyers who wanted to serve on committees in 1991; only 150 actually got appointed. That's a resource lost to the Bar. It happens every year.

• I have a partial solution for a problem not yet perceived by many lawyers but very much in the public's consciousness: delivery of legal services to lower-middle-income persons. The most costly part of most legal transactions for the millions of people who cannot afford a lawyer is at the "point of sale," i.e., the initial interview. It is at this time that the client and the lawyer interact, exchange information and, in most cases, the transaction is concluded without much additional legal intervention. Example: The tenant learns at the lawyer interview that the three-day notice to quit the premises is valid, that the defenses are limited and that it's time to pack up and move. Much of this information could be communicated by a computer linked to modern and inexpensive telecommunication systems. Software packages exist which use a limited form of "artificial intelligence" to take the client through a series of branch type questions with different solutions depending upon the answers given. The Bar performs this service already, though in a much more limited sense, through the Seattle Times Infoline. Let's expand it to include a "point of entry" computerized interview program and a resource directory so that the dispossessed tenant in the example above can seek alternative housing. Keep a panel of retired volunteer lawyers available by telephone to supplement the computer responses. Since we lawyers hold the lock on the courthouse door, it is our responsibility to find innovative and cheaper methods of ensuring consumer access to the legal process.

• Add lay members to those committees and sections of the bar which deal with matters affecting the public interest, not just character and fitness and discipline, but also "consumer protection," legislation, etc. We can and should forge alliances with other interested groups. Law is pervasive and affects everyone, yet lawyers seem intent on keeping the franchise closed to only those who have a license. Adding special membership categories to our committees and sections should not be perceived as compromising the quality of our franchise but enhancing it.

The presidency has been a great experience, not to be repeated. It has been likened to the herding of cats, drinking out of a fire hose and captaining a full-sailed ship in a Cape Cod hurricane. If in the course of these varied experiences I have provoked a spark of insight, a small doubt about the status quo, a slight hesitation in the routines of lawyering, then the sunset ahead looks pretty good.

Lowell K. Halverson



J. Donald Curran—Delay, Curran, Thompson & Pontarolo, P.S. (Spokane), Fifth District

"My three years on the Board of Governors have been a stimulating and satisfying experience. The WSBA is at the forefront of the bar associations nationally in innovative programs. Members who feel alienated from the Association or who perceive it as a necessary burden should get involved in committees, sections and programs. They will find it fulfilling."

Ronald M. Gould—Perkins Coie (Seattle), King County at Large

"It has been my privilege to serve on the Board of Governors for the past three years. Nothing in my professional career has impressed me more than the professionalism, concern for lawyers and sensitivity to public interest exhibited by the various presidents and governors with whom I have served. The Board has also enjoyed successful cooperative efforts with those representing the judiciary, the Washington Young Lawyers Division and other organizations that serve segments of our bar. I have learned a great deal about the concerns and interest of our bar and all that I have learned has given me more reason to be proud of our profession. Challenges and opportunities for improvement remain. Continuing and persistent efforts are needed to improve the bar's effectiveness and to broaden participation of its members. For example, there are many initiatives to increase the participation of Washington's women lawyers and minority lawyers. It is my hope that lawyers with varied practices will continue to find common cause in seeking to increase access to our courts, equality of opportunities for lawyers and service to clients and the public. Thank you for the opportunity to participate on your behalf."

Jeffrey L. Tolman—Roof, Tolman & Kirk (Poulsbo), First District

"My term on the Board of Governors is ending. It has been like raising a child—a burden of love. During the three years I have been on the Board we have made many difficult decisions—some right, some wrong—but all with an earnest desire to do the best we could for the members of the Association. I am thankful for the honor to have been able to sit with the fine men and women on the Board. I hope and think that ours is a slightly better profession after the hard work and decisions made by the Board over the past three years. Thank you for allowing me to be a part of it."

Lembhard G. Howell—Lembhard G. Howell, P.S. (Seattle), Seventh District

"Probably the most significant accomplishment of the Board since my tenure on it has been the realization that a dues increase is to be dreaded and must be avoided as the plague. Starting with Julie Weston as treasurer, through Bill Bergsten and Ron Gould, that tradition has continued. We must always know the financial impact before voting on any new program. We have also adopted guidelines for reimbursement of expenses. Right now I have a concern about the income projection for CLE. The other area in which much has been accomplished is that of discipline. Don Curran has done an outstanding job as chair of that committee. For the first time, we have aspirational timelines in our complaint procedure."

John G. Schultz—Leavy, Schultz & Davis, P.S. (Pasco), Fourth District

"My service on the Board of Governors during the past two years has been the pinnacle of my career. I have appreciated the opportunity to represent the fine lawyers from the Fourth District and communicate the thoughts of the rural bar to the many issues facing the state bar and the courts. I will continue to guard the treasury, resist any dues increase, and hope to conclude my term of office next year with a no-frills association that serves the solo practitioner and small law firm on the east side of our state as well as it serves those lawyers in the large urban areas."

John T. Slater—Slater and Slater (Bellingham), Second District

"The opportunity of serving on the Board of Governors for the last several years has proved to be a most rewarding yet challenging experience. It has allowed me the privilege of observing the efforts of a vast number of attorneys of this state who have given so generously of their time and talent to promote equal justice for all members of society and the betterment of the legal profession. It has been an honor to have played a very small role in this important task."

Thomas J. Chambers—Thomas J. Chambers and Associates, P.S. (Seattle), Eighth District

"As a lawyer and an advocate no one has ever accused me of being reasonable or patient. Work on the Board requires both reason and patience and, therefore, has been termendously challenging to me."

Monte E. Hester—Monte E. Hester, Inc., P.S. (Tacoma), Sixth District

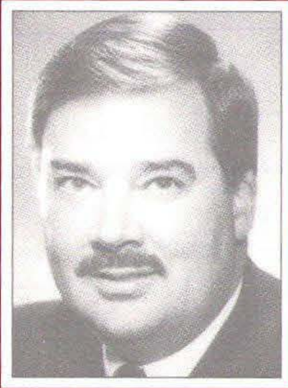
"My experience on the Board and working with the other Governors has been great during this first year. I look forward to continuing our efforts on behalf of fellow lawyers and the public."

Alva C. Long—Law Office of Alva Long (Auburn), King County at Large

"I have tried to add some color to the Board and am considering a new dress code requiring multi-colored shoestrings, tennis shoes and pastel clothing, including pastel judicial robes. It occurs to me that most of us do not understand that we make all of this up."

Steven B. Tubbs—Schwabe, Williamson & Wyatt (Vancouver), Third District

"As with most of life's experiences, my first year on the Board could be characterized as bliss to blarney, depending upon perspective. Given the choice, I opt for optimism. I encourage the advocates of change to maintain their endeavors; the disgruntled to express their grievances in constructive ways; the vaguely satisfied to let those responsible know of your contentment. Keep in touch."



Dennis P. Harwick

1990 was not only the beginning of a new decade, it was the beginning of a major transition for the Washington State Bar Association. John Michalik, executive director for over a decade, announced his resignation. Lowell Halverson, a lawyer with a passion for advocating access to justice for all citizens and a veritable cascade of new ideas, was elected president. Alva Long, a nontraditionalist (to put it mildly), was elected to the Board of Governors. A new executive director "with the brain of a banker and heart of a legal services attorney" (according to President Halverson), was hired.

Events around the world confirmed that the rule of law and protection of human rights was not a simple proposition. The bicentennial of the U.S. Bill of Rights provided an opportunity to renew our commitment to the ideals and protections found in its hallowed words.

The U.S. Supreme Court issued its opinion in *Keller v. State Bar of California* upholding the constitutionality of mandatory state bar associations, but limiting the kinds of political and ideological activities they could engage in without providing a rebate process to their members.

The Washington Supreme Court and the Board of Governors renewed their attention to the attorney discipline system. Efforts to provide low-cost access to law-related information by way of technology expanded. The debate about the decline in professionalism continued to rage. To cap it off, a Long-range Planning Task Force under the leadership of Bill Gates was appointed.

It is my privilege to look back over the past year of the WSBA and to share those accomplishments with you. What follows is a summary of the leadership of the President and Board of Governors, the energies of literally hundreds of volunteer members of the WSBA, and the hard work of the staff.

Dennis P. Harwick,
Executive Director

HIGHLIGHTS

A quick review of the minutes of the Board of Governors from October through June revealed that the Board had considered over 70 different issues, nearly 20 of which dealt with the attorney disciplinary process. The Board endorsed a professional liability insurance program. It created a "Lawyer to Lawyer" program to match newly admitted lawyers with experienced mentors. It presented the first annual Excellence in Legal Journalism Awards. It launched an electronic bulletin board pilot project.

The Board revisited the perennial issues of unauthorized practice of law, client security program gifts, advertising rules, and WSBA conventions. It received formal reports from the Washington Commission on Trial Courts (the Gates Commission), the WSBA Long-range Planning Task Force (also chaired by Bill Gates), the Domestic Relations Task Force, and the Washington legal services programs, among others.

The Board formalized or adopted new policies dealing with CLE credit for self-study of audio and video tapes, rebates for certain political and ideological activities, reimbursement of volunteer expenses, and the distribution of the WSBA mailing list.

ATTORNEY DISCIPLINE

In the lawyer disciplinary area, the Board adopted aspirational "Standards for Timely Completion of Disciplinary Matters." It also adopted policies expediting the prosecution of cases involving serious misconduct, releasing information to prosecutors, and strengthening the training and credentials of volunteer hearing panel officers and the Disciplinary Board. The number of complaints against attorneys continued its inexorable rise (see chart). Family law, torts, and criminal law constituted the "big three" for complaints, accounting for over half of all grievances.

ADMISSIONS

The WSBA continues to grow. Over 1,250 people took the bar exam in 1991. On January 1, 1990, the WSBA had 15,381 active members. On January 1, 1991, it had 16,171 active members. And by July 1, 1991, it had 16,368 active members.

In addition to those 16,368 active members, the WSBA had 2,018 inactive members, 350 judicial members, 197 honorary members (senior attorneys), Seven Rule 8 members, and one foreign law consultant for a **total membership of 18,941.** There were also 1,894 Rule 9 Interns and 18 people enrolled in the Law Clerk Program.

CONTINUING LEGAL EDUCATION

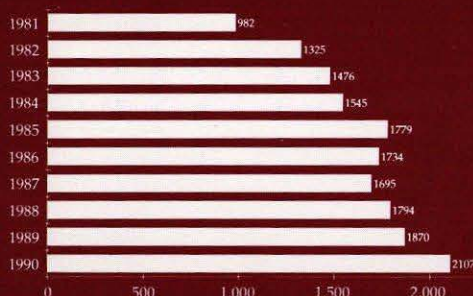
The WSBA CLE Department changed leadership with the departure of Terry Foster, the CLE director for the past ten years, and the promotion of Diane de Ryss to CLE director. During the past year, the CLE Department offered 58 seminars at 63 sites. Through June of 1991, over 7,700 people attended WSBA CLE programs—with three months left in the fiscal year! In addition to the materials provided at CLE programs, it distributed over 4,500 publications, including deskbooks, deskbook supplements, and course books.

WSBA Active Membership by Congressional District

District	Members	Percent
First District	2,997	(18.3%)
Second District	834	(5.1%)
Third District	1,196	(7.3%)
Fourth District	768	(4.7%)
Fifth District	1,294	(7.9%)
Sixth District	1,331	(8.1%)
Seventh District	3,845	(23.5%)
Eighth District	1,986	(12.1%)
Out of State	2,117	(13.0%)
	16,368	(100.0%)

Complaints Handled by the Legal Department

1981-1990



PUBLIC AFFAIRS

In addition to the "Excellence Awards" mentioned above, the Public Affairs Department distributed a new "Law and Justice Handbook" as a reference source for the news media throughout the state, continued its national leadership in law-related MENTOR programs, produced thousands of Citizen Rights pamphlets on 17 different topics. It also published *Bar News* monthly and *Resources*, the WSBA's annual membership roster and reference book. The Public Affairs Department also served as a clearinghouse for pro bono programs throughout the state and provided leadership training for local bar associations.

LAWYERS' ASSISTANCE PROGRAM

LAP continued its national leadership in the development of member assistance programs in bar associations. In addition to its evaluation, treatment, and referral services for impaired attorneys, LAP added a career planning service to help WSBA members find their niche in the legal profession. Over 800 members have been helped by LAP since its creation four years ago.

LEGISLATIVE OFFICE

The WSBA's Olympia office was instrumental in shepherding the Board's legislative agenda through the Legislature. Although we were not successful in passing the filing-fee bill to help fund civil legal services for the indigent, we were successful in passing or defeating the other pieces of legislation supported or opposed by the Bar. The Olympia office also maintained a close working relationship with the Washington Supreme Court.

ADMINISTRATION

The WSBA also saw the departure of its senior employee, Serni Reeves, during the transition. She was replaced by Pat Dieken, a CPA and bank administrator, who assisted the WSBA in developing a more detailed "functional" budgeting and financial reporting. The WSBA finished fiscal year 1990 (ending September 30, 1990) with revenues exceeding expenses and continued towards its goal of building a year-end fund balance equal to 10 percent of the WSBA's annual operating budget.

In retrospect, it was a remarkably productive year despite the transition within WSBA staff. Much credit must be given former executive director John Michalik, Serni Reeves, and Terry Foster for their contributions, along with the current staff and department heads of the WSBA. Lowell Halverson's energy and inspiration will continue in the programs he started and the ideas he planted during his "French intensive gardening." The "dons" of the Bar, the senior class of the Board of Governors—Don Curran, Jeff Tolman, and Ron Gould—will leave a legacy of thoughtful leadership. This was a year of endings and beginnings. The future awaits.

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Accountants and Consultants

Independent Auditors' Report

Board of Governors
Washington State Bar Association
Seattle, Washington

We have audited the accompanying balance sheets of the Washington State Bar Association as of September 30, 1990 and 1989, and the related statements of revenues, expenses and changes in fund balance and cash flows for the years then ended. These financial statements are the responsibility of the Bar Association's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Washington State Bar Association at September 30, 1990 and 1989, and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles.

BDO Seidman

January 7, 1991

SUMMARY OF ACCOUNTING POLICIES

OPERATIONS

The Washington State Bar Association is a not-for-profit entity. Operations consist of billing and collecting dues from members, administering the Bar Exam and providing various services to the membership.

DEFERRED COSTS

Deferred costs are primarily expenses associated with seminar planning and the production of materials. Recognition of these expenses is deferred until the related seminars are presented, usually in the subsequent year.

PROPERTY, EQUIPMENT AND DEPRECIATION

Property and equipment are stated at cost. Depreciation is computed over the estimated useful lives of the assets, generally five to ten years, using the straight line method.

UNEARNED SEMINAR INCOME

Seminar registration fees are recognized as revenue in the year in which the related seminars are held. Unearned seminar income relates to fees collected for seminars to be conducted in the subsequent year.

DEFERRED DUES REVENUE

Dues revenue is recognized by the Bar Association ratably over the applicable calendar year membership period. Accordingly, dues collected during the Bar Association's fiscal year which relate to the fourth quarter of the membership period are included as deferred revenue in the financial statements.

INCOME TAXES

The Bar Association is an organization exempt from federal income taxes.

CASH FLOWS

For purposes of reporting cash flows, the Bar Association considers all certificates of deposit with original maturities of 90 days or less to be cash equivalents.

FINANCIAL STATEMENT CLASSIFICATIONS

Certain amounts in the 1989 financial statements have been reclassified to conform to 1990 classifications.

BALANCE SHEETS

ASSETS	September 30, 1990	1989
CURRENT:		
Cash and cash equivalents	$ 491,550	$ 673,601
Certificates of deposit	900,000	600,000
Trust account deposits	5,464	534
Receivables		
Trade	31,248	29,959
Interest	17,177	25,647
Other	10,840	13,845
Inventory		
Supplies	52,908	46,852
Deskbooks and manuals	56,078	48,865
Deferred costs and prepaid expenses	153,584	142,507
TOTAL CURRENT ASSETS	1,718,849	1,581,810
PROPERTY AND EQUIPMENT, net (Notes 1 and 2)	328,994	349,114
INVENTORY - DESKBOOKS	204,448	99,000
TOTAL ASSETS	$2,252,291	$2,029,924

LIABILITIES AND FUND BALANCE	1990	1989
CURRENT LIABILITIES:		
Accounts payable	$ 420,675	$ 387,442
Accrued expenses	131,588	129,576
Trust account liability	5,464	534
Current maturities of obligations under capital leases and equipment contracts (Note 2)	29,138	47,352
Current portion of deferred compensation (Note 3)	30,095	27,500
Unearned seminar income	272,268	328,160
Deferred dues revenue	757,368	713,174
TOTAL CURRENT LIABILITIES	1,646,596	1,633,738
OBLIGATIONS UNDER CAPITAL LEASES AND EQUIPMENT CONTRACTS, less current maturities (Note 2)	3,730	32,422
DEFERRED COMPENSATION, less current portion (Note 3)	181,320	211,416
TOTAL LIABILITIES	1,831,646	1,877,576
FUND BALANCE	420,645	152,348
	$2,252,291	$2,029,924

STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN FUND BALANCE

	September 30, 1990	1989
REVENUES:		
Membership dues	$2,999,637	$2,877,632
Continuing legal education	1,491,765	1,627,517
Bar examination fees	621,989	583,118
Bar News	246,590	255,525
Sections	245,896	270,889
Convention	172,822	118,194
Interest earned	137,796	127,675
Other income	121,401	101,053
Lawyer Referral Service	49,415	51,876
Bar journal directory *(Resources)*	42,487	43,914
Clients' security program recovery	31,410	7,186
Young Lawyers Division	18,587	16,546
Total revenues	6,179,795	6,081,125
EXPENSES:		
Salaries	1,812,584	1,667,464
Continuing legal education	924,801	1,054,280
Payroll taxes and benefits	476,797	392,041
Bar examination and admissions	386,621	337,892
Rent and utilities	355,374	339,809
Bar News	257,575	264,506
Sections	237,765	300,282
Postage, printing and office expense	207,065	195,215
Convention	192,590	163,817
Public affairs and public relations	191,038	216,698
Conferences and meetings	146,367	139,802
Equipment rent and maintenance	127,050	120,828
Young Lawyers Division	83,045	71,145
Committees	80,766	84,429
Depreciation and amortization	67,100	63,784
Bar journal directory *(Resources)*	60,384	77,706
Discipline	58,021	38,239
Professional fees	49,366	38,645
Clients' security program	35,920	51,748
Legislative activities	32,619	32,119
Insurance	30,371	33,138
Provision for inventory obsolescence	29,225	-
Interest	27,161	34,637
Lawyers' Assistance Program	21,902	21,805
Lawyer Referral Service	19,991	24,713
Total expenses	5,911,498	5,764,742
REVENUES OVER EXPENSES	268,297	316,383
FUND BALANCE (DEFICIT), beginning of year	152,348	(164,035)
FUND BALANCE, end of year	$ 420,645	$ 152,348

NOTES TO FINANCIAL STATEMENTS

NOTE 1 - PROPERTY AND EQUIPMENT

Property and equipment consist of the following:

	September 30, 1990	1989
Furniture and equipment	$687,626	$642,987
Leasehold improvements	12,091	9,750
Automobiles	18,943	18,943
	718,660	671,680
Less accumulated depreciation and amortization	(389,666)	(322,566)
Property and equipment, net	$328,994	$349,114

NOTE 2 - LEASE COMMITMENTS AND EQUIPMENT CONTRACTS

The Bar Association is committed under various operating lease agreements for office space, equipment and an automobile, and under capital leases and equipment contracts for equipment and an automobile. The assets under capital leases and equipment contracts, included with property and equipment on the accompanying balance sheet, have a net book value of $109,452 and $132,356 as of September 30, 1990 and 1989. Terms of the equipment and automobile agreements vary from three to five years, and include interest rates which range from ten to twelve percent. Effective December 1, 1986, the Bar Association entered into a ten-year noncancellable lease with two five-year renewal options for the use of new office space in Seattle. The Bar Association also entered into a three-year lease for office space in Olympia, effective March 1, 1990.

As of September 30, 1990, the future net minimum payments under capital leases and equipment contracts, and future minimum rental payments required under operating leases with remaining lease terms of one year or more are as follows:

Year Ending September 30,	Operating Leases	Capital Leases and Equipment Contract
1991	$372,362	$31,059
1992	381,028	3,782
1993	373,393	-
1994	360,929	-
1995	359,272	-
Thereafter	361,131	-
Total minimum payments	$2,208,115	34,841
Less amount representing interest		(1,973)
Present value of net minimum payments		32,868
Less current maturities		(29,138)
Long-term portion		$ 3,730

Rent expense was $296,059 and $276,663 for the years ended September 30, 1990 and 1989.

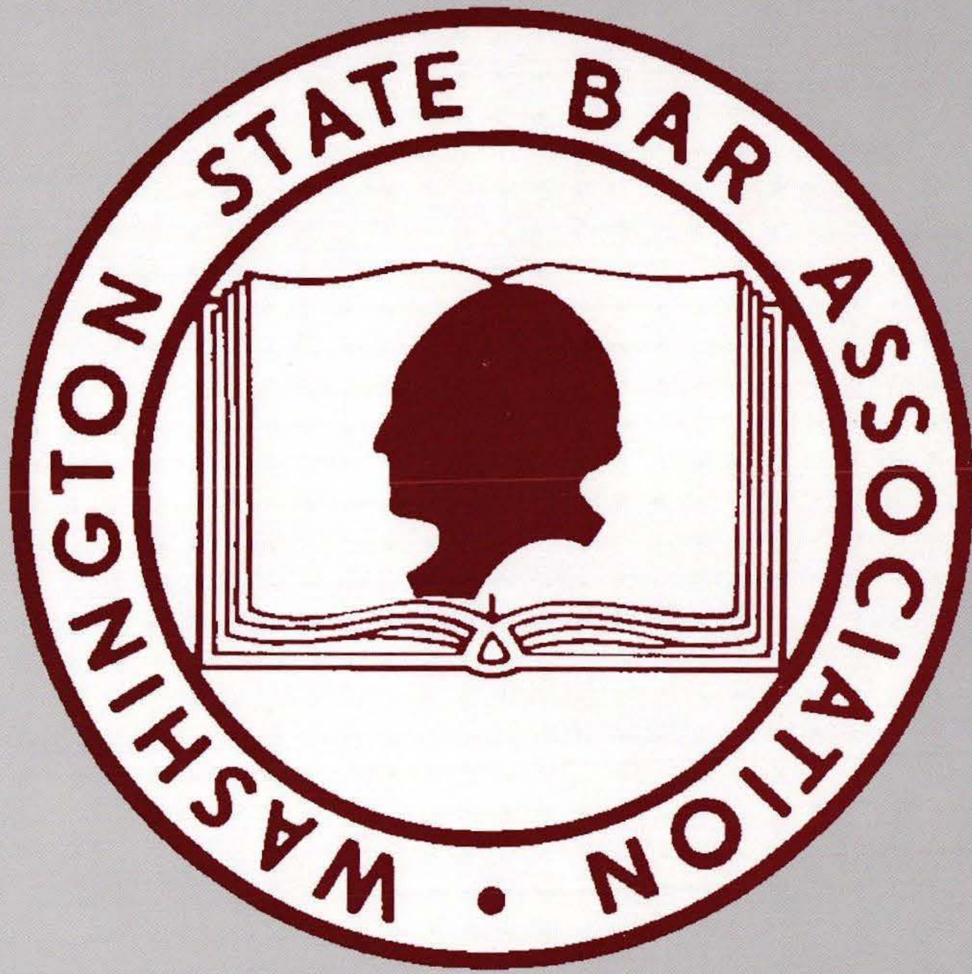
NOTE 3 - DEFERRED COMPENSATION

Effective January 16, 1978, the Bar Association entered into an Employment and Deferred Compensation Agreement with its then executive director, G. Edward Friar. The agreement requires monthly payments as a general obligation of the Bar Association upon termination of the employment of the said executive director. Mr. Friar retired as executive director on December 31, 1981. The estimated balance due under the agreement and its amendments has been computed on a present value basis using actuarially determined life expectancy tables and interest rates and is reflected as a liability of the Bar Association in the financial statements. The total amount to be paid to the former executive director will depend upon his actual life span. In the event that Mr. Friar lives beyond the original estimated life span, the Bar Association will incur an additional $48,000 a year.

STATEMENTS OF CASH FLOWS

Increase (Decrease) In Cash And Cash Equivalents

	September 30, 1990	1989
CASH FLOWS FROM OPERATING ACTIVITIES:		
Cash received from membership dues and other activities	$6,029,012	$6,160,937
Cash paid to suppliers and employees	(5,908,781)	(6,019,177)
Interest paid	(27,161)	(34,637)
Interest received	146,266	127,256
Payments on deferred compensation	(27,500)	(25,129)
Net cash provided by operating activities	21,836	209,250
NET CASH FROM INVESTING ACTIVITIES:		
Acquisition of property and equipment	(46,981)	(36,222)
Certificates of deposits	(300,000)	184,559
Net cash provided by (used in) investing activities	(346,981)	48,337
CASH FLOWS FROM FINANCING ACTIVITIES:		
Payments on capital leases and equipment contracts	(46,906)	(42,292)
Net cash used in financing activities	(46,906)	(42,292)
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	(182,051)	315,295
CASH AND CASH EQUIVALENTS, beginning of year	673,601	358,306
CASH AND CASH EQUIVALENTS, end of year	$ 491,550	$ 673,601
RECONCILIATION OF REVENUES OVER EXPENSES TO NET CASH PROVIDED BY OPERATING ACTIVITIES:		
Revenues over expenses	$ 268,297	$ 316,383
Adjustments to reconcile revenues over expenses to net cash provided by operating activities:		
Depreciation and amortization	67,100	63,784
Provision for inventory obsolescence	29,225	-
Change in assets and liabilities:		
Decrease (increase) in:		
Receivables	10,186	7,254
Inventory	(147,942)	(50,237)
Increase in deferred costs and prepaid expenses	(11,077)	(42,775)
Increase (decrease) in accounts payable and accrued expenses	35,245	(255,814)
Increase (decrease) in unearned seminar income	(55,892)	(162,207)
Increase in deferred dues revenue	44,194	33,577
Net cash provided by operating activities	$ 239,336	$ 234,379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