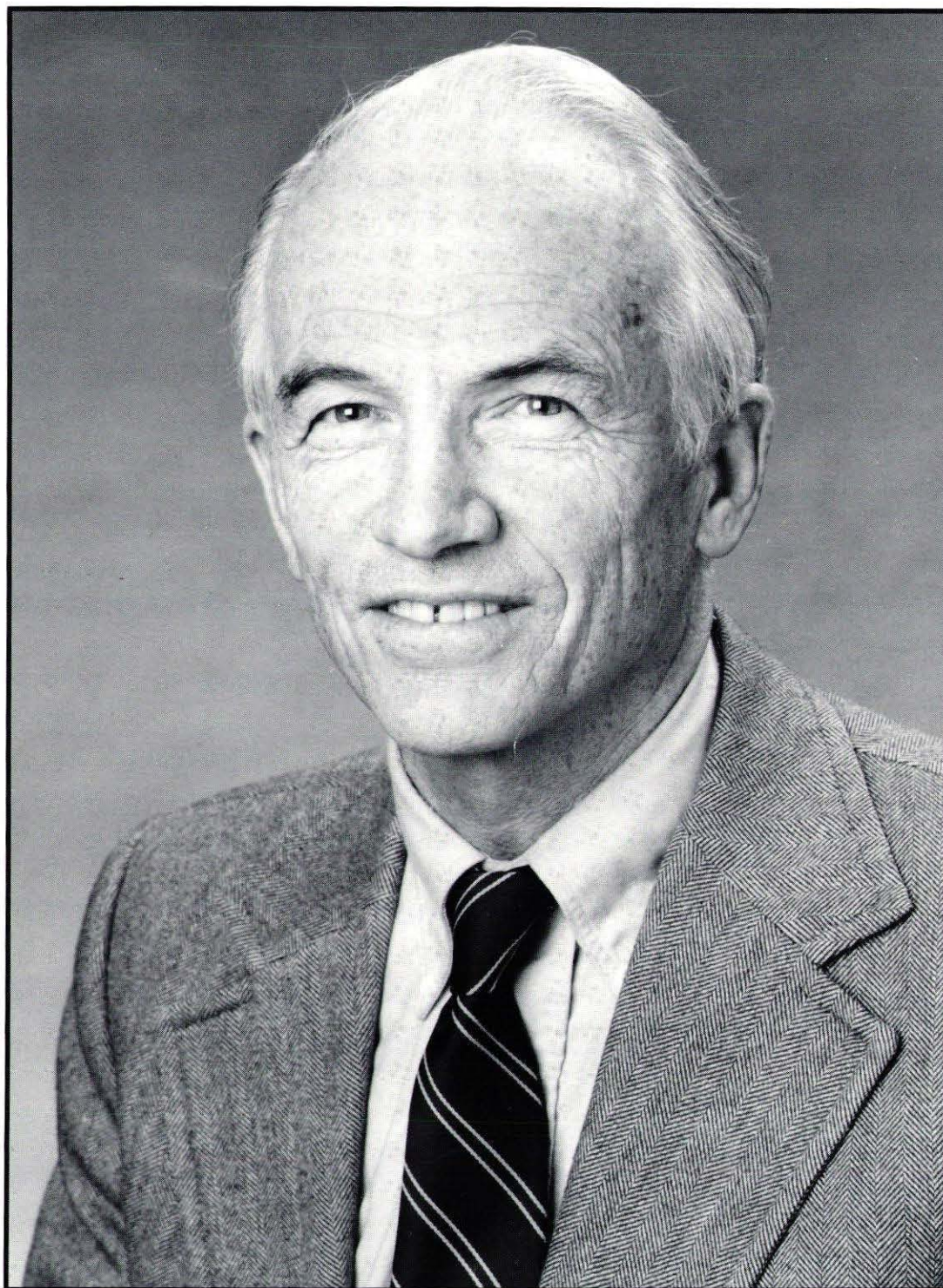


Washington State **Bar**
News

Vol. 46, No. 10, October 1992



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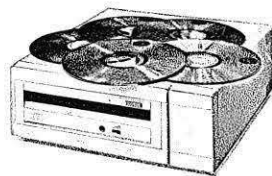
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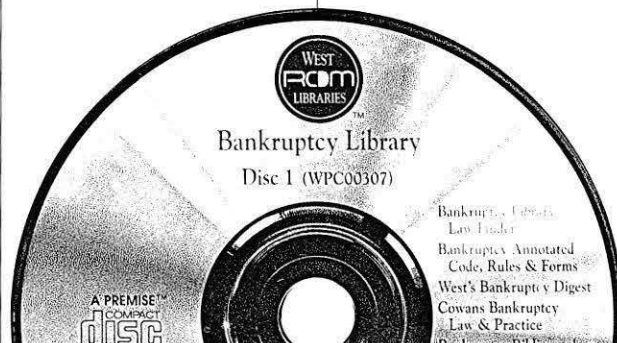
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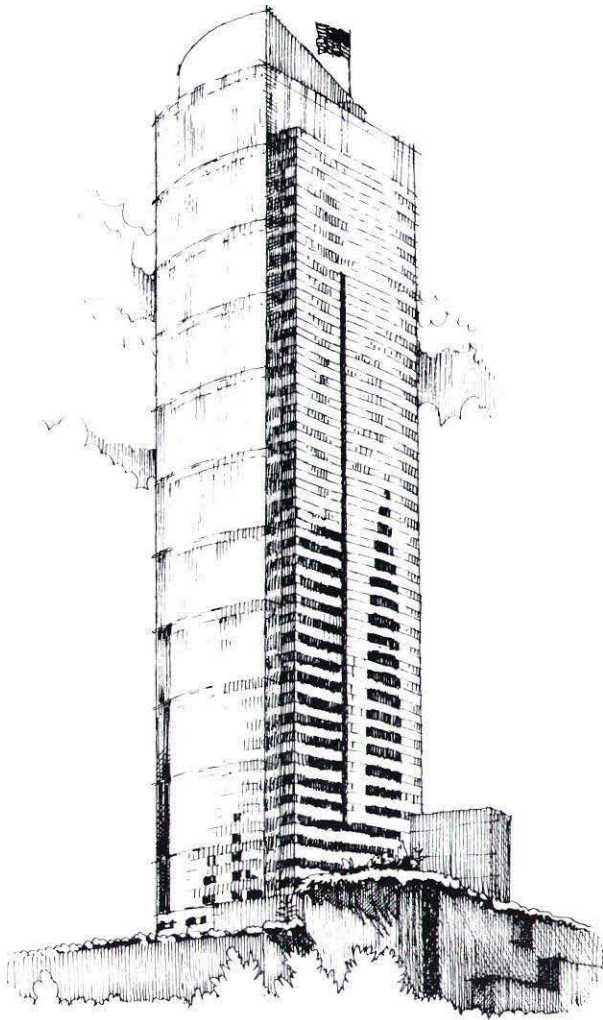
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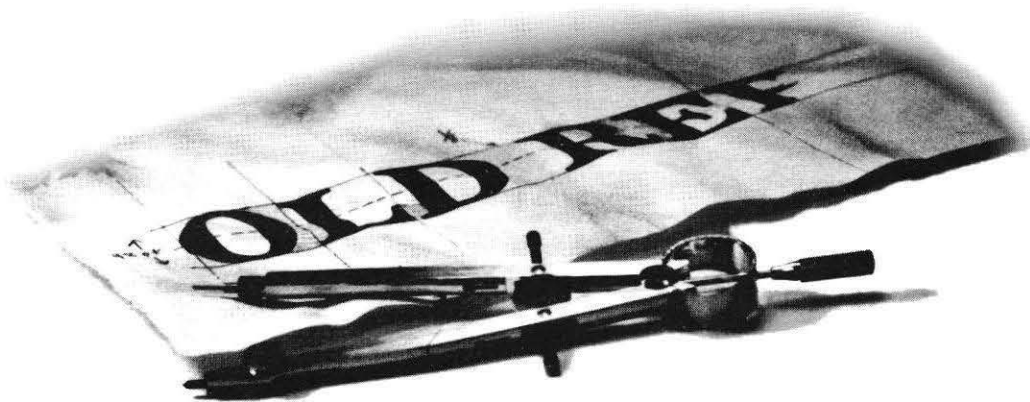
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Letters to the Editor of reasonable length are invited. Such letters should be typed and signed. The Editor reserves the right to select communications or excerpts therefrom for publication, and to edit any letter as may be appropriate.

The Devil and Paul Luvera

Editor:

In reference to the article by Paul Luvera (*Bar News*, July 1992), I have a comment. Paul Luvera is a respected trial attorney and has been very successful. However, I take exception to his article calling for more bureaucracy running the lives of the trial bar. It is similar to a trial judge making a complaint to the bar association about a trial attorney's misconduct in a jury trial before him, but not granting a new trial, sanctioning the attorney, or holding him in contempt.

Harry Truman made two applicable comments: (1) "The buck stops here." In the case of a trial, the trial judge is in the best position to control "perceived misconduct" by counsel. Our efforts should be directed toward encouraging experienced trial attorneys to seek the bench in place of government attorneys continuing on their retirement paths.

(2) "If you can't stand the heat, get out of the kitchen." Not everyone can be a trial attorney. Some cannot walk and talk at the same time, let alone think, and others cannot take the pressure. Abuses in discovery and deceit by client or attorney can be addressed under CR 26 and 60. No matter how many ethics classes or bureaucrats oversee trial attorneys, dishonesty is a fact of life with some people. Experienced trial attorneys know which ones they are, and their record costs their clients dearly.

The final enforcement mechanism is the tort liability system itself. I testified against an aircraft manufacturer and its corporate counsel last summer for falsifying discovery responses sent to its California counsel in a case. The San Francisco jury awarded that co-defendant \$23,000,000 for that conduct.

Although I agree with Mr. Luvera that CR 11 is abused and misused, the problem is with the people in the system, not the "system."

JAMES F. LEGGETT
Tacoma

Editor:

Call me paranoid, but it struck me as ironic for the *Bar News* to publish, on page 23 of the July issue, at the end of Paul Luvera's article on ethics in litigation, an advertisement that read: "18K Gold Plated/Wristwatches/\$14. ea./Til Midnight July 31." The ad also offered "Your Colored Logo-Message-Etc./On Dials..." Do you think they would be willing to use their regular Rolex logo? I guess I should ask the vendor directly; let's see, that was Tiffany Watch Co. of La Crescenta, California. They must have moved from New York.

NICHOLAS WAGNER
Bellevue

News About Dues

Editor:

This is in reference to the ongoing debate about increasing bar dues.

I can easily afford any increase. However, I strongly oppose it, based on the *principle* that we, as lawyers, are supposed to be *leaders* of society, not followers.

The debate over the statistics of other bars has two problems. First, it is endless, as both sides are excellent debaters and will never convince the other side. Second, statistics are irrelevant to the principle that we are leaders.

Given the principle that we are supposed to be *leaders*, we have the ability to actually implement the "read my lips, no new taxes" policy. We have no one to blame (e.g., a Democratic Congress), only ourselves.

The fact that we have not raised dues since 1987 is something to be very proud of, not something to use for an excuse to raise dues.

This proves we have been leaders.

Do you want us to continue being leaders? If yes, then oppose a bar dues increase based on principle, not on statistics.

JERRY WEIDENKOPF
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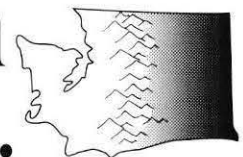
Minority Lawyers in Big Firms

Editor:

As a Mexican-American attorney now practicing in Los Angeles and a former assistant city attorney in Seattle, I am prompted to respond to Ricardo A. Guarnero's commentary in the June 1992 *Bar News* regarding the issue of minority retention among large law firms.

Certainly, Mr. Guarnero is to be commended on advancing his argument that large law firms should be responsible for establishing "programmatic efforts" designed to "incorporate" a racially and culturally diverse workplace

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of attorneys in their organizations. Unfortunately, his comments betray a naivete likely to lead to misdirected strategies, given the profound demographic and competitive changes occurring in our legal profession. Essentially, he asks: How should the major law firms enhance their minority recruitment efforts to ensure the retention of an appropriate level of racial and cultural diversity among their attorney ranks?

Indeed, the notion that "glass ceilings" exist in major law firms, which effectively exclude Latino and other minority attorneys from achieving important and influential equity partnerships, is nothing new. But Mr. Guarnero suggest that compelled mentorship or programs to foment contacts with choice clients or to provide access to the "right people" are necessary to overcome such barriers. He further intimates that such programs should come about from spontaneous and self-imposed charitable goodwill of these firms. Given the historical resistance of large law firms to put such

plans in place (or to implement them in earnest even if they do exist on paper), and the contemporary disapproval of any public or private program that even hints of "affirmative action," it is very unlikely that any of these suggestions will obtain Mr. Guarnero's desired results.

I respectfully submit that a more relevant question must be asked, given the trends in today's legal profession. Two key factors play into the approach I suggest. First, Latino and minority attorneys should not forget that in spite of significant educational gains and professional achievement, "negative images" of us continue to persist in the minds of traditional large firm decision makers. The truly unsettling reality is that a presumption of incompetence, however unfounded it may be, is generally attached to minority attorneys by the power elite at these firms (See, e.g., "Beyond the Revolving Door," *Los Angeles Daily Journal*, August 23, 1991). Lesson One: When engaging in any battle, it is fundamental to know what you are up against.

Second, while the bar is becoming increasingly diverse, its most influential members remain white males, and it is not likely that this trend will change significantly in the foreseeable future. In California, for example, where more than 128,000 lawyers fling files, complaints and briefs at one another, 93 percent of those in practice for more than 20 years are white males. And, coming down the pike, among all California lawyers in practice five years or fewer, is a pool of law partner aspirants nearly 40 percent white female and 49 percent white male. While admittedly not having access to similar demographic data on Washington's attorney population, I seriously doubt that the outlook is markedly brighter than in California. Lesson Two: It is equally fundamental to know who you are up against.

Thus, I submit that the more relevant issue is: Given the generally adverse stereotyping attached to the Latino and minority attorneys by nonminority partners and managers, and the fact that the great majority of decision-making

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lawyers are presently and will continue to be nonminority, what can the Latino or non-minority *initiate on his or her own* to stand out within the competitive framework of the firm?

Of course, each attorney must develop a strategy in response to this question that is particularly tailored to his or her skills and interests. And, if mentorships and client-contact programs are in place to assist, more power to you. But the common denominator is that the Latino or other minority attorney must actively and aggressively initiate, and patiently develop, an *individual* marketing program to ultimately contribute a unique competency to the firm, which, in turn, might add to the competitive positioning of the firm within the relevant legal marketplace.

It is beyond the scope of this letter to spell out the components of such individual efforts, but it is important to stress that reliance on large commercial law firms or corporate law departments to install and earnestly implement programs to enhance the individual competitiveness of their Latino and other minority attorneys is misplaced. The private legal profession is undergoing wrenching structural re-trenchments, partners are being let go; clients increasingly scrutinize their legal bills; and other constraints on law firm resources continue to emerge, all tied to changing economics of law practice. These conditions make it highly unlikely that significant resources will be targeted any time soon to the type of programs suggested by Mr. Guarnero.

In the near term, the only real answer for the Latino or other minority attorney is to activate your own individual plan to establish your unique competitive niche in the firm that might be leveraged into the partnership ranks of your firm, or even your own practice. And, in a decade or so, once major business clients begin to demand that their legal counsel be representative of their own work forces or customer bases, mentorships and client contacts will be arrived at more naturally as a matter of basic business survival.

AUGUSTIN R. JIMENEZ
Los Angeles

LAW-BBS: A Hands-On Report

Editor:

Those unfamiliar with the L.A.W. Bulletin Board System may question whether the time, effort or expense warrants using the service. What follows is one user's experience, concluding that the rewards are worth it.

I am a sole practice attorney in a suburban Seattle location. Before I started using the L.A.W. BBS, I was familiar with WordPerfect and had used a spreadsheet on a computer for bookkeeping. I had no experience with using a computer to communicate. In law school, I had some training in computerized legal research, but after law school I could not afford Lexis or Westlaw most of the time.

After some comparison shopping, I purchased a fax/modem that could be used to send and receive faxes onto my computer as well as use the L.A. W. BBS (the "Zoom 94/24 Faxmodem"). The modem cost about \$130. (I could have settled on a modem without the fax capabilities that would have cost as

little as \$50.) Installing and setting up the modem proved to be very easy. It came with very detailed instructions on the physical set-up. It even had pictures of where to plug the modem in and where to plug the phone jack. The modem also came with software set-up that involved putting a floppy disk into the machine, typing a word and following simple instructions. In my experience, anyone who is familiar with word processing should be capable of installing the hardware and software necessary to use the L.A.W. BBS.

When I dial the L.A.W. BBS phone number, I see an introductory screen on my computer, and then I am asked to fill in basic information like my name, phone number and a password of my choice. (In computerese, this is called "logging on.") Then I see a menu of choices for activities on the BBS. From there, it is just a matter of selecting menu alternatives.

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explanation of choices and procedures. At first, I sought explanation each time before I made a choice. As I become more familiar with the BBS, I know more about what each choice will do, and now I seldom seek help. For someone with even basic computer skills, learning to use the L.A.W. BBS is not difficult.

At low or no cost I can now do computer-aided research just like Westlaw or Lexis by using the BBS. I save considerable shelf space and cost by having a basic library (WA statutes, cases, regulations, ethics opinions and selected administrative law decisions, local and county ordinances) on the BBS rather than in books in my office. When I have long quotations from cases, I can prevent copy errors by taking text from the screen into a brief rather than having it re-typed. Before, my occasional use of the regulations did not warrant purchasing them, but when they were needed, I made special trips to the law library. Cutting out these special trips makes the BBS a valuable tool. The time and expense I save by cutting out even a few library trips is far

more than the time and expense of buying and setting up to use the BBS.

The BBS has many other uses. It can be used to send or receive messages. There are "conferences" where people with shared interests can exchange ideas on a wide range of topics, such as law involving the handicapped or district court procedures or using WordPerfect in a law office. I can transfer files stored on the BBS by modem onto my computer (including legal forms in a variety of areas, such as a commercial lease or the mandatory family law forms and also some useful, free programs). I can search for the Washington Secretary of State's Corporation Division's registered agent information. Additional information sources are being frequently added to the BBS, such as the recent addition of the WSBA's Community Property Deskbook.

The BBS is a valuable tool. The time and expense of setting up the hardware and software and becoming familiar with the BBS is definitely worthwhile.

RON STEINGOLD
Bellevue

More on Fees

Editor:

We received a special mailing in early September entitled, "An Open Letter to the Lawyers of Washington," from the president, president-elect, board of governors and executive director, making a pitch for a 33 percent increase in our WSBA fees. The issue of increased bar fees has been debated in the pages of the *Bar News* ad nauseam over the past few months — March, June, July and August, to be exact. Indeed, most of the arguments offered in the special mailing were already raised in columns by WSBA president Delay and executive director Harwick in the March 1982 issue of *Bar News*.

This special mailing by the WSBA, on good quality paper no less, makes even a clearer argument why bar fees should not be increased. Considering that each copy costs at least 15 cents for postage, printing, labels and paper, and assuming it was sent out to all 17,154 active WSBA members, this "special mailing" cost the members of the WSBA over \$2,500!

When the WSBA is facing a budget crisis, it is irresponsible for our leadership to issue special mailings when there are other avenues of communication available—such as the *Bar News* itself. If our WSBA leadership does not believe that the *Bar News* is an appropriate vehicle for communicating with the WSBA membership, then they might want to consider trimming the \$265,000 *Bar News* budget instead of raising our bar fees.

STEVEN A. HEMMAT
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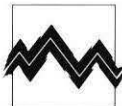
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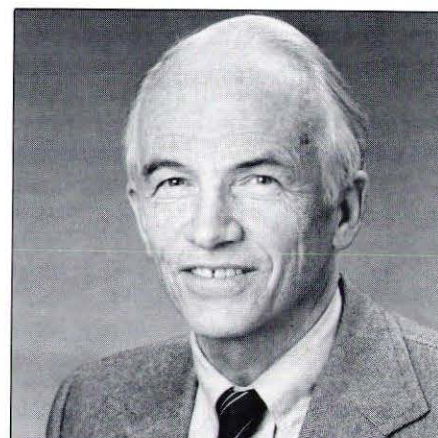
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CLE Seminars at the Crossroads



Stephen E. DeForest

A significant decline in registrations for WSBA-sponsored CLE's during the past year, and a projected loss, have caused the members of the Board of Governors to raise a number of questions about the current direction of WSBA's CLE. Some have questioned whether the WSBA should continue in the CLE business.

Gross revenues from CLE have always exceeded the direct expenses for the seminars (course books, promotion, facilities, etc.) and the salaries and benefits of WSBA staff supporting this program. However, when the indirect costs, such as office rent, utilities, and insurance, are allocated to CLE, the annual results have been above and below the break even point. Figures for the past five years for the CLE Department (seminars and publications) are set forth in the insert.

For the just-concluded fiscal year, estimated gross revenues were \$1,240,000, with a projected loss of \$224,000. The drop in revenues is a direct result of fewer registrations: an estimated 5,426 for 1991-1992, compared with 7,767 for the preceding year. Assuming an average registration fee of \$135, that's a short fall of \$316,000.

The economic recession is a major reason for the decline in attendance. Law firms are taking a closer look at whether or not to encourage, through reimbursement, their lawyers to attend CLEs in excess of the minimum annual requirements. Attendance has also been

affected by other factors, such as the competition with other CLE providers. For example, the Seattle-King County Bar Association increased its CLE offerings from 13 in 1990-91 to 52 in 1991-92. The recent modification of the CLE rules to allow credit for tapes may also be having an adverse effect. The WSBA is not alone. The PLI, a for-profit, nationwide CLE provider, had a registration drop of 40% in 1991. On gross revenues of \$11.3 million, it lost \$2.6 million. The Idaho State Bar has seen CLE attendance drop 33% in the last year.

During this past year, a number of measures were taken to reduce CLE expenses. These included in-house publication of course books, redesign of brochures and catalogs to reduce printing and paper costs, reduction of staff, and the moving of seminars to sites which do not require lunch to be furnished.

The WSBA seminar program is designed to implement a number of service-oriented policies. If its sole objective were to make money, it would be structured differently. The selection of CLE topics would be limited to those which are popular. Topics which lack broad appeal, but which target specific areas or specialties, would no longer be offered. CLE has been the focal point for those WSBA sections which hold mid-year meetings. Such meetings are more costly than a one day CLE seminar. Usually they are held in resort locations, the materials are more voluminous, and the faculties larger.

Over the years the Board has directed the CLE Department to address other needs or policies, such as geographical diversity with respect to both site location and selection of faculty. Judges have been provided reduced-rate tuitions and substantially discounted deskbooks. County law libraries and law school libraries receive complimentary books.

The allocation of overhead to WSBA departments, through functional accounting, is not a precise science. The current method is based on how staff time is spent. Daily records are kept, but judgment is required in identifying the program or programs to which a particular activity applies. A single percentage point in the overhead factor could mean the difference between "profit" and "loss" for those departments, such as CLE, which generate revenues.

A significant direct cost of WSBA CLE has been the policy of reimbursing CLE speakers for their expenses, primarily travel. Because faculty is drawn from around the State, and CLE programs are offered in different locations, this has been a substantial expense—approximately \$110,000 in fiscal 1991-1992. Opinions differ as to

<i>FYE</i>	<i>Gross Revenues</i>	<i>Direct Expenses</i>	<i>Indirect Expenses</i>	<i>Profit/Loss</i>
9/30/87	\$1,050,794	\$ 658,775	\$460,723	(\$68,704)
9/30/88	1,243,242	795,880	481,722	(34,280)
9/30/89	1,627,517	1,054,280	514,626	58,611
9/30/90	1,491,765	924,801	498,152	68,811
9/30/91	1,478,806	966,108	520,568	(7,870)

whether this policy is necessary to assure good presenters, and whether the quality of the presentations would decline if expense reimbursements were eliminated. Some CLE sponsors do not reimburse expenses. Local bars have, of course, an inherent advantage, since travel expenses are nonexistent.

The history of frequent losses, combined with the availability of a

greater variety of CLEs through local bars, raise the issue of whether the WSBA should remain in the CLE business. This is an appropriate time to examine that suggestion. In July the Board of Governors appointed a special committee to review the WSBA CLE program. As a starting point, it has recommended that a marketing consultant be hired. One of the items

which the special committee will have to consider is that if the WSBA were to drop its CLE seminars, and terminate CLE program staff, the remaining overhead would have to be reallocated to other activities of the WSBA. That amount is estimated to be \$170,000-\$190,000. This would not be a one-time writeoff, such as businesses take when they trim a division, but a continuing expense. Simply as a matter of economics, this overhead factor would suggest that the WSBA should sponsor more seminars rather than fewer, assuming of course that attendance at the additional seminars would be sufficient to cover the direct expenses. Besides the overhead absorption problem, other consequences that might follow from an abandonment of CLE seminars by the WSBA would include increased attendance at local bar CLE seminars; Section sponsored CLE's would either have to be scrapped, or the services of another CLE provider used; and the variety of CLE offerings would decline.

As the Board works through this issue, it would be very helpful to have your input on the following issues:

- Should CLE speakers be reimbursed for their direct expenses?
- Should the WSBA CLE program be refocused to concentrate on proven winners?
- Should the WSBA subsidize its CLE program in order to accomplish other objectives, such as geographical diversity?
- Is the significant decline in WSBA attendance a temporary phenomenon, or is it indicative of a long-term trend?
- Are WSBA seminars competitively priced?
- Should the WSBA get out of the CLE seminar business?

Tom Chambers, Bill Eden, Grant Johnson, Mike Larson, Alva Long, Gary Randall, and I, along with Dennis Harwick and Diane de Ryss, serve on the special committee. Let us hear from you.

I wish to acknowledge the tireless efforts of my predecessor, Joe Delay, on behalf of the WSBA. Joe pledged a year ago in this same space to respond to your letters and telephone calls. He has kept his word. I pledge mine.

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Communication—Damned If You Do; Damned If You Don't

There's an interesting letter on page 10 of this issue—one criticizing the leadership of the WSBA for sending out an "open letter" to the membership detailing the background and considerations that lead to a fee increase. The authors, Steven A. Hemmat and J. Mark Weiss, correctly calculate the cost of the mailing (they estimate over \$2,500; actual cost, including printing and postage, was \$3,056.28).

It's not that costs weren't considered. The message was carefully kept to a one page self-mailer (without envelope) and was sent bulk mail. The cost per active member was \$ 0.178 (17.8 cents each) for printing and postage.

The real issue (putting aside the fact that RCW 2.48.130—the State Bar Act—requires that written notice of any proposed increase in membership fee shall be sent to active members not less than sixty days prior to the effective date of such increase) is whether communicating with the members of the WSBA on an issue of such fundamental importance as a fee increase was worth 18 cents per member. I submit that it was—and that much of the disenchantment with the WSBA within the membership comes from the sense that leadership has not communicated clearly with the members over the years.

It is not that there haven't been conscientious efforts. The president of the WSBA writes a column in *Bar News* each month. The executive director of the WSBA (note the editorial third person) writes this column each month. The editor of *Bar News* (make that the autonomous editor—just like the former autonomous republics of the Soviet Union as he once pointed out to me) writes the "Gray Pages" each month recapping the Board of Governors' meetings. Many members of the Board of Governors publish newsletters at their own expense. I publish a newsletter after each meeting that is sent to all local bar, section, and committee leaders. Liaisons from a dozen or more organizations attend each Board meeting and report to their constituencies. The Board funded the electronic bulletin

board as another communication vehicle. Despite these efforts, the WSBA is often perceived to be uncommunicative.

This is, however, one of those issues where perception is as valid as reality. The Board recognizes the need to enhance communications. It ranked improving communications as one of its top three priorities for the coming year (along with improving the lawyer discipline system and fixing the chronic funding problem). Periodic meetings with section leaders are being held. There will be a joint meeting of section leaders, WSBA Committee chairpersons, and the Board of Governors later this month. The president of the WSBA spends countless hours visiting local bar associations. I have tried to meet with as many local bar associations and constituency groups as would have me. Board members meet



Dennis P. Harwick

regularly with their local bar associations. Some even buy ads in this magazine.

All these efforts cost money—and are usually worth it. But we can always strive to do better. I'd welcome any suggestions on how we can open up lines of communications and/or improve existing ones.

Damned if you do; damned if you don't. I'll take the former.

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Overview of *With Liberty and*

by Duane Smith
Professor of Political Science
University of California at Los Angeles

Several weeks ago, during the recent primary election campaign, a worker for one of the candidates for the House of Representatives called me to ask me to vote for her man. She started out, "Now the thing you have to understand about Jeff is that he's not a politician." Before she could go any farther, I said, "I'm sorry to hear that. In my opinion, the Congress of the United States is no place for amateurs. If he's not a politician, why is he running for political office?"

Several weeks earlier, a worker for another candidate had called and asked if I would like to have an absentee ballot. I was delighted, for that was exactly what I wanted. She took my name, and a few days later, the application for an absentee ballot arrived. About two weeks before the election, she called back to see if I had mailed my absentee ballot. I said that I had not yet done that, but certainly intended to. She asked, "Are you going to vote for Xavier?" "I really haven't made up my mind yet," I replied. The night before the election, she called again. "Hi Mr. Smith, it's me again." By this time I was beginning to develop rather warm feelings toward this young woman who thought I was worth all this effort. It's been years since I have been pursued so ardently. Have you mailed your absentee ballot yet?" "Yes," I laughed. "And I voted for your guy. I'll say one thing. You have—a real smooth operation, and I'm filled with admiration."

Jeff, the nonpolitician, represents an important tendency in our political life. And so does Xavier Becerra, for the intertwining of politics with the recurrent desire to escape from the messiness of politics is a persistent feature of American history.

The tradition of great politicians goes back to Thomas Jefferson—the first great party politician in the United States, James Madison—without whose political shrewdness the new Constitution and the Bill of Rights probably would never have seen the light of day, and Sam Adams—a clever politician who organized the town of Boston in a way similar to the later Tamany Hall organization in New York, who taught his cousin John Adams a thing or two about politics, and who was one of the political movers of the American Revolution.

Incidentally, future Congressman Becerra also understands a fundamental political truth: a vote is a vote. He is a representative of the newly dominant majority in my Congressional District and in Los Angeles, in general. I, of course, am a member of the exhausted remnant of the once-dominant Anglo establishment. Xavier Becerra doesn't care because he understands what the politicians of Tamany Hall understood when they met the new arrivals at the docks and later led them to the polls: one vote is as good as another. That's what politics is about, and I would remind you, that's what democracy is about.

The American revolution was

essentially a political struggle that emerged out of the irreducible political conflicts between the Americans and the mother country over questions of political authority, representation, and the political organization of the Empire. It is not insignificant that Professor Bailyn calls his book about pre-revolutionary America *The Origins of American Politics*. Here he tells us, "the history of politics is the history of the ways men have used the instruments of power, the history of struggles for authority, hence of the rivalries, factions, and interests that swarmed through and about the agencies of government." And, one might add, that it is also the history of the effort of these factions and interests to form some sort of consensus about the ends and means of public policy.

This country emerged, then, out of a political struggle, a struggle led by politicians such as John Adams, Alexander Hamilton, Thomas Jefferson, George Washington and others. The decade that separated the conclusion of the revolution from the adoption and ratification of the Constitution was marked by further political struggles—struggles again over authority, representation, and the political organization, not of the empire, but of the nation.

To a large extent the adoption and ratification of both the Constitution and the Bill of Rights were the result of the political shrewdness of that master of politics, James Madison. Madison may well have been, as many have

Justice for All

suggested, one of the most dazzling intellects of his time. The Constitution and the Bill of Rights were not adopted and ratified, however, simply, or perhaps even primarily, because of their intellectual and theoretical brilliance. Without Madison's understanding of the political importance, for example, of George Washington's presence at and support for the convention, it is possible to surmise that the convention would never have gotten off the ground.

Following the adoption of the Constitution in Philadelphia, there was a great political contest between the Federalists and the Antifederalists over ratification, a contest that presaged the formation of political parties in the United States. These were struggles that reflected conflicts of interests which manifested themselves in disputes over political authority: questions about the nature of representation, separation of powers and checks and balances, and federalism. And James Madison, of course, was at the center of this contest and was largely responsible for the compromise that led to the promise of a bill of rights in an effort to win the votes necessary to ratify the new Constitution.

The first great controversy of George Washington's administration reveals a somewhat different aspect of American politics. It was, of course, over Secretary of the Treasury Alexander Hamilton's recommendation that Congress establish the First Bank of the United States. While this proposal raised many economic and political

issues, the debate over the establishment of the bank was conducted almost entirely in terms of its constitutionality. The debate between Jefferson and Madison on the one side and Alexander Hamilton on the other hinged on the meaning of the necessary and proper clause: does it give Congress the authority to establish a bank?

The fact that Madison and Hamilton, erstwhile collaborators on *The Federalist*, were on different sides of this dispute over what the Constitution means should, incidentally, give pause to those who seem to think that it is an easy matter to determine the original intent of the Framers. But more importantly, for our purposes, this transformation of a political issue into a constitutional, i.e., legal, issue was simply the first episode in what has become a continuing theme of American life: our desire to escape from the messiness and uncertainty of political resolutions to political problems to the neat certainties of constitutional solutions. Perhaps the most recent example of this was the aborted attempt to solve the budgetary problems of the United States with a constitutional amendment.

The Supreme Court, at its best, has played a crucial role in maintaining the conditions for politics and extending the playing field. Nobody would deny the importance of *Brown v. Board of Education* in the development of civil rights. But the Congress and the Executive have also played important, arguably more important, roles in the

protection of rights. The adoption and ratification of the Civil Rights Amendments in the 1860s represented landmark efforts to realize the promises of the Declaration of Independence. But so were President Truman's executive order desegregating the armed forces in 1948, and Congress's passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965, to take but two examples.

Students who read *We the People... and With Liberty and Justice for All* will learn about all of this and more. They will come away with an enhanced appreciation of the fact that the Constitution was a great political achievement just as the achievement of independence had been a great political achievement. They will also come to an understanding of what is probably the major peculiarity of the American political system: the centrality of the courts and judicial review. Most importantly, they should come to understand that the Founders did not intend the Constitution to be a substitute for politics. Rather, they saw it as a framework that defined and preserved the conditions that make politics possible.

As a result of this, the students will be better able to participate in the great political debates which they as citizens will confront. As the Supreme Court lurches farther to the right and deeper into incoherence, becoming more and more irrelevant to the resolution of current political conflicts, one may hope that these young people, equipped with

their new understanding will take up the arduous tasks of citizenship. Instead of attempting to resolve our political conflicts by hiring lawyers to argue the case before judges, they will engage in the much more difficult task of finding political solutions to national problems. Whether in the streets, the political parties, the political campaigns, the ballot box, the halls of Congress and of

the various state legislatures and city councils, a reinvigorated concept of citizenship offers the best hope for the solutions of our collective problems.

All of this is messy, of course. It is inconclusive. The effort to forge a consensus out of conflicting interests and moral views is, by its nature, inconclusive. The tasks of politics are unending. But what is democracy about

if it is not about politics? The death of politics, whether intentional or accidental, means the death of democracy.

It was Lenin who argued that the achievement of communism would mean the end of politics. Politics, he claimed would be replaced by the administration of things. The image of a society without the disorders of political conflict, characterized by an eternal nirvana of other-directedness and managed by benevolent administrators, is old and persistent. We Americans have not been free of this impulse, whether it has been to escape to legal and administrative neatness, or to choose representatives whose sole claim to our attention is that they are not politicians.

We hope that students will emerge from their study of *We the People... and With Liberty and Justice* with the understanding that "politics" is not a dirty word and that "politician" is not an epithet. With that understanding, they will go forth to further the achievement of the promise which Hamilton set forth in the opening page of *The Federalist*. These words seem to me as relevant today as they were two hundred years ago.

It has been frequently remarked that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force. If there be any truth to the remark, the crisis at which we are arrived may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of man's end.

These remarks were presented in May at a law-related symposium in Los Angeles.

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The Straightjacket of Justice: Judges and Politics Make Strange Bedfellows



by Georges H.G. Yates

To the layperson who walks into the voting booth, only to see a list of candidates from whom to choose, those running for judge look very similar to those running for other offices. There is, however, one exception: while the layperson often feels uninformed about several of the candidates, the list of judicial candidates will likely evoke those same emotions that a third-grade multiple choice civics exam evoked possibly 40 years earlier. And if there is a tendency to vote a given party line when in doubt, selecting between the judicial candidates can prove even more frustrating; after each name there is no badge of party affiliation to add comfort to the decision-making process.

To the student of professional responsibility, on the other hand, it is clear there are different rules of the road—or in this case rules of the campaign trail—for judicial candidates in comparison to their "political" running mates. This brief essay discusses those rules as interpreted by the arbiter of judicial conduct, the Washington State Supreme Court.

In the end, it might give the layperson solace to know there are unique policy considerations at stake when selecting judicial candidates. But at the same time, the layperson, judicial candidate and judge might share some frustration with the demands of satisfying those policies, which may be seen as creating a straightjacket of justice. In the author's opinion, they should be seen, instead, as the price exacted from society in the name of fair administration of the laws.

I. The Early Cases: Washington State Constitutional Limitations

Even before Washington state adopted the Code of Judicial Conduct (CJC), limitations were placed on a judge's ability to play in the field of politics. As early as 1912, Washington's supreme court considered the limitations imposed by Wash. Const. art. IV, § 15 in *Reynolds v. Howell*, 70 Wash. 467, 126 P. 954 (1912). That constitutional provision states in part:

The judges of the supreme court and the judges of the superior court shall be ineligible to [hold] any other office . . . [other] than a judicial office . . . during the term for which they shall have been elected.

Wash. Const. art. IV, § 15.

In *Reynolds* the defendant, Judge W.W. Black, was duly elected to the position of Snohomish County Judge in 1909. 70 Wash. at 467, 126 P. 954. Black's judicial term was to serve "for four years from the second Monday in January next succeeding [his] election, and until [his] successor [was] elected and qualified." Wash. Const. art. IV, § 5. Black then applied to the state canvassing board to have his name certified on the democratic ticket for Governor. *Id.* The gubernatorial post sought by Black commenced on "the Wednesday following the second Monday of January, 1913." *Id.* In response, a relator filed a writ prohibiting Black's certification for the

post on the ground that such a certification would violate Wash. Const. art. IV, § 15. *Id.*

The Court accepted the relator's viewpoint, stating the goal of the constitutional framers was "to keep judges out of politics." *Id.* The Court found the commencement of the gubernatorial term did not provide ample time for Black's judicial successor to be elected and qualified. *Id.* Thus, the Court held that Black could not make the leap from justice to politics. He could not run for Governor because he was a county judge. And "judges ought not to be allowed to be scramblers for political places." *Id.*

Reynolds, however, did not create the definitive interpretation of Wash. Const. art. IV, § 15. Instead, the Supreme Court, in 1918, was forced to add a twist in *Chandler v. Howell*, 104 Wash. 99, 175 P. 569 (1918).

The *Chandler* court faced the same issue as *Reynolds* presented, with one exception. In *Chandler*, the judge-defendant was campaigning for a seat in Congress, as opposed to a state government office. Because the judge in *Chandler* was seeking a federal elected position, the U.S. Constitution was invoked.

The U.S. Const. art. I, § 5 provides in part that "[e]ach [federal] house shall be the judge of the elections . . . and qualifications of its own members." Thus, the supremacy of the federal constitution forced the Washington Supreme Court's hand. As a result, the *Chandler* court concluded that Wash. Const. art. IV, § 15 applied only to state government posts, and not

positions in either house of the federal legislature.

Thus, the earlier quoted passage from the *Reynolds* opinion requires modification. "[J]udges ought not to be allowed to be scramblers for political places"—unless they are scrambling towards federal politics.

History shows us, therefore, that judges and politics have made strange bedfellows from the start. One might ask whether a judge soon to be governor is different from a judge soon to join Congress. In the early days of Washington jurisprudence, the answer lay not in the answer to that question but, instead, in the necessities of constitutional interpretation. Unlike today, judges were restricted from political involvement only by Wash. Const. art. IV, § 15. Today, restrictions are even greater, as is clearly evidenced by the Code of Judicial Conduct.

II. Cases Subsequent to Codification of Washington's Code of Judicial Conduct

Washington's Code of Judicial

Conduct severely restricts Washington judges from participating in political activities. More specifically, Canons 1, 2, 5 and 7 have been considered by the Washington State Supreme Court as creating such restrictions. The pertinent parts of those canons are:¹

Canon 1 - An independent judiciary is indispensable to justice in our society.

Canon 2 - (A) Judges should . . . conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(B) Judges should not . . . convey or permit others to convey the impression that they are in a special position to influence them.

Canon 7 - (A)(2) . . . Judges or [judicial] candidates shall not identify themselves as members of a political party. . .

(A)(4) Judges should not engage in any other political activity

except on behalf of measures to improve the law, the legal system, or the administration of justice.

A good starting point for interpreting the political activity restrictions contained in Washington's Code of Judicial Conduct is *In re Kaiser*, 111 Wash. 2d 275, 759 P.2d 392 (1988). In *Kaiser* the defendant, King County District Court Judge James Kaiser, was an incumbent facing a tough campaign. Kaiser's opponent, a DWI prosecution specialist, capitalized on his experience by giving the impression he would improve on DWI enforcement as district judge. After losing the primary, Kaiser decided it was time to become a proactive campaigner. Although he did not specifically respond that he was a Democrat when the Democratic party approached him concerning the party's endorsement, he did forward a letter to his Democratic precinct stating,

Bearing in mind the nonpartisan position a judge must maintain while on the bench, it may be useful for you to know that Judge Kaiser's family have been lifelong Democrats. Indeed, Judge Kaiser has doorbelled for Democrats in the past.

Kaiser also made several campaign statements, countering his opponent's campaign, in which Kaiser stated he was tough on drunk driving. And finally, Kaiser's campaign made certain false statements concerning his opponent's campaign funding. Kaiser won the election by one vote.

After the election, the Court censured him. First, the Court noted that he had been admonished five years earlier, pursuant to Canon 5(B), for serving as a member of the Mothers Against Drunk Driving (MADD). It had been found at that time that his involvement with MADD reflected adversely on his impartiality. Then, returning to his campaign activities, the Court concluded that his statement to the Democratic party violated Canon 7(A)(2), because it was tantamount to identifying himself as a member of the Democratic party.² Also, the Court concluded that Kaiser's campaign statements, stating that he

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was tough on drunk driving, violated canon 7(B)(1)(C) because those statements suggested that he would not be an impartial judge of DWI matters.

Thus, the *Kaiser* case makes it clear that once candidates enter the judicial arena, they must strip themselves of partisan armor and refrain from making promises that resonate partiality. In addition, the *Kaiser* case brings to life the fact that even after elected, judges must refrain from association with organizations that give the impression of partiality. Therefore, unlike Washington's early constitutional cases that prevent judges from using the bench as a stepping-stone, the Code of Judicial Conduct adds a new dimension of impartiality that the judge must continuously strive to represent. If the judge egregiously fails to meet that standard, the Court has artillery great enough to remove the partial judge from office, regardless of the vote of the people.

But while impartiality is a laudable goal, taken to its extremes it can exact a high price. In *In re Blauvelt*, 115 Wash. 2d 735, 801 P.2d 235 (1990), the defendant was a municipal court judge in Elma. This appointive position required the hearing of cases each Wednesday from 6 to 8:30 p.m.. During the remainder of the work week, Arthur Blauvelt continued his practice of law as a partner in an Aberdeen law firm. Where Blauvelt went wrong was when he attended his local Democratic caucus in 1988. At that caucus, he was elected as a Jesse Jackson delegate to the Grays Harbor County convention, where, in turn, he was elected to the state convention.

One might reasonably conclude that the judge was simply exercising his rights as a citizen of the United States, by participating in the selection of a Democratic presidential nominee. In 1988, Washington had yet to adopt a presidential primary system. Indeed, the caucus that Blauvelt attended was his sole opportunity to cast his vote for Jesse Jackson at that time.

The Court, and the Judicial Conduct Commission, disagreed, however, finding Blauvelt in violation of the Code of Judicial Conduct. More specifically, the Court found his participation in the convention violated

Canon 7(A)(1) because his function as a delegate was the equivalent of serving as a political organization leader.

The Blauvelt case is interesting in that no sanction was filed against him. Hence, the Court concluded it was not required to address his constitutional defenses because he agreed that if no sanction was filed, such analysis was unnecessary. The Court also concluded that since Washington would probably develop a presidential primary, any need to adjudicate Blauvelt's constitutional claims was eliminated. Today, the *Blauvelt* opinion remains on the books as a testament to the high price one pays to satisfy the requirement of impartiality. Uncertainty also remains whether, in the end, such a price could actually have passed constitutional muster.

Now, we have seen that a judge's energy must be focused on justice, not politics, and that impartiality is the golden rule. However, all may not be as grey as it seems: a judge must remain impartial, but there are certain campaigns that take a position which actually improves the administration of

justice. One such instance can be found in *In re Staples*, 105 Wash. 2d 905, 719 P.2d 558 (1986).

The defendant was a Benton County judge, Fred Staples. At that time, the county seat was located in Prosser, but the Washington State Supreme Court authorized Benton County to hold court a 30-minute drive away in Kennewick. The Supreme Court's authorization also required Benton County to modernize the county seat courthouse in Prosser, so that future superior court proceedings could be held at both locations. In response, the Benton County commissioners allotted over four times as much funding for the Prosser courthouse remodel as was required by the Supreme Court order. Judge Staples thought the appropriation was ridiculous, since the majority of Benton County's cases were being held in Kennewick, and the judges and staff no longer wanted to travel back to Prosser. Therefore, Staples mounted a campaign to move the Benton County seat to Kennewick. Success in moving the county seat would have made the

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Supreme Court order to remodel the Prosser courthouse null and void. But the resulting controversial campaign fell short, only by a small percentage.

The Judicial Conduct Commission responded by filing a disciplinary action against Staples. The commission alleged that Staples had engaged in political activity that was not designed to better the administration of justice

and, as a result, he was allegedly in violation of Canon 7(A)(4).

The Washington Supreme Court disagreed. It decided that Canon 7 is grounded in the same policy consideration above. A judge should not participate in outside activities that take focus away from judicial duties, and a judge should not participate in activities that give any appearance of

partiality. In *Staples*, the Court found that his campaign failed to violate either policy. The Court then went on to limit Canon 7(A)(4) to partisan political activities.

After reading *Staples*, we can limit our earlier conclusions that a judge must focus on justice, not politics. *Staples* makes it clear that sometimes efficient administration of justice and politics go hand in hand. When that occurs, the judge can participate, not as a politician, but as an advocate for justice.

Then there are some instances where the gavel of justice is held in one hand and the handbill of politics is held in the other hand of the same public official. Such an instance was found in *In re Niemi*, 117 Wash. 2d 817, 820 P.2d 41 (1991). The defendant, Janice Niemi, was both a state senator and an acting judge pro tempore. Due to her dual service, the commission filed a disciplinary action alleging that she was mixing justice with politics in violation of the CJC. The Court on the other hand, disagreed. It held, "Janice Niemi's service as a judge pro tempore, while holding the status of a state senator, does not violate Canons 1, 2(A), 7(A)(a), 7(A)(3), 7(A)(4), or the separation of powers doctrine." *Id.*

The Court concluded that requiring a judge to focus on judicial duties is not at issue in the case of a judge pro tempore, since pro tempore services "increase, rather than diminish, the judiciary's resources." *Id.* Furthermore, the Court concluded that the requirement of impartiality was not at issue, since Washington's state constitution requires consent of all parties involved before a judge pro tempore can hear a case. *See* Wash. Const. art IV, § 7. So as *Niemi* shows, justice and politics make strange bedfellows, but that doesn't necessarily mean they are incompatible. The bottom line remains: the judge must focus on judicial duties, and partiality is a forbidden word in the judicial clubhouse.

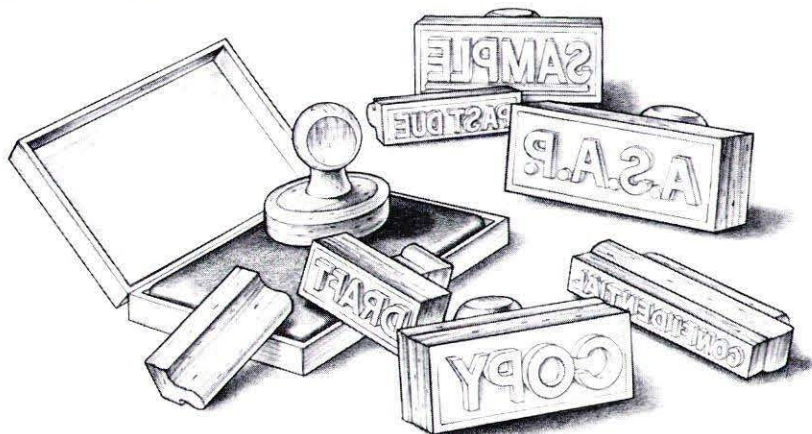
In April of this year, the Court wrote the latest chapter on political activities of judicial candidates in *In re Stoker*, 118 Wash. 2d 782 (1992). In *Stoker*, district court judge Fred Stoker attended the Clark County Fair in August 1990. *Id.* at 785. During his attendance, he was seeking reelection. *Id.* Both the

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Democratic and Republican parties maintained booths at the fair. *Id.* Stoker placed his campaign signs and items of campaign literature in the booths of both parties. *Id.* At various times during the fair, he was seen campaigning inside both booths. *Id.* Stoker's campaign committee paid a \$65 booth rental fee to the Democratic Party on the expressed written condition that it was a rental fee, not a political contribution. *Id.* at 795. No similar fee was required by the Republican Party. *Id.*

The Commission on Judicial Conduct, after considering the charges filed, imposed the sanction of admonishment against Stoker. *Id.* at 784. The admonishment was grounded in violations of Canons 1, 7(A)(2) and 7(B)(1)(d)³ of the Code of Judicial Conduct. *Id.* On appeal, however, the Washington Supreme Court overruled the commission's admonishment and dismissed all charges. *Id.* at 800.

First, the Court agreed that Stoker's \$65 dollar payment to the Democratic Party was for rent, not political contribution. *Id.* at 796. The Court stated that "[u]nquestionably, Appellant Stoker would be prohibited by Canon 7(A)(2) from making a contribution of any amount to the Democratic Party or to any other political party. But, while the \$65 payment was made to a political party, it was documented as payment for use of space" and "was not a political contribution prohibited by Canon 7(A)(2)." *Id.*

Second, the Court concluded that Stoker was not deceptively campaigning in violation of Canon 7(B)(1)(d). *Id.* at 798. The Court stated that while a judicial candidate would be best to identify himself as "nonpartisan," Stoker had not identified himself as a member of "a political party" nor had his literature suggested or implied any party affiliation. *Id.* Thus, the Court declared the commission's interpretation of Canon 7(B)(1)(d) too narrow. *Id.*

Third, the Court determined that even if Stoker had received the endorsement of both the Clark County Republican and Democratic parties, Judge Stoker's campaign practices did not violate Canon 7 as long as he did not identify himself as a political party member. *Id.* at 800. In the words of the Court:

We are not convinced that the Washington Code prohibits nonpartisan judicial candidates from being endorsed by a political party if it is clear that the endorsement does not imply membership or participation by the judicial candidate in that party. In that sense, *bipartisan* identification is not of itself prohibited, particularly

where, as here, the judicial candidate made every reasonable effort to balance his involvement . . . between booths of the Democratic Party and the Republican Party without favoring one over the other.

Id. at 799. Thus, a reading of *Stoker* indicates that judicial candidates are free

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to campaign alongside their partisan running mates, but only if they pay equal respect to both Republicans and Democrats. Only then will the judicial candidate avoid any appearance of partiality. Avoiding such partiality clearly remains a principal mandate of the Code.

III. Conclusion: The hallowed halls of justice are on a higher plane than the trenches of politics.

"As of 1990, Washington is one of 11 states which elect judges by nonpartisan election."⁴ *Id.* at 794 (citing, *see* P. McFadden, *Electing Justice: The Law and Ethics of Judicial Election Campaigns* 177 (1990)). Apparently, the rationales for retaining nonpartisan judicial elections are an impartial judiciary, not beholden to any political party, and the promotion of legal administration as opposed to partisan political activities.

Although the Code of Judicial Conduct is drafted with language aimed to carry out the just-mentioned

rationales, the code is capable of differing degrees of restrictive interpretation. For example, the commission has had a tendency to interpret the code more strictly than the Court in several instances. E.g., *Stoker*, 118 Wash. 2d 782. And although the "court will give 'considerable weight' to the recommendations of the Commission, the Commission's recommendation is reviewed de novo." *Id.* at 793. Indeed, the Court recently stated that "[w]hile we must hold judges and judicial candidates to the highest standards of conduct, we must, at the same time, avoid without a clear factual basis, reading into proper conduct 'implied' results which constitute violations of the Code" *Id.* at 799.

Niemi, however, blurs the edges of the judge's political arena. It appears that the Court places much lower antipolitical expectations on judges pro tempore. Specifically, was Blauvelt's two and one-half hours a week of service as a municipal court judge, ground for a much greater restriction on a judge's

freedom of political expression than the role played by a judge pro tempore? It seems excessive to have prohibited Blauvelt's participation in choosing his presidential preference through the state's historic caucus system, while allowing a state senator to serve as a judge pro tempore.

Perhaps the answer lies in beliefs that a judge is a higher ethical form of being than a partisan politician. While the judge cannot dabble in politics, the politician can apparently dabble in the judiciary. And in a society where incumbency and experience are valuable assets when seeking election, the judge cannot gain political points, but the politician can achieve judicial recognition. So, like a crabpot, the hollowed hall of justice may admit politicians, but once inside, judges cannot escape back into politics.

Although we can distinguish the cases with such a theory—that the Code of Judicial Conduct makes it easier for a politician to become a judge, than for the judge to become a politician—it is presented only as comic relief. Few judges jump the trench to seek election in partisan politics, but the reasons are not likely attributable to the CJC. It seems that most judges are content as judges. While "politician" evokes nearly as many negative connotations as "lawyer" in today's society, "judge" has escaped the blunt end of public criticism. Society's differing reaction must lie, at least in part, in differences between the judicial versus the partisan political campaign. It appears that the political restrictions of the CJC have paid a dividend.

The next time the layperson walks into the voting booth, only to find a list of unknown judicial candidates lacking party affiliations, let there be solace in the principle that if the voter is hauled into court tomorrow, at least that person will not be at the mercy of a prior campaign promise. As for the judge, who cannot claim a party affiliation, let there be solace in society's continued respect for the bench.

¹ It is important to note that Canon 7 contains several political restrictions that are too extensive to cite in this essay. *See* Washington Code of Judicial Conduct Canon 7 (1989).

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TRAINING



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

² While the court recognized that Judge Kaiser's statements violated Canon 7, those statements were still afforded constitutional free speech protection. "The court reasoned that where political speech is at issue, disciplinary rules are subject to exacting scrutiny under the First Amendment." *In re Stoker*, 118 Wash. 2d 782, 797 (1992)(citing *Kaiser*, at 284).

In the end, however, the court determined that "[t]he state's interest in protecting the good reputation of the judiciary is compelling, as every court which considers the issue has recognized." *Kaiser* at 288. And while certain Canon 7 violations may constitute protected speech, claiming party affiliation as a judicial candidate violates a compelling state interest. *Id.* at 289. Judge Kaiser's censure was upheld. *Id.* at 291.

³ Canon 7(B)(1)(d) prohibits "misleading, or deceptive campaign advertising to be published or broadcast" on behalf of a judicial candidate. The commission ruled that Canon 7(B)(1)(d) was violated since Judge Stoker's campaign activities at the fair "implicitly misled fairgoers into believing that he was endorsed by both political parties for re-election to the bench." *Id.* at 788.

⁴ The others states include: Georgia, Idaho, Kentucky, Louisiana, Minnesota, Montana, Nevada, North Dakota, Oregon and Wisconsin.

Georges H.G. Yates is a third-year student of law, University of Puget Sound School of Law; Lead articles editor, University of Puget Sound Law Review.

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Evidence.

In medical malpractice action, defendant called another of plaintiff's treating physicians as defense witness. Over plaintiff's objection, this physician testified that he saw no negligence on defendant's part. Appellate court reversed, saying the testimony should have been excluded under Rule 403 as unfairly prejudicial. Court said jury might conclude that plaintiff's case lacked merit simply because plaintiff's own physician was willing to testify against her. Court stopped short of saying that a treating physician should *never* testify against a patient. However, court clearly sought to discourage such testimony, saying that when such testimony is admitted, appellate court will "carefully scrutinize the trial court's rationale." Court specified six factors for and against admitting such testimony that trial court must balance. *Carson v. Fine*, ___ Wn.App. ___, 830 P.2d 680 (Div. 2, 5/26/92).

—K. B. Tegland

Real property.

(*Case 1.*) In partition action: (a) Court must value land to be partitioned as it exists at date of trial. If it is presently not subdivided, value may not

be for subdivided land, though a factor in fixing present value is the increment of value that a marketplace purchaser would allow for the possibility that it might be subdivided. (b) If owelty is to be awarded because portion of land awarded to one party is worth \$40,000 more than portion of land awarded to other party, amount of owelty is one-half this difference, *i.e.*, \$20,000, not \$40,000. *Carson v. Willstadter*, ___ Wn.App. ___, 830 P.2d 676 (Div. 1, 6/2/92).

(*Case 2.*) Adjoining landowners executed written agreement for cross-easements, but agreement was "informal," *i.e.*, not sufficient under statute of frauds, RCW 64.04.010, to create easements. However, first owners, relying upon agreement, subdivided their land by recorded plat, built road across second parties' land, and sold lots to grantees. With second parties' acquiescence, first parties and their grantees used road and otherwise treated land as if easement existed for several years. *Held*, agreed easements exist. Operation of statute of frauds is excused by doctrine court calls "part performance." *Kirk v. Tomulty*, ___ Wn.App. ___, 831 P.2d 792 (Div. 1, 6/29/92).

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Finding the First Job

If only I had remembered that each of us is a unique individual, and no two of us follow the exact same path in life Maybe I would have dealt with my post-bar exam job search process in a healthier way and not seen myself as less of a person for being unemployed. Having survived, I can look back and see what was important in the process.

I graduated from law school in June 1990, took the July bar exam and immediately fled the country for three months in an attempt to escape and recover from sheer exhaustion. Every classmate seemed to have a job lined up except me. To top it off, I didn't pass. Why me? I couldn't bear the thought of going through the process again. But of course I did, and passed. Dealing with the events unfolding upon law school graduation has given me some insight and helped me determine what it is I want from a legal career.

After a brief exodus to southern-California sunshine following the second exam, I began the job search in earnest. (Note: two bar exams, two trips: a clue to my priorities). I

developed a well-researched plan of attack. The focus was networking with everyone, and I do mean *everyone*.

I tried to do informational interviews with as many people as possible. There's nothing like picking up the phone, calling someone, and saying, "You don't know me, but so-and-so gave me your name, and I was wondering if you would have some time to talk about the area of law in which you practice." The approach was right; the information obtained was valuable, but a job was not forthcoming.

Family and friends were unable to understand why I couldn't find a job. I began to doubt my self-worth, not just in law but in every area of my life. I started to withdraw from friends and any social setting. The grace period for school loans expired, adding financial insecurity to the list of woes. This job search process was beginning to fall under the heading, "major challenges in life," and I geared up for the long haul.

First I had to find what was going to make me happy and not to compare my life with those around me, particularly

those of peers. I had ideas about what I wanted, and what I didn't want, from a job as an attorney. I was aware of the dissatisfactions of the practice of law, and I was determined not to fall into a job that was not right for me, even though I was desperate for money. I hadn't received even one job offer, let alone one that I might not accept because it wasn't right.

Eventually I discovered that, no matter how emotionally and financially desperate I was for employment, I couldn't continue to put my entire life on hold until I found it. I couldn't look for a job 40 hours a week and do nothing else but question my worth. I had to focus on living a more balanced life. None of this "all or nothing approach." I had to let go of my perfectionistic tendencies.

I saw that by withdrawing from all nonbusiness contacts, I had taken the fun out of life. I made an effort to socialize instead of withdrawing. I concentrated on getting eight hours of sleep and eating well. I planned fun things to do. I became an expert at

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For All the Commitments You Make



by Lindsay Thompson

Vancouver, B.C., September 16, 1992

(The editor gratefully acknowledges the assistance of Judith Eiler, who took notes while he was absent on *Bar News* business.)

Present: The president, president-elect, governors-elect and current governors save Joe Nappi, not present but participating by conference telephone call. Also present: Judge Gerry Alexander (Court of Appeals, Division II); Frank Edmondson (Government Lawyers' Assn.); Judith Eiler (*Bar News* editor pro tem); Ernest Heller (Administrative Law Judges' Assn.); Sheryl Garland (Washington Women Lawyers); Judge Paul Hansen (Superior Court Judges' Assn.); Grant Johnson (WSBA Young Lawyers Division); Jim Kaufman (Washington Prosecuting Attorneys' Assn.); Judge Larry Moller (District & Municipal Court Judges' Assn.); Linda Moran (Washington Women Lawyers); Bill Phillips (Washington Defense Trial lawyers); Geoffrey Revelle (Seattle/King County Bar Assn.); Larry Shannon (Washington Trial Lawyers' Assn.); Mark Shepherd (Seattle/King County Young Lawyers); Robert Welden (WSBA general counsel); and Dennis Harwick (WSBA executive director).

The governors met first in executive session. In open session, the Board approved the minutes of the last meeting and heard the last report of president Joe Delay. Executive director Dennis Harwick reported the convention's main events were sold to various commercial ventures, giving them the right to introduce the guest speakers at luncheons and generally get noticed. These sponsorships help cover the cost of the convention. Harwick also said the date of the January 1993 Board meeting, in Olympia, has been moved one week to the 15th-16th.

Special Election Set: The Board set October 15, 1992 as a deadline for candidates to file for election to the Ninth Congressional District Board of Governors seat. Ballots will be mailed October 30 and will be due back by November 23. In a related matter, the Board approved an amendment to the Young Lawyers Division bylaws reducing the number of King

County at-large seats on the YLD board from two to one. This change reflected the addition of the Ninth Congressional District seat.

Is It a Trap Or Fiscal Responsibility? In August, the Board approved and recommended approval by the Supreme Court of a charge of \$50 to be levied on late applications. The deadline for applications came up for change to 60 days (previously 40) before the examination date. There was some disagreement: Governor Tom Chambers thought it was a trap for the unwary--the Board was declaring a late fee and then moving back the deadline to catch more people as late applicants. Others thought trying to calculate the due date by working backwards from the exam date was like trying to figure when Easter will occur, and a clearer deadline should be set. The change passed.

IOLTA Blues: The Legal Foundation of Washington asked the Board to join with other IOLTA and bar groups as amici in a lawsuit brought by the Washington Legal Foundation against the Massachusetts Bar Foundation. After some discussion, a motion to have WSBA join (no charge for the brief) was approved by the Board. Governor Alva Long, who opposes IOLTA generally, voted no.

Computer News: A variety of computer-related matters came before the Board. They reappointed Jim Turner and William Baron to the Judicial Information System Committee and heard a report from Turner on its computerization of law projects and on the work of B2C2, the Bench-Bar Computer Council. They approved a court rule amendment to allow for the electronic filing of local rules with the state to make them readily available, by computer. Steve Crossland explained the WSBA computer bulletin board subscription service, devised to support and expand the system. Subscriptions are \$10 per month (three-month minimum), or \$100 per year. Subscribers are entitled to up to three hours' use per day. Subscriptions are per person, not per firm. Payment can be by credit card or

enjoying the little things that don't cost a penny. Daily walks on the beach helped me to appreciate the beauty of life.

Finally, I became involved in giving to others. The surest way to take the focus off my problems was to help those in greater need. I became a peer counselor for the Lawyers' Assistance Program, and I have received much more than I have ever given. The attorneys and staff, through their actions and words, have helped me to clarify the important values in life and understand that first and foremost taking care of

myself is the cornerstone of giving to others. My life journey is unique and cannot be compared to that of anyone else. The job I have now is one that developed through persistence, self-analysis, and adaptability to a tight market. At this point in my life, I have the "perfect" job as an attorney, and it was well worth the wait.

Nota Bene

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career dissatisfaction, alcohol and drug abuse. Contact the Lawyers' Assistance Program at (206) 727-8268.

Every Tuesday at noon in the WSBA Presidents' Room, (4th floor, Westin Building), LAP sponsors a free job hunters' support group for WSBA members who are actively involved in the search for a new position. This is a drop-in group focusing on the exchange of job leads, and job finding ideas. Call Joyce Elven at (206) 727-8268 for information on upcoming special programs to be held periodically in conjunction with these meetings.

cash. The system went into effect October 1, 1992.

"Let's See: Stake In The Heart?" "Yep." "But Alive Anyway?" "Yep." "Hmmm. Must Have Used the Wrong Sort of Wood." Former Young Lawyers Division president Robert Bakemeier was back with an oft-deferred and several times killed proposal to get the WSBA into the business of rating candidates for federal judgeships. Bakemeier's proposal provided that whenever a federal vacancy occurs, the president would set up an ad hoc nominating committee made up of diverse groups in the bar, tell the senators they were ready to serve, and wait. If the senators didn't make use of the committee, the Board of Governors could ask it to do so independently, producing an unsought list of nominees.

Governor John Schultz led the charge against the idea yet again, noting it's a federal, not a state, matter, and that the Department of Justice had not welcomed state and local bar association input into federal judicial appointments in other states. Other governors felt it was time to muscle in and get the procedure set so it could be used the next time.

Governor Alva Long thought the judiciary needs to be depoliticized, and he supported the plan. Others have observed that the plan just tries to substitute the political preferences of a more politically correct WSBA committee for those of senators making the nominations. Governor Steve Tubbs didn't like the mandatory character of the plan: what if candidates decline to be screened by the committee? The plan was adopted 5-3-1, Tubbs, Schultz and Slater opposed, Howell

abstaining.

More on Court Rules: The Board took up amendments of a number of court rules, first approved after close votes in June, reconsidered in July, and set over to this meeting for further discussion. Various interested parties turned up in the audience; someone even dredged up a doctor to speak on some of them. Governor Wayne Blair, who forced reconsideration in July, tried to refer them back to committee; it didn't work.

CR5 was amended to require all discovery materials in a case which are subject to nondisclosure, confidentiality agreements, or protective orders, to be preserved for two years after the proceedings are final. CR11 was amended to its pre-1985 form, eliminating sanction provisions that have been widely criticized as being ineffective and divisive. CR19 was amended to adopt the "empty chair" concept: any party who may share in liability has to be brought in as a defendant by the named defendant(s). CR26 was amended to require not just discovery of insurance coverage but production of the insurance documents as well. Discovery materials subject to nondisclosure or a confidentiality agreement would be discoverable if they contain matters of "broad public import," generally including anything anyone ever might conceivably want to see. CR34 was amended to make documents and things held by a nonparty discoverable. CR45 was amended to expand the subpoena power to accomplish this end. CR35 was amended to allow the party being examined in an independent medical examination to have a representative present at the exam, and to make a sound recording of the examination.

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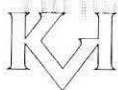


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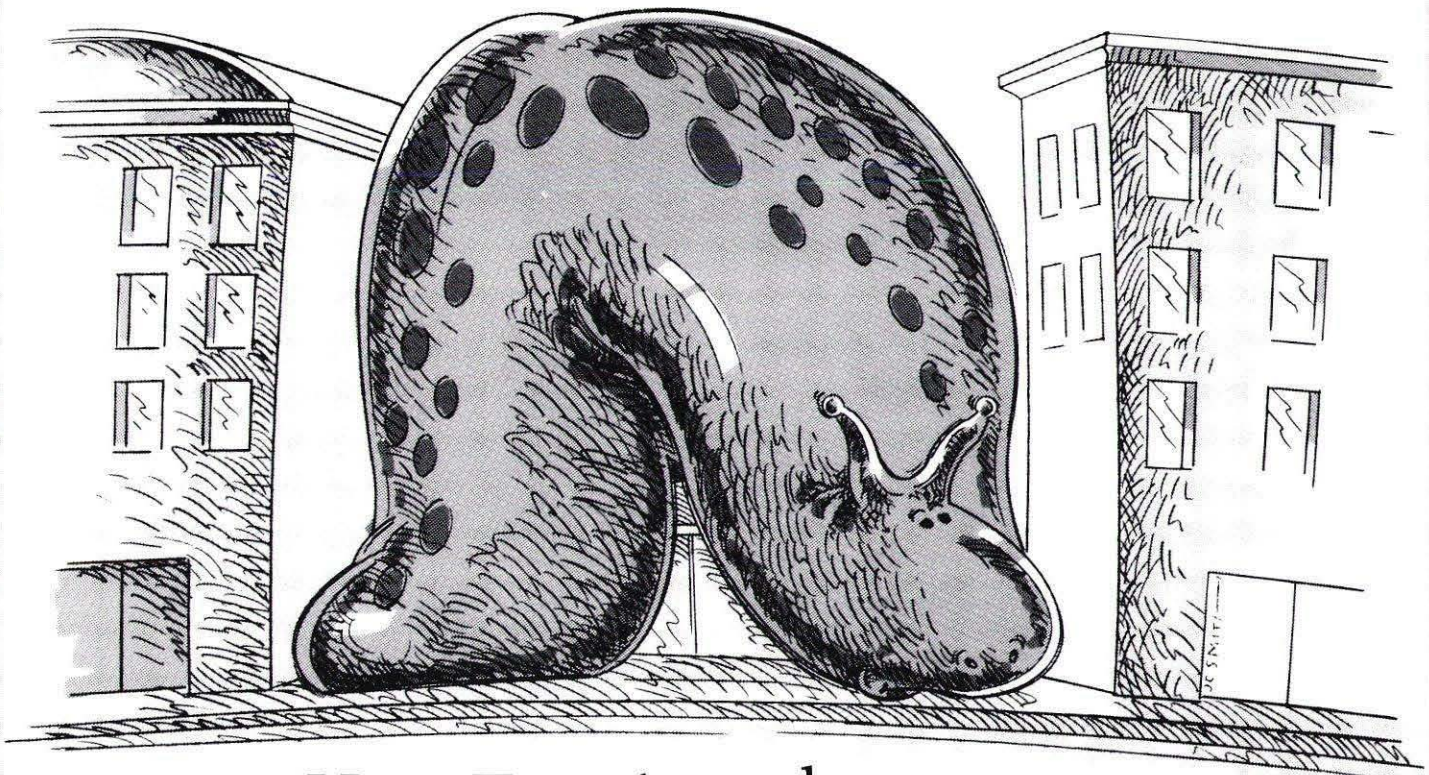
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CR37 was amended to make evasive or misleading answers to interrogatories a failure to answer if it results in prejudice to any party.

As A Concept, It's Great: The Board considered what to do about the Client Security Program, which considers awarding funds to persons who lose money at that hands of their lawyers. The program is funded annually as a line item in the WSBA budget. Trouble is, claims always exceed the budget, and they are piling up now at such a rate as to make even pro rata awards meaningless. Current claims are up to \$1 million. Options put to the Board (and responses offered) include use of IOLTA funds (none available, low interest rates); getting insurance or a bond for the fund (could be canceled after the first claim); charging members a trust account/IOLTA assessment to fund the program (bad politics); asking the Legislature to do something (not realistic); asking members to support a voluntary assessment (weakest idea); continuing current funding method (yeah); passing a mandatory assessment (raucous laughter); and asking the Supreme Court to pass a rule making a mandatory assessment.

The court rule was the option preferred by the Client Security Program Committee. The Board voted to table the matter until January, voting 9-1, Howell opposed.

WSBA Budget Update: Executive director Dennis Harwick told the Board revenue is up \$50,000 over this time last year, and expenses are down \$180,000, leaving him cautiously optimistic the budget will balance for FY 91-92. The big variable is the convention, dependent upon registrations for its final cost. Trouble is, bar dues for FY 92-93 don't start coming in 'til January, and with no reserve funds, Harwick said, some short-term borrowing from the banks may be necessary.

Next Meeting: October 30-31 in Pasco. Bring a costume.

* * * * *

The 103d Annual Meeting

Vancouver, B.C.
September 18, 1992

The Annual Meeting of the Washington State Bar Association was called to order by president Joe Delay at 2:15 p.m. The minutes of the 1991 annual meeting were approved.

Fred H. Dore, retiring Chief Justice of Washington, reviewed the work of the judiciary over the last year. Awards were announced for 50-year members of the Association. Paul Stritmatter introduced a videotape supporting LawFund, the foundation for funding civil legal services to the poor in Washington.

President Delay made some closing remarks, then introduced Ed Shea, who chairs the Resolutions Committee. He presented the committee's report on seven resolutions presented by Governor Alva Long and others. No one appeared to speak for them at the committee's hearing September 10, but that there was intense debate among committee members on each one. The committee unanimously recommended rejection of six and recommended rejection of a seventh (the second term

resolution) by a vote of 6-1. Here's the result:

1. Resolution to allow WSBA governors to serve two six year terms: Noting that governors are restricted to one three-year term, Long said the restriction had been adopted some years ago when a governor who'd been re-elected more than once annoyed enough other governors to provoke action. He thought this was a bad reason for the term limit. He said governors don't get any training before becoming governors, and "you're overwhelmed by the amount of work to be done." In essence, he said a second term is needed to master the intricacies of WSBA finance and operations.

Governor Lem Howell opposed the idea, saying "three years is enough punishment for any member of the Association." Sheryl Garland said Washington Women Lawyers opposed the resolution; they felt greater diversity is needed in Board composition. Re-election would slow change, not advance it. Howard Todd said he'd watched the Board try to master the details of WSBA finance for years, and thought having a second term option would give them more time to do that. "We ought not to tie the governors' hands, so they can challenge the information they get from bar staff. We should think about getting good government, not symbolic government." Jeff Tolman said the proposal would make governors political animals—their decisions would increasingly be governed by re-election considerations. The resolution was rejected on a voice vote. A division was requested by Lem Howell but not completed when Howell said he could see the ayes outnumbered the nays "three to one, or more."

2. Resolution to discontinue WSBA subsidies to the Young Lawyers Division. Proponent Alva Long said he expected to lose this one, but wanted to point out that the effect of funding the Young Lawyers Division was to favor them over other groups who might be equally worthy of WSBA support. For example, he said, "We should support gay and lesbian lawyers. We should support lawyers who've practiced over 35 years in Auburn." He said young lawyers aren't really Young Lawyers—they are government lawyers, because the only place new lawyers can get work is as prosecutors and public defenders. Such people are not helped by money given to the Division. "Other parts of the state don't share in the boodle the Young Lawyers Division gets."

Governor Steve Tubbs opposed the resolution. "I don't understand Alva's argument," he said. "Alva voted to fund Lawyers for Literacy but can't support the Young Lawyers." Forty percent of WSBA members are young lawyers, Tubbs said. They need to be involved in bar activities. Mark Shepherd, Seattle/King County Bar Association Young Lawyers president, echoed Tubbs' comments. He added that young lawyers are "grossly under-represented" on WSBA committees and the Board of Governors. The Young Lawyers Division gives them a chance to be involved in bar association work and develop the skills to lead the WSBA into the next century. He argued the Board of Governors' sunset review process was a better way to review a program's effectiveness than "piecemeal dismantling." Young Lawyers Division president Grant Johnson said he was from Wenatchee, the next

YLD president is from Vancouver, and four or five Young Lawyers Division board members are government lawyers, putting the lie to what he called Long's grossly misleading statements." He noted that Long was relying on the total budget allocation to YLD to argue it cost too much, not taking into proper account 20 percent of all CLE revenue they pay back to the Association, nor funds they raise on their own. Besides, he said, young lawyers are Association members, too, and they pay dues. He recounted the varied activities of the Division and how they advance diversity, involve younger Association members, and serve underserved elements of the public. "Passing this resolution will undermine the very purposes Alva espouses," Johnson concluded.

David Abercrombie said when he was a young lawyer they thought themselves part of the bar as a whole. "Why are they separate now? It's a redundant, unnecessary classification." A Spokane lawyer said he was a 34-year member and he'd driven over to vote for fiscal responsibility. "We have a shortfall. It has to come from somewhere. It's about time we get some fiscal responsibility." Rosemary Dasczkiewicz said YLD is a benefit to Association members because it is accessible and diverse, things the senior bar is not. Geoff Revelle, Seattle/King County Bar Association president, denied Long's claim that SKCBA had opposed all of his resolutions, then noted the YLD "is the only place where people without access to significant amounts of money and power can participate in bar activities. It would be a travesty and a tragedy to pass this resolution." Lisa Lowe, YLD president-elect, John Powers, Ron Gould and Jonathan Sitkin all spoke against the resolution as well before the question was called. Wrapping up, Long said he was not against Motherhood, or pro-sin. "If

the young lawyers want representation, you have to look elsewhere. The Board of Governors next year will be ten white males and a woman. There is no room there for representation of other interests," he said. On a hand vote, the resolution was defeated, "four or five to one," chairman Shea declared.

3. Resolution to discontinue the CLE Department effective October 1, 1993: Lem Howell moved to amend the resolution to discontinue only the seminar part of CLE, noting the publishing end makes money. The amendment passed on a voice vote. Alva Long told the meeting this resolution was a good way to hold WSBA's feet to the fire. If CLE shapes up, we can halt this resolution next year. But David Swartling said CLE presentations are as good as or better than those of the commercial vendors. "This isn't throwing the baby out with the bath water, it's shutting down the whole water system." Scott Osborn noted that CLE covers its direct, out of pocket costs, losing money only when its allocation of overall WSBA overhead is added in. "This is an extremely short-sighted resolution," he contended. Governor Tom Chambers agreed. "CLE is a membership benefit. If we do away with CLE, we have to reallocate CLE's share of overhead to other programs, which will then run deficits, so there will be no real savings. If you work in Seattle and in a field that can draw 200 or more to a seminar, you're OK voting for this resolution. If you don't, or work outside the Seattle area, you'll be out of luck. This resolution will cost the rest of you more, not less." President-elect Steve DeForest said managing bar finance by resolution is not the way to go.

David Abercrombie said "we used to do CLE ourselves. How do the private companies make money? I could heat my house

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through the winter on the junk mail I get from CLE."

Ken Weber said "You can't vote to abolish something today and then say we'll take a look at it next fall. Programs have to be scheduled and speakers lined up. No law office would run itself that way. CLE is for educating our members to provide competent service to the public. When CLE was voluntary, I knew lawyers who kept way ahead, but I also knew lawyers who never went to any. If we kill of CLE because it loses money sometimes, we'll be saying to the public we're only in it for the money." Steve Tubbs said the resolution will require WSBA to assume CLE will end next year, canceling programs and laying off staff before it could be reviewed again next fall. A voice vote was inconclusive. A division was taken, and the resolution was rejected, 93-65.

4. Resolution to discontinue WSBA law-related education programs October 1, 1993: A motion to close debate, before any debate, was approved and the resolution was rejected on a voice vote.

5. Resolution to discontinue funding random audits of lawyer trust accounts: The debate on this resolution was almost verbatim the debate when it was offered last year at the annual meeting. See the October 1991 *Bar News* for the arguments presented then and now. The resolution was rejected on a voice vote.

6. Resolution to restrict use of Association dues income to those purposes necessary to license and regulate the practice of law, commencing October 1, 1993: Alva Long said his resolution would create a voluntary bar association. "That makes sense. It would

redistribute the Bar Association into its locales." People would pay as they go for the services they want. "We have a 1933 system and this will substantially change it. If you want all genders and sexual divisions represented, this will do it. Variant voices are not empowered under the current system," he concluded. John Powers said Long's resolutions--all of them--don't change the WSBA, "they abandon it." Just when lawyers are under attack on all fronts, he said, "these people want us to flinch." The resolution was defeated on a voice vote.

7. Resolution calling for automatic referenda on any future dues increase: Long told the meeting, "I've been concerned by the erosion of a democratic bar association. The membership in general has to be empowered. I represent those in the trenches, the great unwashed," he continued. "If the WSBA can't sell its position to the membership in a referendum, they shouldn't ask." David Abercrombie supported Long: "We need to maintain control. The leaders are afraid of change." Jay Nuxoll said people aren't coming to the bar convention any more because of all the sections having midyear meetings elsewhere. "They should be here." Andrew Schwam was "horrified to learn it will cost \$20,000 to run a referendum. I'm troubled the Bar won't automatically ask about increasing our dues. They should just put a mail-in ballot in the *Bar News*." Geoff Revelle called the resolution silly. "We have a referendum process already. People should use it." The resolution was defeated on a hand vote. Ed Shea returned the chair to president Delay, who turned over the gavel to resident-elect DeForest. After a few remarks, he gavelled the meeting to a close at 5:29 p.m.

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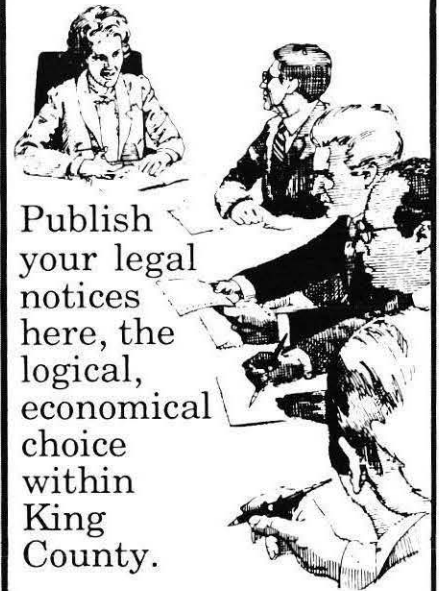
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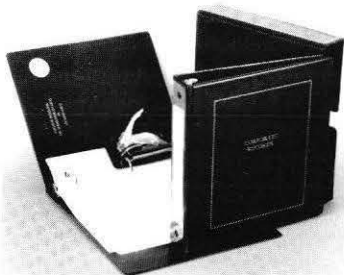
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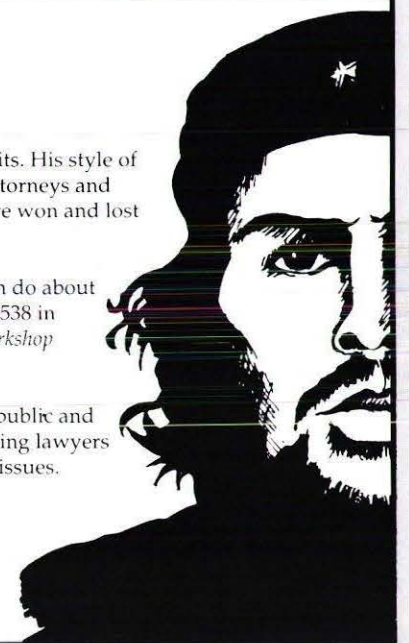
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January, 1993

8-9 Olympia: WSBA Board of Governors meeting. *For information:* (206) 727-8200 or contact your local governor.

15 Deadline for copy for March 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

February, 1992

12-13 Tacoma: WSBA Board of

Governors meeting. *For information:* (206) 727-8200 or contact your local governor.

15 Deadline for copy for April 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

March, 1993

15 Deadline for copy for May 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

26-27 LaConner: WSBA Board of Governors meeting. *For information:* (206) 727-8200 or contact your local governor.

April, 1993

15 Deadline for copy for June 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

May, 1993

7-8 Spokane: WSBA Board of Governors meeting. *For information:* (206) 727-8200 or contact your local governor.

15 Deadline for copy for July 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

June, 1993

15 Deadline for copy for August 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

18-19 Leavenworth: WSBA Board of Governors meeting. *For information:* (206) 727-8200 or contact your local governor.

July, 1993

15 Deadline for copy for September 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

30-31 Winthrop: WSBA Board of Governors meeting. *For information:* (206) 727-8200 or contact your local governor.

August, 1993

15 Deadline for copy for October 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

September, 1993

7 Victoria, B.C.: WSBA Board of Governors meeting. *For information:* (206) 727-8200 or contact your local governor.

7-11 Victoria, B.C.: WSBA Convention and Annual Meeting.

15 Deadline for copy for November 1993 *Bar News*. Contact Lindsay Thompson, editor, (206) 577-3080.

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Notices of Interest to WSBA Members

WSBA Nondisciplinary Notices:

Interim Suspension: By Supreme Court order entered August 4, 1992, Lacey attorney **Daniel B. Havirco, Jr.** (WSBA #19922, admitted 1990) was ordered suspended from the practice of law pending the outcome of disciplinary proceedings against him based upon his felony conviction.

Interim suspension is pursuant to Title 3 and is not a disciplinary sanction.

Commission on Judicial Conduct:

Stipulation and Agreement to Admonishment: By stipulation dated July 7, 1992 and order of admonishment dated August 7, 1992, Skagit County Superior Court Judge **Stanley K. Bruhn** was admonished by the Commission on Judicial Conduct for violations of Canons 1, 2(A), 3(A)(1),(2),(3) and (6), and 3(B)(3) of the Code of Judicial Conduct. The parties stipulated that Bruhn "tolerated inappropriate demeanor and comments by defense counsel which disrupted the order and decorum" of a trial. "He should not have tolerated this behavior but rather should have insisted upon professional and appropriate behavior by defense counsel. When taxed by defense counsels' behavior [he] demonstrated a lack of patience and courtesy towards them.

The parties stipulated that while presiding in a hearing in another, later case, Bruhn "displayed a continuation of his disapproval of the disruptive behavior" in the prior case "by making inappropriate comments" concerning one of the defense counsel from the prior case, who was present in the courtroom during the hearing, though not in a representational capacity. Even though the attorney's conduct may have been provoking, "a judge must not permit such behavior to result in a loss of order and decorum in the courtroom nor can such behavior, no matter how provoking, result in a judge failing to be patient, dignified and courteous to all whom the judge deals with in his official capacity."

Public Notices

Important Notice to All Active Members: New CLE Reporting Cycle

All active members of the WSBA are required to report their compliance with Mandatory Continuing Legal Education

requirements. APR 11.6. Previously, every active lawyer was required to report a minimum of 15 credit hours each year.

By order of the Supreme Court, beginning this January, *every active lawyer will be required to file a report*

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only every third year, but must report a minimum of 45 credit hours during that three year period.

Reporting: Beginning in January, 1993, all active members of the WSBA will be divided into three reporting groups based upon year of admission:

GROUP 1: ADMITTED IN 1991* AND BEFORE 1976.

GROUP 2: ADMITTED IN 1992*

AND BEFORE 1983.

GROUP 3: ADMITTED IN 1993* AND 1984 THROUGH 1990.

1993: Group 1 will be required to report 15 credits for 1992. That group will next report 45 credits in 1996 for the years 1993-1995.

1994: Group 2 will be required to report 30 credits for 1992-1993. That group will next report 45 credits in

1997 for the years 1994-1996.

1995; Group 3 will be required to report 45 credits for 1992-1994. That group will next report 45 credits in 1998 for the years 1995-1997.

Carry-over credits: At present, any excess credits earned in 1991 must be claimed in 1992 or 1993. For credits earned in 1992 and beyond, a member may carry over 15 credit hours into the next three year reporting period.

Late filing: All active members who are not in compliance by December 31 of the final year of a reporting period must pay a late filing fee of \$150 for the first period of noncompliance. The late filing fee increases by \$300 for each consecutive period of noncompliance.

*Newly admitted members: Newly admitted members are exempt from the requirements of APR 11 for the year of admission and the following calendar year. However, credits may be earned during this period and reported with credits during the first three-year reporting period.

Members will receive further information regarding this revised CLE reporting procedure with 1993 licensing information. Questions may be directed to the WSBA Licensing Department, (206) 727-8222 or 727-8252.

Court Rules Committee Seeks Comments

When it convenes in October, 1992, the WSBA Court Rules & Procedures Committee is scheduled to review the Rules of Appellate Procedure (RAP) and Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ). Member comments and suggestions about these rules are invited. Contact Steven Rosen, Staff Attorney, WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, Washington 98121-2599.

Board of Governors Election Results:

The following results have been announced for elections to the WSBA Board of Governors:

2d District: Vickie K. Norris, Everett (unopposed).

4th District: West H. Campbell, Yakima (elected with 261 votes); Edward V. Hiskes, Richland (203 votes); John J. Sandlin, Yakima (43

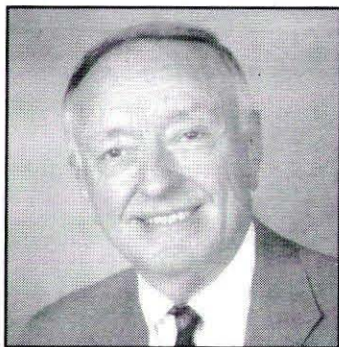
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votes).

7th District: Jan Eric Peterson, Seattle (elected with 809 votes); Lucy Isaki, Seattle (793 votes).

The new members of the Board of Governors will take office after the WSBA Annual Business Meeting in September, and will serve a term of three years.

Ninth Circuit Electronic Bulletin Board:

The public, the bar, and the media can obtain instant access to Ninth Circuit Court of Appeals opinions and orders as they are released, via the court's Electronic Bulletin Board System.

There is no charge to use the service, but users will need a computer, a telephone, and communications software configured to 300, 1200, or 2400 baud. The number(s) to call to access the system are: (415) 744-9022, 9023, 9024, and 9025. Access is 24 hours a day, first come, first served. In addition to current opinions and orders, users can access opinions from the last 30 days, disposition logs, oral argument calendars, the current rules, and press releases.

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 September 1992 is 3.04%. The maximum allowable interest permissible for October 1992 is therefore 12%.

Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills; past maximum interest rates appear in the *Bar News* on page 39 in October 1987 for 1982-84; page 37 in June 1989 for 1984-85; and on page 47 in June 1992 for 1986-92.

CORRECTION

Part of a formula on page 37 of the July 1992 *Bar News* ["Apportioning Settlements to Survivors in Wrongful Death Cases" by Wolfgang Franz] was lost in computer translation. The complete formula and the paragraph preceding it are shown below. The *Bar News* apologizes for the omission.

... [A]n apportionment formula can now be devised. Economic losses should be first subtracted from the settlement and put into a separate account to be drawn upon by the surviving spouse to provide economic support for the family. This may be best assured by having a periodic payment-structured settlement. The remainder of the settlement, which

represents noneconomic losses, is then allocated among family members in proportion to the total number of damage units suffered. These damage units are expressed in terms of a one-year loss of society suffered by the spouse. The formula that determines the portion of the total noneconomic losses that a specific survivor would receive is:

$$\frac{S_j + C_j + T_j}{\sum_{j=1}^n S_j + C_j + T_j}$$

Where:

- S_j = the number of damage units for loss of society of family member j.
- C_j = the number of damage units for loss of consortium of family member j.
- T_j = the number of damage units for loss of training, guidance and instruction of family member j.

This formula applies for any number of survivors.

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ELECTRONIC DATA AS

by John E. Jessen

What do a Fortune-100 company, a Mom-and-Pop corner grocery, an international trading company and the neighborhood gas station all have in common? They most likely use personal computers, or PCs, in their daily course of business. The PC, technically known as a microcomputer, has come to dominate the American business landscape in the past decade. It is becoming difficult to locate a business of almost any size that does not, in some way, utilize a PC.

From employee and payroll records to internal and external correspondence, vast amounts of information are stored each day that reflect the goings-on of the organization. Once stored, a large portion of this information never makes its way onto a secondary medium, such as paper¹. While recognition of the value of this information that is created and stored on a PC (electronic data) has been gradually growing, the legal community has generally been slow to recognize its true potential. This article provides an introduction to electronic data and discusses some possible avenues to follow for its productive discovery and use in litigation.

Electronic Data Defined

Electronic data is created whenever a PC is used to accomplish something. When you type a letter into a word processor, you create electronic data. When you add a name and address to a database, you create electronic data. When you develop a spreadsheet to forecast future sales or enter an employee's time to calculate a payroll, you create electronic data. Electronic data is any information that is either entered into a PC or that is created by the PC in response to a request by an operator. We refer to the data as electronic because it is stored in the PC in a digital, or electronic, form.

The Nature of Electronic Data

One of the key differences that separates electronically stored data from data held on other media, such as paper or microfiche, is its ability to be easily manipulated. Modifying a typewritten document can be a typist's nightmare. An electronic document, on the other hand, can be modified in virtually any manner at a moment's notice. Material can be added, deleted or changed and a new paper copy printed with little time or material expense.

Electronic data can be more easily stored and moved than other data types as well. While a hundred thousand paper documents may occupy many filing cabinets, a similar number of electronically stored documents could fit on a small magnetic disk. This size reduction also means that electronic documents can be more easily relocated or "lost" than other types of documents. It's one thing to attempt to hide a room full of storage boxes. It's another matter entirely to destroy a plastic disk three and a half-inches square and an eighth of an inch thick.

Another area in which electronic data excels is that of retrieval. Documents that once took a great deal of effort to locate and retrieve—for example, a single paper document in a large storage facility—can be easily located if stored electronically. Advances in searching methodologies have greatly enhanced productivity in this area. A recent study required a paralegal to locate and retrieve 20 paper documents from a collection of 20,000. After 67 hours of searching, 15 of the requested documents had been located. All 20 of the requested documents were found in under three seconds when they were stored electronically².

The features described above that make electronic data different from other data types are many of the ones that make PCs so valuable to business. Electronic data is easier to create, modify, store, retrieve and destroy than other data types. These same features,

combined with the unique way in which PC hardware and software operate, can also make electronic data a valuable, although often an elusive and frustrating, source of discovery for the legal practitioner.

Using Electronic Data as Evidence

Over the years, attorneys and their support staffs have developed extensive policies, procedures and methodologies pertaining to the acquisition, analysis and use of paper-based data. The reasoning for this is quite understandable—paper has been around for a long time. To date, the same levels of sophistication for the acquisition and use of electronically based documents have not been developed by the average attorney or paralegal. The reasons for this are many. First of all, many in the legal arena lack the comprehensive knowledge of computer hardware, software and systems that is required to understand the technical aspects of how data is created, modified and stored. Without such an understanding, it is difficult to write the proper interrogatories and requests for production that elicit the desired information. At present, most requests for electronic data are usually simple, generic add-ons to traditional paper document requests.

Secondly, most attorneys do not have the time that is required to stay on top of the changes that are occurring in the PC arena. Hardware and software changes occur constantly and require a large commitment of both time and capital to stay ahead. It is difficult to locate and utilize electronic data without current knowledge of the way in which the software creates and modifies the data and the way in which the hardware stores and moves it.

The use of electronic data as a common discovery source remains underdeveloped, due, in part, to the two factors described above. Those who are using electronic data as a discovery

EVIDENCE: A LITIGATION TOOL

source, however, are finding it to be invaluable. "Electronic information discovery opens up a whole new dimension in case preparation," says Ken Shear of Endriss & Shear, a Seattle firm concentrating on employment litigation. "You can miss a lot if you leave that door closed." A well-thought-out and well-implemented electronic data discovery plan can yield tremendous results.

Electronic Evidence: Getting Started

A planned approach to discovery usually yields the greatest results. This is especially true when dealing with electronic data. As we have seen, electronic data is very dynamic and can be modified easily. While productive in a business sense, from a discovery standpoint this can be disconcerting. A simple miscalculation can effectively damage or destroy hundreds of data files. In addition, if electronic data that is found is not handled properly, it could be considered tainted and found inadmissible. There are several steps that should be followed when considering electronic data as a discovery source:

First of all, step back and look at the opponent's entire computer system. What hardware do they use? What software do they use? If they make backups, how often do they do it and what backup methodology do they employ? What policies and procedures are in place that impact the operators of the system? Do they use electronic mail? Hardware and software are quite predictable. Once you know what the computer system looks like, you have a good idea of how information is entered, created, modified, stored and erased. This initial information regarding an opponent's computer system can be gathered from many sources, including your client, published materials, witnesses, depositions, interrogatories and requests for production.

Once you have developed a profile of the other side's system, you can be quite

specific in your requests for additional information. Additional deposition questions, interrogatories and requests for production can be tailored to elicit exactly what you want. If properly developed, these tools go a long way towards ensuring that you get the information you need.

You can go so far as to subpoena a computer if the information you have gathered indicates that there may be useful information on it. In this situation, you would actually have someone sit at the computer and review the contents for the desired information. This procedure can often be very valuable for several reasons. First of all, you will have access to the actual data and not some carefully screened subset that has been chosen for you. Secondly, much of the data on a typical PC is not kept in an organized fashion. You may locate files that were not found by your opponent and, therefore, were not included in production. Finally, it is possible to get an idea from the computer itself as to actions that were taken regarding its electronic data. If large amounts of data were erased from the system, it could show up as plainly as a fingerprint on a clean glass. There may also be the opportunity to bring back these "erased" files and restore them to their original form. Again, you would receive information that perhaps was not included in production.

Any electronic data that is found that may be of use should be treated carefully. All pertinent information relating to the circumstances under which it was located should be recorded. The original data should be secured and should not be used for subsequent analysis. Copies of the data should be made, and these should be used instead. Any steps that you can take to authenticate the data and to minimize its usage may prove to be valuable at a future date.

The Value of Electronic Data

People are more aware than ever of the legal implications of the actions that

they take. For this reason, letters, memos, spreadsheets, and reports are often scrutinized for possible problems. This "crafting" process may result in a politically and legally correct document, but it does little to reveal the true intent or content of the underlying author or data set. You can sometimes pierce this veil by utilizing electronic data discovery methods. Electronic documents are often created in versions, with subsequent revisions stored as separate data files. These early versions of a document can be useful in developing timelines of events and in showing the author's thoughts.

A comprehensive electronic data discovery program can lead you to evidence that is simply not available in any other format. As usage of the PC increases, more and more data will be created and stored that will never leave its electronic world. This means that you must go to it in order to use it as evidence. The world of information is changing at a rapid pace. Your discovery and litigation tools must change right along with it.

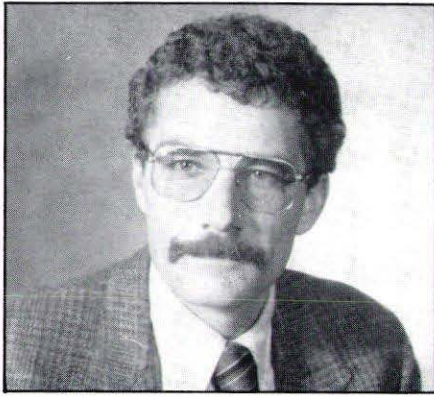
References

¹ EED Staff White Paper, *The Utilization Rate of Electronic Data*, Electronic Evidence Discovery, Inc., 1991.

² "The Legal Market: Making a Case for Optical Storage," *Reseller Management*, November, 1990, pp. 106-110.

John E. Jessen, recently named the "Sherlock Holmes of Software" by The Seattle Times, serves as managing director of Seattle's Electronic Evidence Discovery, Inc., which assists attorneys in understanding, locating, retrieving, analyzing and utilizing electronic evidence in litigation.

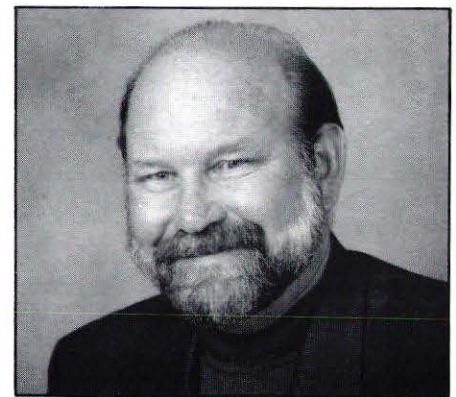
On December 18, Jessen, along with David Binney, will conduct a WSBA CLE entitled "High-tech Discovery: Finding and Using Electronic Data in Discovery."



West H. Campbell



Vickie K. Norris



Eric Jan Peterson

Four Join WSBA Leadership

by Lindsay Thompson

With the end of the Association's annual meeting in Vancouver September came the annual changing of the guard on the Board of Governors. Three new governors took on the representation of lawyers in the Second, Fourth and Seventh Congressional Districts for the next three years, and Seattle lawyer **Stephen E. DeForest** succeeded Spokane lawyer Joe Delay as the Association's president for 1992-93.

In northwest Washington's First Congressional District, Everett lawyer **Vickie K. Norris**, 40, was elected unopposed. She succeeds Bellingham lawyer John T. Slater. Born in Texas, Norris graduated from the University of Washington in 1974 and from Willamette University's College of Law in 1978. She served as a Snohomish County deputy prosecutor from 1978 to 1981, when she went into private practice. Norris is a partner in the Everett firm of Anderson Hunter, P.S., whose members include a past WSBA governor, Julian C. Dewell, and practices insurance defense and plaintiff's personal injury law.

In eastern Washington, Yakima lawyer **West H. Campbell**, 40, defeated two other contenders to be elected governor for the Fourth Congressional District. He succeeds Pasco lawyer John G. Schultz. A Boston native, Campbell was raised in Yakima and educated at the University of Arizona and the University of Washington, graduating in 1974. He attended the University of Puget Sound School of Law from 1976 through his December, 1978 graduation, and was

admitted to practice in May, 1979.

Campbell joined the Yakima firm of Gavin, Robinson, Redman, Pratt & Crollard upon being admitted, and became a shareholder in 1984. Formed in 1947, the firm has long been active in Bar Association affairs: two members, John Gavin and Robert Redman are prior governors and presidents of the WSBA. Campbell's practice is primarily in the field of civil litigation, with an emphasis in personal injury, property damage and professional negligence cases. He is a trustee of the Washington Defense Trial Lawyers Association and a variety of other law-related groups at the local, state and national levels.

In the Seattle-based Seventh Congressional District, **Jan Eric Peterson**, 48, was elected to succeed Lem Howell. A Washington native and 24-year resident of the Seventh, Peterson has been a partner in the Seattle firm of Peterson, Bracelin, Young, Putra, Fletcher & Zeder since 1973. Among the firm's members is former WSBA governor and president Elizabeth Bracelin. A trial lawyer, judge pro tem, and frequent arbitrator and mediator, Peterson has served on WSBA and Seattle-King County Bar Association judicial selection and legislative committees. He was president of the Washington State Trial Lawyers' Association in 1982-83, a state delegate to the American Trial Lawyers' Association from 1983 to 1985, and president of the Washington Chapter of the American Board of Trial Advocates in 1990. He was editor of the

ABA Young Lawyers magazine from 1976 through 1978 and has served on numerous other bar-related committees, boards and groups. He is listed in *The Best Lawyers in America* and *Who's Who in American Law*, and says he "likes children, dogs, and Alva Long."

Though it's not a requirement, WSBA presidents are usually elected from the ranks of former members of the Board of Governors by the sitting Board. To ensure representation among the state's geographical areas and concentrations of lawyers, the presidency generally travels on a three-year rotation, between eastern Washington, represented by immediate past president Joe Delay, western Washington outside King County, and King County.

Presiding over the Board, and the Association, for the coming year, is Seattle lawyer Stephen E. DeForest, 59. A Seattle native, DeForest is a 1955 summa cum laude graduate of Yale and a 1960 cum laude graduate of Harvard Law School. A member of Riddell, Williams, Bullitt & Walkinshaw in Seattle, DeForest has been active in state and local bar affairs for over thirty years, serving as president of the Seattle-King County Bar Association in 1981-82 and on the WSBA Board of Governors from 1987 to 1990. In the mid-1970s he served on the WSBA Editorial Advisory Board; in 1976 he served as Acting Editor of the *Bar News*. DeForest's practice concentrates in the areas of litigation, corporate and business law, and defamation defense. DeForest's first column as president appears on page 11.



COMPUTER TECHNOLOGY

**I'm From the ABA.
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by *Lindsay Thompson*

Martindale-Hubbell, the New Jersey based publisher of thick books full of lawyers' names, has announced an agreement, in principle, with the American Bar Association to introduce a universal lawyer numbering system.

In a press release, Ira Siegel, Martindale-Hubbell's president, called the numbering system an "innovative strategy" which "will enable Martindale-Hubbell and ABA to track trends in the legal profession and, in turn, be responsive to the information needs of members of the legal community."

Under the agreement, a discrete number will be assigned to all domestic lawyers, and will serve as a unique identifier during a lawyer's professional career. The numbering system will be implemented in future editions of the Martindale-Hubbell directory in hard print, CD-ROM, and online via the Lexis and Nexis research services.

As part of the agreement, ABA members will be identified with an official ABA symbol in future editions of the Martindale-Hubbell directories, which now identify members of the International and Canadian Bar Associations.

FEDERAL COURTS

**Justice O'Connor
Denounces Gender
Bias**

by *Michael Hofferber, Outrider
News Service*

Supreme Court Justice Sandra Day O'Connor called for an end to gender bias and sexual harassment in the nation's courts during an address before the Ninth Circuit Judicial Conference at Idaho's Sun Valley Resort August 9.

Referring to a Ninth Circuit task force study that found evidence of gender bias in both court appointments and attitudes

toward litigants, O'Connor told the gathering of over 400 jurists and lawyers from nine Western states they must learn to recognize the bias and eliminate it from their courtrooms.

"Where the courts go, the rest of the judicial system will follow," O'Connor said.

The task force, established in 1990 by the Ninth Circuit's Judicial Conference,

issued a 200-page report in August that detailed a variety of findings of sex-based discrimination in the Western federal courts. The report's findings were based on surveys of 232 federal judges in the Ninth Circuit and more than 3500 male and female attorneys throughout the Circuit, supplemented by group interviews with attorneys in various types of practice, including U.S.



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Attorneys' offices, federal public defenders, and private criminal defense and civil law firms. Task force researchers also combed public records to collect statistical data on representation of women on Ninth Circuit bench and bar committees and in appointed positions, and conducted legal research to examine how women are treated by judicial decision-makers. The task force was chaired by Judge John C.

Coughenour, U.S. District Judge for the Western District of Washington. Among its members was Seattle lawyer M. Margaret McKeown.

The nation's first woman Supreme Court justice explained that gender bias can start at a very early age. As an example, she quoted from a letter she received from a student in New Jersey. "I think you're the fairest judge in the United States," it read. "I hope you

become the President's wife."

Over half the judges surveyed by the Ninth Circuit's gender bias task force said they observed lawyers treating women litigants with less respect than they treated men, O'Connor pointed out.

Judges should not let inappropriate behavior occur in their courtrooms simply because they are inured to it, she continued.

Now that she is 62 years old and eligible for senior citizen discounts, O'Connor said, she feels more free to speak her mind without fear of the consequences. This could be because as we get older our skins get thicker, she said, "or because those who are younger no longer take us seriously."

O'Connor advocated greater civility in the courtroom and called for an end to military metaphors in discussing litigation. Statements like, "I demolished his argument" or "If you use that defense, they'll kill you" encourage a war-like attitude in and out of the courtroom, she maintained.

As an alternative, the Supreme Court justice suggested approaching legal arguments as a form of discourse. Instead of focussing on attacks and tactics, lawyers ought to give greater attention to mediation, arbitration and negotiation.

O'Connor criticized the "bottom line" focus of the nation's top law firms and said lawyers need to be more mindful of their civic and moral responsibilities.

"While lawyers are working harder than ever and making more money than ever, an increasing demand for pro bono service is going unfilled," she told the conference.

O'Connor also criticized the Ninth Circuit's process for handling eleventh-hour appeals of death sentences. "A single judge on a 28-judge court is able to delay (an execution) up to a week simply by calling for a vote," she pointed out. "The other circuits seems to be able to consider habeas petitions in well under seven days."

O'Connor suggested that the Ninth Circuit follow the Supreme Court's example by having its clerk follow capital punishment appeals in the district courts and distribute copies to circuit judges to keep them informed of the arguments being presented. This lets judges familiarize themselves with the cases before they appear as a last-minute

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request for stay of execution.

The court has a twin obligation, she said, "to be fair to the petitioners, and to be fair to the states enforcing their laws."

LEGAL EDUCATION

ABA Says Developing Lawyer Excellence A Joint Responsibility of Bar and Law Schools

An American Bar Association task force issued an exhaustive analysis of the role of law schools and the practicing bar in developing lawyering skills and values on August 9.

The report calls for a long-range approach to achieving excellence in the legal profession.

Created by the ABA Section of Legal Education and Admissions to the Bar, the task force took a searching look at public and professional expectations of what lawyers are and ought to be, what skills and values they need to fulfill those expectations and how they go about acquiring those skills and values during and after law school. It developed an agenda for long-term change, said Robert McCrate of New York, past ABA president and task force chair. He said the report concludes lawyer development is a continuum that extends through a lawyer's education and career. As a result, "the responsibility for providing society with a profession of excellence does not lie solely with law schools or with the practicing bar. Rather, it must be a common enterprise of both."

Among the task force's recommendations is the creation of an institute for the practice of law, a nonprofit educational venture to work toward a more integrated process of education to assist the profession in meeting the public's expectations of lawyer competence and professional responsibility. It would be created out of parts of existing ABA divisions and other interested groups. The report was presented at the ABA meeting in San Francisco.

KING COUNTY

Holcomb Assumes Law Library Command

Jean M. Holcomb, formerly Law Librarian at the Norfolk, Virginia Law

Library, has been named director of the King County Law Library in Seattle. After an extensive search process, Holcomb was selected from several well-qualified candidates, said Annetta Lawson, a member of the search committee.

A magna cum laude graduate of the University of North Dakota, Holcomb obtained her M.L.S. degree from the

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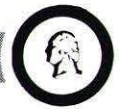
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University of Alabama, and her law degree from the University of Alabama School of law. She is a member of the Alabama Bar Association and the American Bar Association, and is active in the American Association of Law Librarians.

Holcomb assumed her Seattle post this month.

NEWS FROM HOME

P. Arley Harrel, a partner at Williams, Kastner & Gibbs in Seattle, addressed the ABA's annual meeting in San Francisco in August. He spoke on the use of expert witnesses at trial.

Ed Holpuch, formerly of the Seattle

law firm of Hatch & Leslie, was recently elected District Attorney for Grant County, Oregon. Holpuch, who takes office in January and has practiced very little criminal law since his admission to practice in Washington in 1970, was last seen looking for a Gilbert's on criminal law and hoping that New Year's Eve in John Day will be a quiet one.

Seattle lawyer **Robert Mussehl** has been appointed to serve a three-year term on the ABA Standing Committee on Dispute Resolution by ABA president **Michael McWilliams**.

Edward F. Shea, a Pasco lawyer and former member of the WSBA Board of Governors, has been appointed to a one year term on the Commission on Public Understanding of the Law by ABA president McWilliams.

Philip Winberry has been elected managing partner of Foster Pepper & Shefelman in Seattle.

Two former partners in a Seattle firm have left to start their own practice. **David C. Groff, Jr.** and **Michael J. Murphy**, late of Davis Wright Tremaine, now do business in Seattle as Groff & Murphy. **Jerry Everard**, also formerly with Davis Wright, and **Celeste Stokes** have joined the firm as associates.

Douglas W. Luna, former associate judge with the Northwest Intertribal Court System, has been appointed administrative judge with the U.S. Equal Employment Opportunity Commission. His geographical area now includes the States of Washington, Oregon, Idaho and Alaska.

WSBA executive director **Dennis P. Harwick** was elected state delegate to the National Association of Bar Executives.

THE JUDICIARY

King County Superior Court Judge **Norman W. Quinn** retires from the bench October 7, concluding 20 years' service. He was elected to the bench in 1977 and served as a commissioner of the court for four years prior to his election. Effective October 12 Judge Quinn will join Judicial Arbitration &

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OPWPLICCB1960 REPORT
(Old Pharts Who Practiced Law
in Chelan County Before 1960 Bar
Association)

by **CHARLES W. CONE**

Summer Meeting: The summer meeting of the association was held at Barney's in East Wenatchee on July 17, 1992. Members present were **Ed Engst, John Phelps, James Lynch, Bernice Bacharach, Edson Dow, Charles Cone, The Honorable H.B. Jerry Hanna, The Honorable Robert Graham, Lowell Sperline and Bernie Burke.**

The summer meeting was changed from the Chelan Park to the East Wenatchee Restaurant for the convenience of the members.

It was reported that Phelps had won the 10K fun run but was denied the gold medal because post-race testing revealed high levels of Metamusil in his system. Ed Engst, former star hurler for the Fats reported that he had lost two pounds and insisted on pitching for the Skinnies in the softball game. Engst hurled a no-hitter through one inning after which the game was called, with the score 26 to nothing in favor of the Skinnies. (*An Editor's Note: Taking two pounds off of Ed Engst is like taking a bucket of sand from the Sahara Desert.*)

Charles Cone, acting chair, reported that the association has been invited to meet in September with the Chelan/Douglas County Bar Association so that the newer members practicing law can have the benefit of the wisdom and experience of the members of our association.

President **Steve Crossland** of the Chelan/Douglas County Bar Association has reported that each of us will be allowed to mumble and mutter for three minutes.

At the business meeting the minimum-fee schedule was reviewed but no changes were made. The group did, however, pass unanimously the resolution endorsing the preservation of the Devine Right of Probate Fees.

CLARK COUNTY REPORT

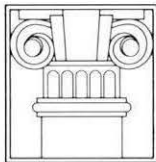
by **JOHN F. NICHOLS**

It's never too early.

While the majority of us lazy lima-bean attorneys are lounging at Club Slurpy catching the last zephyrs of a long, hot summer, there are those hard-working competitors positioning

themselves for the strenuous fall campaign. No, I am not referring to those running for some trivial elected post (Quayle, et al.); there are those wily lawyers positioning themselves for the prime yellow-page spots. Yes, the Beagle campaign has already started. Traditionally, the Beagle rush does not begin in earnest until the first yellow-page salesman places calls on October

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12 at 8:04 P.S.T. Whether due to the Columbus Quincentennial or the economy, the ground movements were already detected in early August. This is unheard of in the modern push-button phone era.

The first ripples were felt with the divestiture of the Darrel Lee firm. Declaring their autonomy were Mike Langsdorf (now with Bob Gregg and

Rob Russell), Bob J.R. Yoseph (Ihringer & Dunkerly) and Bob Mitchell (sighted somewhere in the Cascade Park area). Darrell remains at the Hazeldell office restricting his practice to serious criminal and track law.

Other movements find Terry Lee (no relation nor resemblance except around the suspicious eyes) moving

from Landerholm, Memovich et al. to Marsh, Stichman, Higgins et al. Apparently, with John Stichman on the stump (or up a stump) for the county commissioner job, there was a need for another hard-driving domestic attorney, but they hired Terry anyway.

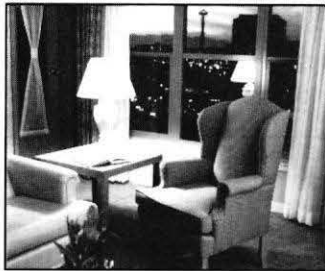
The battle is also brewing over the yellow-page positions of the judicial candidates Jim Rulli and Ed Poyfair. The vultures waiting to pick the bones of the winner are offering outrageous amounts for said space. The catch is they must also use the previous occupants' graphics. In Jim's case, the explosion effects coming out his ears, or the leaning office/house for Ed.

As the old riddle queries, Where do you bury the survivors?

The final answer will be announced in this space as time and interest allow.

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EAST KING COUNTY REPORT

by **MARIJEAN E. MOSCHETTO**

October is ELAP month. For those of us on the Eastside, the Eastside Legal Assistance Program is a particular source of pride.

Started by the East King County Bar Association in 1989, ELAP has accomplished extraordinary things by way of providing services to those in our community who cannot afford legal services. A variety of services are provided: lectures are held for senior citizens on probate and related matters; family law workshops give basic instruction on how to fill out the forms; there are special clinics held for victims of domestic violence; and the basic legal clinics serve those with questions on landlord-tenant problems, civil and small claims, and bankruptcy. Where appropriate, ELAP refers clients to the Seattle-King County Bar Association Mentor Program and Evergreen Legal Services or its own ELAP Pro Bono Panel.

Eighty-five attorneys from the Eastside volunteer their time to staff the clinics and workshops. We salute two of our outstanding volunteers: **Phil Shuklin**, who takes numerous pro bono cases, and **Rudy White**, who bails out the clinics when the scheduled

attorney can't show up. ELAP's work in three short years has earned it and the East King County Bar Association the 1992 Pro Bono award, to be shared with the Spokane Bar Association.

ELAP receives grant money from the cities of Bellevue, Redmond, Kirkland, Bothell and Mercer Island. Some of its funding comes from IOLTA and King County. However, like many other social service organizations, ELAP's funding through IOLTA and King County is in serious jeopardy due to revenue problems.

Many prominent Eastside law firms and lawyers have generously donated money to ELAP, including Riddell Williams, Inslee Best, Bogle & Gates, Windus Thomas, Oseran Hahn, Patrick Lepley, Revelle Hawkins, the Van Eaton firm, Tudor & Tudor, and Ken Davidson.

ELAP is sponsoring a fundraising raffle, where the grand prize will be a Disneyland trip for four, including airfare, hotel and Disneyland passes. The winner will be announced at the EKCBA holiday party on December 17.

On October 15 EKCBA will co-sponsor a luncheon with ELAP, combining ELAP's fundraising event with its own membership meeting. Expected speakers will include the congressional candidates for the Eighth Congressional District. ELAP's president Ted Barr will be present with EKCBA President Ron Dickinson.

GOVERNMENT LAWYERS BAR ASSOCIATION REPORT

by EVELYN A. FIELDING

It is impossible to try to write something interesting for October, when it's really mid-August, but this summer has been so action-packed that you'll want to read this even if it isn't the very latest scoop.

August was notable for two events at the Attorney General's office. There was the annual conference (this year returning to the WSU campus), which for the first time offered wine-tasting for discriminating AG palates, and the annual AG picnic in Olympia. This year's picnic competition was a cookie

contest (rolled, drop, or bar). Pity the judge facing 14 varieties of fudge brownie—unlike the method for wine-tasting, swish-and-spit is out of the question for public cookie consumption.

This summer the political campaigns have added to the GLBA roster of activities. We have co-sponsored a lunch program featuring the candidates for the Attorney General's office, and an

evening soiree to meet the eight candidates for three judicial seats on the Thurston County Superior Court (although 200 attorneys and a no-host bar may not really qualify as a "soiree" in the strictest sense). Kudos to Nancy Krier and Kate Walsh for their unflagging efforts to make these programs a success.

On a more serious note, about 20

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government lawyers recently met with our WSBA District Governor, **Steve Tubbs**. The meetings was an excellent first step toward an ongoing dialogue with Steve about the particular concerns of government attorneys. One of those concerns involves the expected bar dues increase. This is a sensitive issue to government lawyers because we have to pay the fees ourselves; the amounts are not tax-deductible, and some of the services provided by the WSBA appear to benefit the private bar rather than the public-sector bar. At the same time, government lawyers do not want to segregate themselves from the rest of the organization. No doubt, fee questions and related funding issues will continue to be of the greatest interest through the remainder of the year.

LOREN MILLER BAR ASSOCIATION

The Loren Miller Bar Association announces election of its officers for 1992-1993. **Deryl Brown-Archie** is president; **Lawrance Edwards** is vice president; **Bruce Harrell** is second vice president; **Millicent Newhouse** is secretary; **Bernardean Broadous** is assistant secretary; **Pat Hall-Clark** is treasurer; and **Barbara Laners** is member at large.

LMBA's annual dinner will be held on October 17. at the Harbour Club of Seattle's Norton Building. This year's theme is the judicial selection process, and the guest speaker is Washington Justice **James Dolliver**. For further information, contact **Gwen Howard** at (206) 464-5449 or **Lem Howell** at (206) 623-5296.

Formed in the 1960s as a support network for African-American attorneys, the LMBA has about 200 members. For more information, write P.O. Box 4233, Seattle, WA 98104.

PIERCE COUNTY REPORT

by **GEORGE S. KELLEY**

When one returns to school after summer recess, an essay is expected on one's summer vacation. The following are excerpts from the summer vacation essays of Pierce County attorneys.

First we have the tale of **Ron Coleman's** vacation in Sun River, Oregon. He was riding his mountain bike when he flipped over its handlebars and onto a big rock. If points were awarded as in Olympic diving competition, Ron would have received a 10 for degree of difficulty and a minus 2 for form. What he did get was a ruptured spleen and a quick trip to a hospital in Bend. Not to worry, as Ron

has had a good recovery and an interesting looking scar. His associates, who practice in the personal injury defense area, assure him that a spleen has no known function and he is probably better off without one.

Gerry Neil was on vacation in a Nevada resort area when he received a 10 p.m. call from his newly hired associate asking if Gerry's secretary had authority to fire him. It seems that the associate was difficult for the office staff to work with, and one morning during the boss's vacation the secretary met the new associate at the door with his personal effects and final paycheck. Gerry's reply to the ex-associate was that he was expendable, while his secretary of 12 years was not.

Tom Krich's daughter was returning from a marine biology summer school experiment in the family truck when she had to brake hard to avoid an accident. Unfortunately a container of sulfuric acid which was part of the experiment spilled on the floor and caused substantial damage to the truck interior. This resulted in Tom's having to explain to his automobile insurance agent how his truck was damaged by his teenaged daughter dropping acid. And who says the '60s are dead?

Then there is **Steve Demarest** who left town on a permanent vacation to open a bunk and beans place called Friday's in Friday Harbor. Actually, it's an historical inn. Next time you are vacationing in the San Juans, look up Steve and his wife **Debbie** to see if life is really better on the other side of the ferry landing.

Finally, there is the attorney who shall go unnamed, who after an argument with Pierce County jailers over the slow release of a client, was allowed a short vacation on the county on an obstructing charge. One might observe that losing one's spleen may be preferable to venting it in the wrong place.

The rest of the bar members did not get a vacation this summer, as they were running for either judge or court commissioner, or they were working on judicial campaigns. Look for the results of those efforts next month along with the annual golf tournament issue.

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opened new offices at the Seafirst Center in downtown Tacoma. Burgess, Fitzer, Leighton and Phillips moved to the 1501 Market Building on Market Street. **Ross Taylor** moved to 10th and I Streets. **Terry Barnett** returned to Tacoma from Seattle and is practicing with Rumbaugh and Rideout.

SOUTH KING COUNTY REPORT

by **JANE C. RHODES.**

The annual South King County Bar Association Golf Tournament was again bestowed with beautiful weather and a great turnout (99 golfers and dinner guests). It was a hot one, and if it had not been for the "ladies by the creek" dispensing refreshments, many of the duffers may have expired on the back nine. Great prizes were awarded after the barbecue dinner, and kudos to **Bob Kuvara** and **Matt Sayre** for tying for best score and winning the tournament. The hearty went on to Crane's corner for horseshoes under the stars. Thanks to **Mike Salazar** and crew for another great "Phil Beige Open," and congratulations to Phil for appearing in such good form after so recently having open heart surgery.

New around south county—Welcome to **Tom Campbell** who has joined Duncan Bonjourni (the relatively new Auburn municipal judge). Thanks to **Pete Curran** for taking on the responsibility of the South King County Legal Clinic, with even more thanks to **Harry Reichenberg** for his past few years of shouldering the responsibility for the legal clinic. The clinic is still in need of volunteer attorneys to help at the clinic which will be operating on Wednesday evenings at the Kent Senior Citizens Center, with three attorneys needed per night. Any attorneys interested in helping out, please give Pete a call. Word has it that Lenninger & Harpold are constructing a new building by the Aukeen District Court in Kent with an interesting roofline and "homey" architectural style, so check it out. Finally, I want to congratulate my associate, **Theresa Ahern** on her impending marriage to **John Greaney**, a downtown attorney. We are sure

Judge **Deborah Fleck** will not forget to officiate at the nuptials on October 17. If there are any new attorneys in the area who want to join our bar association, please give me a call. The meetings are the third Thursday of each month at Anthony's Homeport in Des Moines.

WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS

The following persons were elected or succeeded to their respective offices at the 36th annual meeting of the Association at Bellevue, June 18-19: **Larry D. Winner, Sr.** (Sr. Asst. City Attorney, Spokane), president; **Richard L. Andrews** (Bellevue City Attorney), first vice president; **Mark O. Erickson** (Olympia City Attorney), second vice president; and **Daniel B. Heid** (SeaTac City Attorney), **Wayne D. Tanaka** (Issaquah City Attorney), and **John E. Vanek** (Yakima City Attorney), board members. **Martin F. Muench** is immediate past president. Other board members are **Glenna Bradley-House** (Ellensburg City Attorney), **Sandra Driscoll** (Federal Way City Attorney), and **Sandra M. Watson** (Assistant City Attorney, Seattle). **Robert F. Hauth** is secretary-treasurer.

WASHINGTON STATE TRIAL LAWYERS ASSOCIATION REPORT

by **LETHA J. OWENS**
and **LORI D. HANSEN**

Ellington named judge of the year:

King County Superior Court Judge **Anne L. Ellington** was named Judge of the Year at the WSTLA Annual Convention.

WSTLA president **Halleck H. Hodgins** said Ellington was chosen because she is "an outstanding judge, a leader on the court, and an intellectual beacon on the judicial landscape.

"Judge Ellington ranks at the top of Washington's judiciary. She is universally respected by her judicial peers and, among trial lawyers, is seen as a staunch defender of the rights of people and victims."

Ellington has served on the superior court bench since 1984. She received her law degree from the University of Washington and was a clerk for the Washington Supreme Court, an assistant attorney general and private-practice attorney before becoming judge.

She also has been chairperson of the State Sentencing Guidelines Commission since 1987 and is a board member of the Northwest Women's Law Center.

"We are delighted to honor Judge Ellington for her leadership qualities, her compassion and her dedication to equal justice for all people," said Hodgins.

People's Law School Given National Attention

WSTLA's People's Law School (PLS) program was highlighted in an article in the August 2, 1992 issue of *The New York Times*. The article by Ken Hunt discusses WSTLA's special-interest PLS, designed to address the topics of interest to a particular segment of the population. Past PLS topics

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BRIAN BOYLE

Most legal scholars believe that, as a common-law doctrine, the public trust is molded to meet the changing needs of society. Washington courts have not determined the full extent of allowable public uses of public-trust resources.

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- *Orion & other Washington cases*
- *The public trust & coastal-zone management*
- *The Public Trust Doctrine & state aquatic-land management*



have covered issues for small businesses, nurses, seniors and homosexuals. **Lori Haskell**, coordinator of the PLS for WSTLA last year, was quoted several times in the article, though her name was misspelled. WSTLA's People's Law School Program is breaking new ground in the area of public outreach. This national recognition of the program is well deserved.

Now entering its seventh year, the original PLS will bring its curriculum of basic legal information to the public in over 20 locations throughout the state. In classes taught by volunteer attorneys one night a week for six to eight weeks, PLS participants learn the basics of our legal system, including such topics as; the Constitution and your rights, consumer law, criminal law, personal-injury law, worker's compensation, estate planning, wills and probate. To date, approximately 13,000 people have attended these classes, and WSTLA hopes to continue expanding locations and enrollment. If you are interested in participating in one of the more than 20 scheduled programs or in organizing a PLS in your area, please contact the WSTLA Office at (206) 464-1011 or (800) 732-9251.

Other news:

Paul Luvera and **James S. Rogers** were featured speakers at the Montana Trial Lawyers Association's Annual Convention on August 7 and 8 in Bozeman, Montana.

If you have any items you wish to appear in this column, or have any comments, please contact **Letha J. Owens** at (206) 542-3138 or **Lori D. Hansen** at (206) 637-3067.

WASHINGTON WOMEN LAWYERS

For the second year in a row, Washington Women Lawyers will hold their annual dinner at the Seattle Athletic Club immediately following the state board-sponsored CLE. The events will take place October 9, 1992. "Sexual Issues in the '90s" will be presented at Plymouth Congregational Church, starting at 9 a.m. The program will address civil sexual abuse cases, as

well as criminal ones, from a variety of perspectives. The annual dinner, featuring Women's Legal Defense Fund president **Judith Lichtman**, will be held at the WAC following a 5.30 p.m. reception. For information and reservations, call (206) 622-5585.

IN MEMORIAM

W. Gordon Kelley, 64, died May 31, 1992 in Bellingham. Born in Spokane, Kelley graduated from the University of Washington and Gonzaga University School of Law. He also served in the U.S. Coast Guard.

Kelley opened a law office in East Wenatchee in 1953. Active in community affairs, including the construction of Rock Island Golf Course and the Valley North Mall, Kelley was also active in legal groups. He was a member of the Washington State Trial Lawyers' Association, and past president of the Chelan-Douglas County Bar Association. He moved to Bellingham in 1988. Survivors include his mother, stepmother, wife, two children and eight grandchildren.

Theodore S. Turner, 93, died June 14, 1992 in Seattle. A Seattle native, Turner graduated from the University of Washington School of Law in 1923. In the 1940s he served four terms in the State House of Representatives, rising to chair the Judiciary Committee. There, says retired King County Judge George Revelle, Turner was an unsung pioneer in helping pass a 1948 law against discrimination in employment.

Turner worked as a deputy prosecuting attorney for King County, and was appointed a Superior Court judge in 1949. He served 24 years, until his retirement at 75 in 1973.

A painstaking jurist, Turner was noted for the thoroughness of his research and preparation in rendering decisions. Colleagues remembered him as a tireless, deeply thoughtful judge who wouldn't be rushed to get a decision out.

Turner was also noted as a violinist and violist, and played with several Seattle-area orchestras. Survivors include four children, ten grandchildren, and four great-grandchildren.

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WILL SEARCH

James Murphy. Anyone having copy or knowledge of will of James Murphy of Kitsap County, died March 1992, contact James J. Mason, (206) 272-1500.

Robert Bottini of Lynwood, recently of Vancouver, died 7/27/92. Anyone with a copy or knowledge of a will, please contact Denise Carper at (916) 362-1608.

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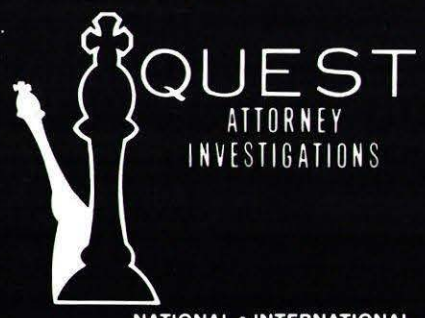
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