Washington State Bar News
Vol. 46, No. 2, February 1992

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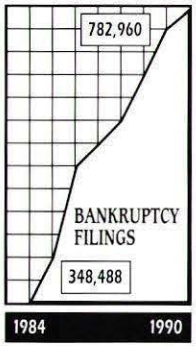

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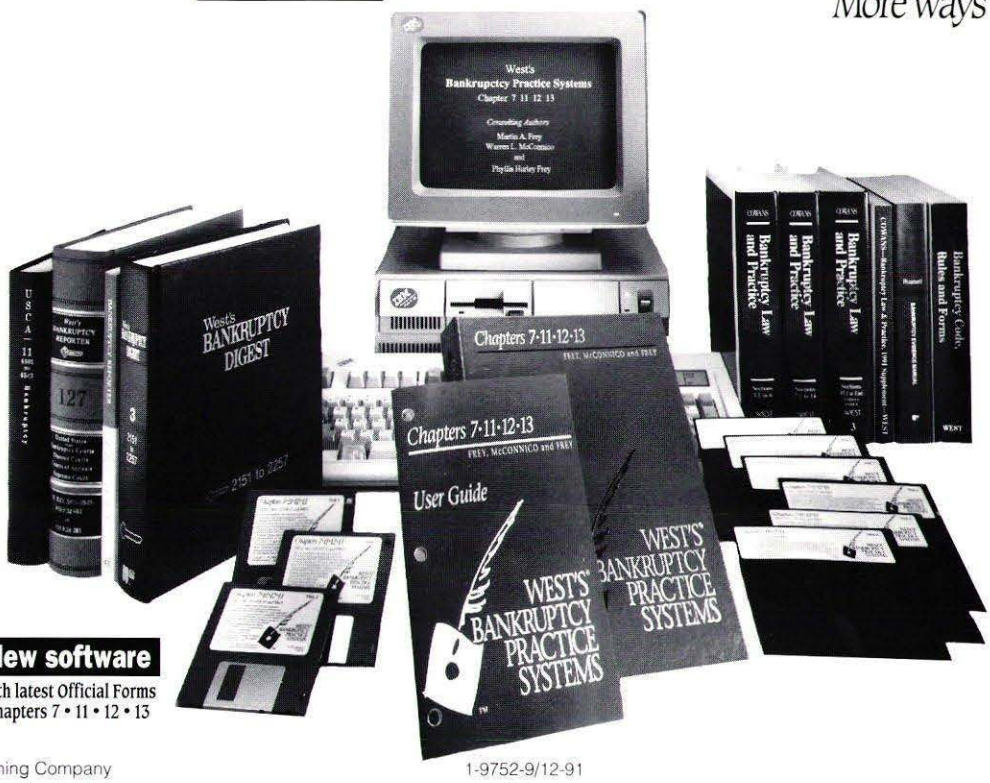

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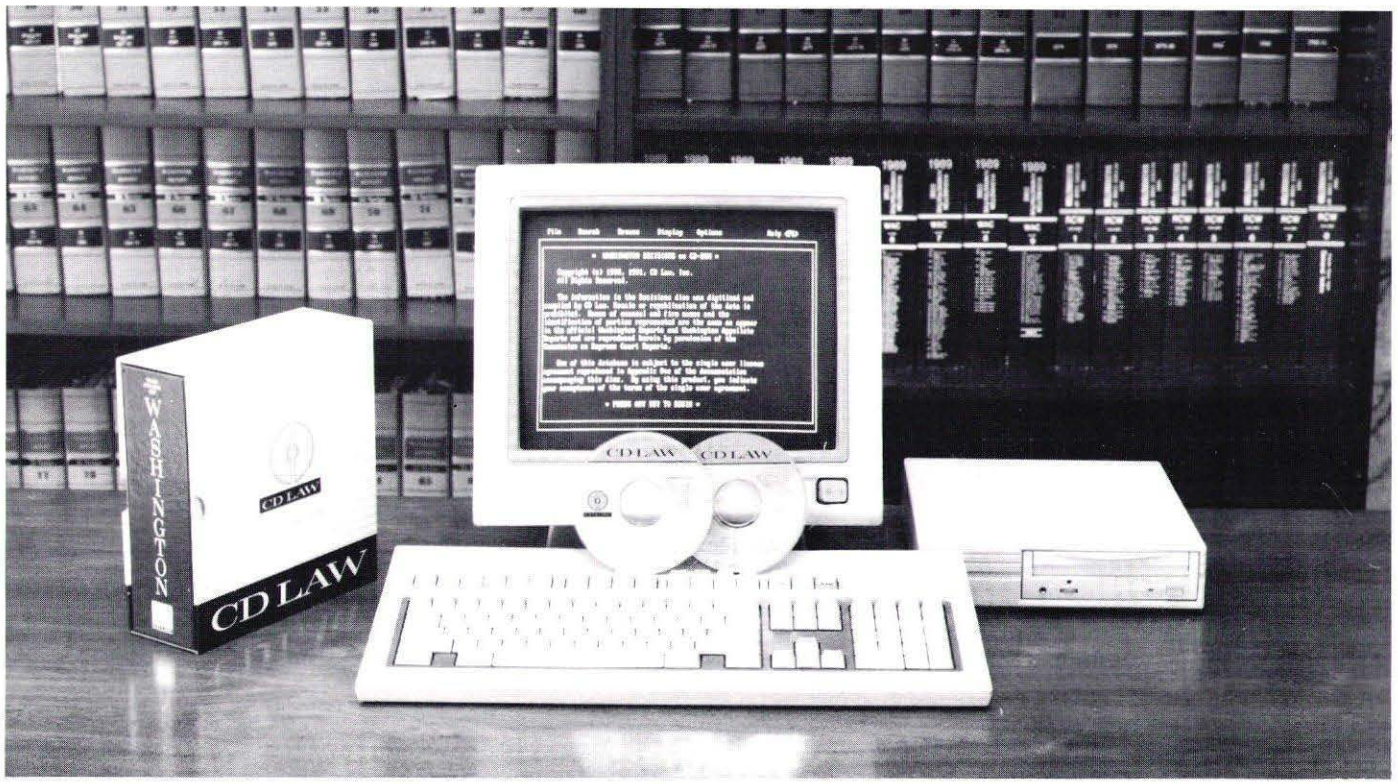

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Washington State Bar News
Vol. 46, No. 2, February 1992

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SPECIAL COMPUTER ISSUE

DEPARTMENTS

COVER

The L.A.W. BBS welcome screens, the great new decision tapes and sysops at work.

LETTERS

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

Sure About Insurance?

Editor:

For 30 years I have taken pleasure and satisfaction in working with a succession of Bar Association volunteers who were and are members of the Insurance Committee. For years I was a member of the American Bar Association Standing Committee on Professional Insurance and have attended their meetings at various locations throughout the country. At one time, we were the principal underwriter in the state of Washington for lawyers' insurance and we still enjoy doing business with some of our customers who have been customers for literally decades.

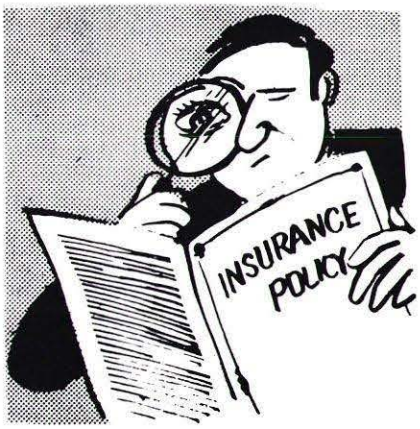
Now to the purpose of this note. It is my genuine and firm conviction that the Bar Association is doing its members a serious disservice by endorsement of any particular carrier for this sensitive field of insurance. Members of the Bar have had the benefit of the best that the free enterprise system has to offer, which is intense, active and no-holds-barred competition from a number of experienced, financially able and qualified national insurers.

This would include:	Standard & Poor's Rating for Claim-Paying Ability
ALAS (Attorneys Liability Assurance Society)	n/a
CNA Insurance Co.	AAA
Evanston Insurance Co.	**
Home Insurance Co.	BBB-
International Insurance Co.	A+
Lloyds of London	n/a
National Union Insurance Co.	AAA
North Atlantic Casualty & Surety Co.	**
Reliance Insurance Co.	A
St. Paul Fire & Marine Insurance Co.	AAA

And finally, the new Endorsee—
National Casualty Co. **

(Note: ** indicates, "This company has no claim-paying ability rating.")

Most of these carriers have been providing coverage and settling losses for Washington lawyers for many years.



They have assigned defense to a selection of experienced defense counsel.

I would venture that if your sponsored carrier, with the Bar's assistance and cooperation, is successful in attaining a dominant market share, competition will be distorted and discouraged and *premiums will go up*. The Board of Governors may be compelled to attempt a correction by imposing a mandatory plan such as Oregon's PLF, which the membership resoundingly defeated five or six years ago.

Looking back over the years as the Bar has attempted to "Solve the Malpractice Crisis," the following scenario came to mind:

* 30 years ago: The committee recommended Zurich Insurance Co. No experience. Nothing came of it.
* 25 years ago: The Bar endorsed Argonaut Insurance Co. Thirty days later Argonaut withdrew.
* 20 years ago: The Bar endorsed St. Paul Fire & Marine. St. Paul enjoyed a short-term success, a prominent carrier withdrew as a result of the endorsement, and three years later St. Paul was no longer an important player.
* 5 years ago: The Bar proposed a mandatory Oregon-type plan. Resoundingly rejected.
* 1991: The Bar endorses National Casualty Co. The company has never written a lawyers' professional policy.

Isn't it fair to ask: What is the

sponsored carrier's claim to fame? What unique experience and capability suggest that they are entitled to special consideration? Surely the fairly limited commission income to the Association cannot be that important.

As commented in 1984 at a *Bar News* meeting: "It would be helpful if the bar were educated on where these [premium] dollars are going and why it's necessary that the companies are charging them more money." This might be more useful than suggesting that the present professional insurance marketplace is uncompetitive or inadequate.

I would suggest that the question needs to be asked, "Is the Association's endorsement of any carrier, and of this carrier, in particular, in the interest of Washington lawyers?"

To a certain extent we are looking at a done deal, but perhaps the Insurance Committee and the Board of Governors should be restrained in their enthusiasm so as not to unduly influence competition.

JACK QUINAN
Quinan-Pickering, Inc.
P.O. Box 3875, Seattle 98124

Protected Rights on Demand

Editor:

I am grateful to Professor Gregory G. Sisk for taking the time, as he did in his letter to the *Bar News* (December 1991) to inform me of my view of abortion as "an innocuous medical procedure with no greater moral implications than the surgical removal of a wart." However, the fact that I did not actually express that view dilutes my appreciation for Professor Sisk's otherwise excellent language skills.

The point of my October letter was not to attack James Mason because of his position on the abortion issue. Rather, it was to condemn those who, like Mason, use emotionally charged, but medically and legally inaccurate language to assert what Professor Sisk calls the "plain and unadulterated truth." Professor Sisk overlooks the fact that Mr. Mason was attacking a draft statute. My reference to "officers of the court" was meant to suggest that lawyers, when arguing the law, should not rely on language devoid of legal content. I trust Professor Sisk teaches his students some version of this basic principle.

Since Professor Sisk took the liberty to make several inferences from my letter—that this journal should attack Mr. Mason because of his *opinion*, that *anyone* who disagrees with me is an ignorant zealot, that I think of abortion *only* in "cold terms"—let me draw a few conclusions of my own.

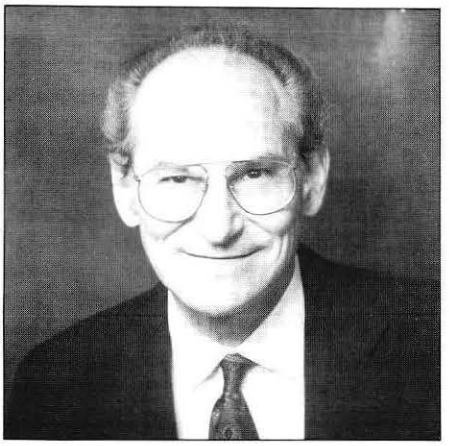
Professor Sisk, like many who seek plain truths and simple explanations, ignores the broader context of the abortion controversy in this country. In so doing, he fails to understand that it is as much about the equality of the sexes as it is about terminating pregnancies. It is about personal autonomy in conflict with a nostalgia for doctrinaire authoritarianism. It is about the religious right trying to survive in an age far too complex for simple truths. Professor Sisk's indifference to these aspects of the issue gives his plea for open and honest questioning an unfortunately hollow ring.

Professor Sisk refers to "abortion on demand," as if to suggest that abortions were available other than at the request of pregnant women. This cliché not only seeks to distinguish the right to abortion from other constitutionally protected rights—one never speaks, for example, of the right of "free speech on demand"—but reflects the myth that women have abortions for convenience, expedience, or mere whim. Professor Sisk illustrates his indifference to the difficult and painful decisions involved in abortion by placing the word "choice" in quotation marks, as if to trivialize the exercise of that faculty by women.

There are, perhaps, ethical grounds on which opposition to abortion can be intelligently argued. But I doubt that characterizing the struggle for personal autonomy as "popular rhetoric" and the use of coded clichés are essential to any such argument. Had Professor Sisk avoided these pitfalls, and approached the issue analytically, I would have been even more grateful for his letter.

JEFFREY COWAN
Seattle

What Does the Bar Association Do For Its Members?



Joseph P. Delay

Recently I attended a luncheon with a group of lawyers, and their question was, "What does the Bar Association do for its members?"

This is an appropriate question, and a response is needed.

The members of our Association pay annual fees of $195 which generate approximately $3.33 million. Membership in the Association, which maintains a main office in Seattle and a small one in Olympia, is mandatory.

There are 63 full-time employees working for the Association. The salaries and benefits for the employees approximate $2.5 million per year. Although the state bar associations of Arizona and Oregon have approximately 50 percent fewer members then we have, they both employ more staff.

Except for the salaries and benefits to the employees of the Association, the Bar's greatest expense arises from handling disciplinary matters. These costs approximate $1 million per year. This amount has been escalating each year due to growth in our membership and growth in the number of complaints. For example, the number of complaints in 1988 was 1,794. The number of complaints in 1990 was 2,017. We expect well over 2,200 this year. This increase has required the employment of an additional staff attorney and the corresponding secretarial support.

The Association also administers a number of other related programs, including the "client security program," which reimburses clients who lose money through dishonest attorney conduct. Fees pay for those losses. Also related to discipline are our fee arbitration service—to settle fee disputes—and our random and for-cause audit programs.

The Association administers the bar exam/admission process, which includes the development and administration of the bar exam, the character and fitness process, the Rule 9 intern program and the law clerk program.

It is also necessary for your Association to fund the operation of 28 committees, including the payment of travel and lodging expenses for members of those committees. In addition, your Association provides administrative support for 20 sections. Although the programs of most sections are self-supporting, a few are not.

Finally, one of the most dynamic groups in the Association has been the Young Lawyers Division, which is funded almost entirely by the Association.

The Association is also the primary CLE provider in the state. It plans, prepares, and sponsors CLEs on 50+ subject matters at over 60 sites each year, not counting our new program for video replay sites. Over 8,000 people attended WSBA CLE programs last year. In addition, the CLE staff produces a number of educational materials, including a series of desk books. With the new rule on audio/videotape self-study, we will be providing those tapes for our members.

The Association is also charged with conducting the annual licensing process for the legal profession, including supervision of the mandatory CLE requirements and trust account certifications.

The Bar maintains a public affairs department whose function it is to deal with the news media and to produce various public service programs such as the Citizens Rights Pamphlets series, the MENTOR and National MENTOR programs, a speakers' bureau, and various efforts to educate the media about law-related issues so that the media can do a better job of reporting legal issues.

The Lawyers' Assistance Program occupies a portion of the Bar office and offers services to attorneys struggling with alcohol, drug, and clinical depression problems. Unfortunately, statistics show that nearly one-third of our members will face those problems during the course of their careers. Since its inception four years ago, the LAP has helped five percent of the WSBA membership—one in 20! In addition, the LAP provides services on career counseling and a listing of job opportunities.

A major member service is publication of *Bar News* each month and the *Resources* directory each year. Both are labor-intensive undertakings, but communication is the life blood of the Association. The *Bar News* is read by 85 percent of the membership.

In addition to the services listed above, the Association has an active legislative program that monitors and assists the legislative process. The Association conducts interviews and evaluation for appellate judicial positions. It assists local pro bono programs and local bar associations. It staffs the development of new court rules. It provides a statewide lawyer referral service (except for King, Lewis, Pierce, and Spokane counties, where local bar referral services are available).

Finally, it represents the legal profession when called upon to respond to major events and issues. Providing leadership to a group as independent and diverse as the lawyers of the state of Washington is a dangerous but necessary business.

I hope that this article helps explain what the Bar does for its members. The programs listed above are just the primary ones, but even they are often overlooked.

Joseph P Delay

Dennis P. Harwick

Red Ink

Recently, I received a pocket calendar from the National Conference of Bar Examiners. It even had my name engraved on it. Actually, the National Conference sent it to the Idaho State Bar and my former colleagues forwarded it to me because no one there wanted to be called "Dennis."

This calendar has a "quote of the week" feature—a number of which are particularly memorable and amusing to people in my line of work. One of the quotes says, "If two lines cross on a graph, it must be important.—Ernest F. Cooke." I don't know who Ernest F. Cooke is, but he sums up the year end fiscal results for the WSBA in 1991. Within the next month or so, *Bar News* will publish a summary of the WSBA's audited financial statements for 1991. However, I received a draft of the independent auditors' report a day or so ago and wanted to share both the proverbial bottom line and to offer an explanation of how things differ from the previous year.

The bottom line is a deficit of $359,377, i.e., expenses of $6,588,404 and revenues of $6,229,027. Now, before your heart stops, a bit of explanation is in order. A significant portion of the deficit is attributable to several "book entries," i.e., some changes in accounting practice that were not cash transactions. For example, we recognized that vacation time and sick leave for WSBA employees accrues monthly, rather than on each employee's anniversary date. The result? A one-time expense entry of $90,000. Similarly, a number of equipment assets had been carried on a ten-year amortization schedule when, in fact, the equipment (including the old telephone system I wrote about in last month's column) only had a useful life of five years. The result? A one-time expense entry to write down the value of assets by approximately $50,000.

Two other items in the 1991 budget, standing alone, account for virtually the entire deficit—an overly optimistic revenue projection that CLE revenues would increase by $252,000 in 1991 (an increase of 17 percent despite the fact CLE revenues actually fell by 8.5 percent between 1989 and 1990) and an overly optimistic expense projection that 1991 bar exam expenses would drop back to pre-1989 levels despite increased operating costs and a well-deserved increase in the payments to bar examiners. In fact, 1991 CLE revenues were basically flat (down a fraction of 1 percent from 1990) and bar exam expenses were up 1 percent from 1990 (excluding the increase to bar examiners).

The point of all this explanation is to demonstrate that there were no "smoking guns" or obvious scapegoats for the deficit. There were no dramatic changes in operations from previous years. One could argue (and I would) that keeping CLE revenues flat during a time of economic stress and increased competition was not such a bad result.

The Board of Governors and its Budget & Audit Committee have spent considerable time studying the numbers and cutting expenses. We have converted to "functional" accounting so that each function, e.g., bar exam, convention, CLE, discipline, etc., has a clearly definable bottom line, including overhead expenses. The benefit is two-fold: 1) our financial reports are much more detailed and allow better accountability within each function, and 2) the Board of Governors and I can make much better informed decisions on cost/benefit considerations.

We return, nonetheless, to the original premise: "If two lines cross on a graph, it must be important." No issue is more important to the WSBA than to establish a solid financial base from which to perform its mandatory and discretionary duties. Copies of the audited financial reports are available upon request to any member of the bar. I will use this space (and other) in future issues of *Bar News* to discuss fiscal matters and share information. If you have any specific questions, I invite you to call me at (206) 727-8240, and I'll do my best to answer them.

THE LONG VIEW

New Law Firm History Booklet Published

The Ninth Judicial Circuit Historical Society has announced the publication of "Partners Through Time: Preparing Law Firm Histories." Written by Jane Wilson, author of a centennial history of the California firm of Gibson, Dunn & Crutcher, the 16-page booklet is available free from the Society at its Portland and Pasadena offices.

While struggling through a whip-sawing economic climate may seem to leave little time for such things as firm history, Wilson argues that such conditions make it more necessary to preserve the cultures and histories of firms. "But the present era of massive growth, rapid mergers, and sudden dissolutions has seen a weakening of the old order," she writes, "threatening a loss of institutional memory, and suggesting to some firms that the time has come to attend to the preservation of their identities by means of written history."

Society Director Chet Orloff, recently appointed Director of the Oregon Historical Society, says the booklet reflects the Society's interest in developing the larger history of law in the American West. "Law firms arrived here with the earliest ships and wagons and, with the people who have worked for them, have made great and influential contributions to the history of every state and community in the vast Ninth Circuit....[I]n building the history of law, a major part of the foundation is the role played by firms and their members."

Copies of the booklet can be obtained from the Society at 620 S.W. Main Street, Portland, OR 97205.

IOLTA

Legal Foundation Announces Grants

Thousands of Washington's poorest citizens will have access to legal assistance thanks to grants of more than three million dollars by the Legal Foundation of Washington. Foundation Board President Frank Hayes Johnson of Spokane announced in December that grants totalling $3.1 million were awarded to 37 organizations throughout Washington. Johnson expressed gratitude for the work accomplished by programs like the Seattle-King County Bar Association's close ties with the Northwest Women's Law Center and Evergreen Legal Services to provide representation in custody cases involving domestic violence.

Funds for annual grant distribution are generated by the Interest on Lawyers Trust Accounts (IOLTA) program, which depends on the participation and cooperation of Washington attorneys. Applications for program funds in 1993 will be available from the Foundation early this year. Contact the Legal Foundation at 945 Logan Building, 500 Union Street, Seattle, WA 98101 for application and related information.

E.T., PHONE YOUR LAWYER

New Public Service Tapes A Dial Away

WSBA's Public Affairs staff have produced 30 new four-minute tapes for the *Seattle Times*' telephone InfoLine as a public service. The tapes deal with common issues like divorce, marriage, child support, domestic violence, bankruptcy, alternatives to litigation, wills, and criminal law.

The tapes can be heard by calling (206) 464-2000.

On another information front, single copies of the WSBA "Citizen Rights Series" pamphlets are free to the public. The seventeen brochures cover such topics as those in the tape series. "Your Civil and Individual Rights" is also available in Spanish and Vietnamese editions. Bulk quantities and display racks for office use are also available through the WSBA Public Affairs Department, and are often used by law firms as a service to clients.

Some 150,000 of the pamphlets were distributed to the public last year.

AT LAST, SOME GOOD PRESS

Lawyers Honor Journalists

The WSBA Excellence in Legal Journalism Awards program honored four Washington journalists for their work covering the legal system at ceremonies in November. Mike Cate, producer for KING-TV's "Compton Report," was recognized for "Selecting Judges," a documentary on judicial election reform prompted by the upset defeat of Chief Justice Keith Callow in 1990. Brian Halquist, producer of KTAC radio's "Cop Talk" program, was honored by his program, "To Judge in the '90s," a look at challenges facing the judiciary in the coming decade.

Russ Zabel, a reporter for Pacific Media Group/Police Beat, won an award for his article on the trial of William Cushing, a mentally retarded man convicted of a Seattle murder last year. And Jim DeFede, reporter for the Spokane *Spokesman-Review*, was honored in the daily newspaper category for his series, "Courting Disaster," which chronicled problems in the district courts of Spokane County.

Nancy Wilson, Elizabeth Rhodes and Duff Wilson of *The Seattle Times* also won an honorable mention for their series on domestic violence in King County.

The City Club of Seattle hosted a luncheon for the awards, featured speaker at which was *New York Times* legal correspondent David Margolick.

Retirement: The Courage to Grow Old

The enzymes still mix.
The colon still works.
The glottis still clicks.
The patella still jerks.

I'm not yet a ghost.
Nor planning to rot--
And I'm making the most
Of the years that I've got!
Robert E. Lee

Age 73, Robert E. Lee is a distinguished playwright and author in a collection of 41 inspiring essays written by prominent people over 60. Phillip L. Berman edited the anthology, called *The Courage to Grow Old*. This article presents the views on retirement of one retired, sober alcoholic lawyer. My last drink was in 1963, about the time Jack Kennedy was shot, and my recall of the 28 intervening years is not bad, lest some skeptic sneer: "Hey, what can an ex-drunk tell me about retirement or about anything else?" I retired from the practice of law--but not of life--two years ago, so perhaps I am still a rookie.

However, *The Courage to Grow Old* is a goldmine on the art of both retirement and aging, and it merits careful study by anyone over the age of 12. The contributors are wonderfully witty and wise. What they have to say is instructive and illuminating.

Follow the example of squirrels: start laying up plenty of nuts for retirement, long before the day arrives. Even more important: take care of your body; exercise, eat wisely, go easy on smoking and booze. As George Burns said: "If I'd known I was going to live so long, I would have taken better care of my body."

So what else is important, once you have gotten the final hugs and handshakes from your colleagues? Find something that inspires you and which involves only the giving of yourself. For me, this has been as a peer counselor for the LAP. There are countless other agencies which need volunteers.

Feed the need to be creative. This is the spark for all of *The Courage to Grow Old* contributors. They laugh at the sedentary life and continue to be productive. "Retirement" is not for them.

To date, I have resisted the return to the courtroom to stare down 12 plaintiff-oriented, high-roller jurors. But the option is still open; I have retained my WSBA license.

The contributors to *The Courage to Grow Old* are mainly writers, actors, scientists, economists, and teachers. They are united on this point: the high importance of a sense of humor. One poet-writer, Dame Hyacinthe Hill, says,

> How is the courage to grow old different from the courage we have had to have throughout life? I think one major difference is an increased need for, and use of, humor. We need more fun and games as we age. It is a way of both hiding sorrow and pain and helping ourselves and others support a bravery which may begin lagging under life's blows. (See "Sobriety--No Laughing Matter," in the April 1991, *Bar News.)*

Faith is important, too. In Alcoholics Anonymous, there is a step acknowledging "A Power greater than ourselves." For many this is God. But not to worry: Nature can be that power, too. Mark Twain talks about "the calm confidence of a Christian holding four aces."

Well, here we are almost at the end, and we haven't even scratched the surface. A pit. As the life expectancy dwindles, we become more conscious of the "morning-line odds." Robert E. Lee has some thoughts on this:

> In theater, the action ends, the houselights come up, the audience is cut off from the play. But the end of a life is more like the closing of a scrim, the intercession of a veil which allows a continuation of contact. The remembered words, actions, convictions of an individual are not severed from those who follow him. No knifelike curtain really falls. We still see and enjoy those who have gone before us, as others may be influenced by what we have said and done. Perhaps those who follow will see us more clearly than we see ourselves.

As my friend Dave Barry says: "I am not making this up." Retirement and aging are both O.K.

CONFIDENTIAL

by **J. Scott Miller**

Listen... Do You Want to Know a Secret?

Confidentiality is the bedrock on which every law practice is founded. Clients rely on the knowledge that attorneys are bound by rules[1] that prevent disclosure of confidential information shared in our professional capacity; otherwise, clients would not disclose ***all*** the facts needed for proper and effective representation. Now, thanks to modern technology, what you believe is confidential may be disclosed despite all best intentions.

Some of the biggest changes have been caused by electronic gizmos like fax machines, portable telephones, car phones, and computerized messaging. But we have also created our own disputes through trade secrets, protective orders and confidential settlement agreements.

These issues become important only after a problem develops. You simply do not need to worry about breaching a client's confidence unless and until it happens.

...Or do you? (You might ask your E&O insurer just how important these questions are).

In any respect, confidences are integrally incorporated into our daily practice. It could be disastrous to ignore the consequences of inadvertent breach, or disregard the methods of assuring the security of the confidences shared in our professional relationships.

Gizmos, Doodads, and Gimcracks

Just the fax, Ma'am

Fax machines are either the devil incarnate, or wonderfully convenient (for those of you who enjoy instantaneous correspondence landing on your desk every few minutes). Now, through the wonder of electronics, opposing counsel can generate a last-minute document and have it in your hands within the time it takes to make a phone call. It has become unnecessary (impossible?) to pause, reflect, plan, reconsider or carefully prepare your position; now a minor dispute can escalate into a major confrontation in the course of a few hours.

What was once an expensive, complex, hard-to-find, sophisticated electronic marvel is now found in almost every office, airport, business, and even many homes. The fax machine has become as common as the microwave oven (but not nearly as useful—it can't even reheat a donut).

Attorneys in Baltimore, Maryland recently learned the true cost of this particular electronic convenience. Several asbestos cases had been consolidated for a trial[2] involving several plaintiffs and multiple defendants. The jury pool was drawn, and jurors were being seated. During an evening recess lead defense counsel sent a confidential fax to the other defendant's attorneys. Unfortunately, the temporary employee (working alone at night, without direct supervision) used a list that included the fax number of Goldman and Skeen, P.A., who represented the lead plaintiff.

Harry Goldman, Jr. reviewed the fax message that was being electronically distributed among the defendants. The fax cover sheet contained a message indicating that the contents were a confidential attorney work product and demanded that if it was delivered in error, the unauthorized recipient return it without reading it[3]. The memo analyzed strengths and weaknesses in the defense, and listed those jurors that defendants should remove. The fax memo was clearly considered confidential by the defense attorneys, and was disclosed by accident.

Abate's attorney, Goldman, reviewed the caselaw and concluded that ***any*** disclosure by defendants, even though inadvertent, waived any claimed privilege. He distributed defendant's fax to attorneys representing the other plaintiffs. One of Goldman's co-counsel was apparently uncomfortable with the situation and informed the trial judge; the defense moved for a mistrial and dismissal.

Plaintiffs argued that a party is entitled to use disclosed confidential information regardless of how it is revealed (unless, of course, it was obtained illegally). The trial court agreed, and ruled that the claim of confidentiality was waived even though disclosure was unintentional and accidental. The court also held, though, that because the fax cover sheet had a clear statement of confidentiality, the defendants were entitled to some relief.

In this instance, the substantive part of the trial had not begun, so the entire jury pool was excused, and a new jury was assembled. The case was tried, and the jury returned a verdict in favor of the plaintiff. Plaintiff Abate has appealed, arguing that the judge committed prejudicial error by excusing the first jury pool. Attorney Goldman reports the appeal is still pending.

There is substantial caselaw to support the judge's decision in *Abate*. For example, when the government inadvertently attached a privileged memo to a motion, then filed a motion to strike the pleadings in an effort to reassert the privilege, intent was found to be irrelevant.

> Voluntary disclosure of attorney work product to an adversary in litigation for which the attorney produced that information defeats

> the policy underlying the privilege. . . . Granting the motion [to strike] would do no more than seal the bag from which the cat has already escaped.
>
> *Carter v. Gibbs*, 909 F.2d 1450, 1451 (Fed. Cir. 1990).

Similarly, when a private party inadvertently provided the opposition with privileged material, the court focused on the ***fact*** of disclosure, not lack of intent.

> Even assuming the Company's disclosure was due to "bureaucratic error," which we take to be a euphemism that necessarily implies human error, that unfortunate lapse simply reveals that someone in the company and thereby the Company itself (since it can only act through its employees) was careless with the confidentiality of its privileged communications.
>
> *In Re Sealed Case*, 877 F.2d 976, 980 (D.C.Cir.1989).

Since it is virtually impossible to guaranty your office will never misdeliver a fax, it is probably prudent to be sure your fax cover sheet reasserts the intent of confidentiality. Inadvertent disclosure ***may*** constitute waiver, but without a clear claim of privilege, the court could have no basis on which to grant relief.

Electronic Mail

Similar problems sometimes result from computerized electronic mail ("E-mail"), which has been described as "halfway between a telephone call and written correspondence."[4] Over nine million Americans now use E-mail regularly, according to the Electronic Mail Association (whose members reportedly include Alcoa, Bechtel, McDonald's, the FBI, and Public Broadcasting Service)[5].

At Epson America (based in Torrence, California) electronic mail administrator Alana Shoars learned that company managers were reading the computer E-mail messages sent between employees. She complained, was fired, and has filed a $1-million wrongful termination suit. The situation at Epson America is not unique. Two former employees of Nissan Motor Corporation U.S.A. who claim they were fired for receiving personal E-mail messages sent to them by dealers have sued the company. (Nissan disputes the claim). And the Prodigy Systems computer network recently found itself on the cutting edge of electronic confrontation when the Anti-Defamation League registered a complaint concerning an anti-Semitic message sent from one network user to another.

The 1986 Electronic Communications Privacy Act[6] now makes it a felony for someone to intercept private electronic messages, including those sent on public networks (like Prodigy Systems, Compuserve, and MCI Mail), but this apparently does not apply to internal E-mail sent among employees. Some corporations have developed codes of ethics, and a very few have formulated clear policies: Federal Express, American Airlines, Pacific Bell and United Parcel Service have E-mail systems that automatically inform employees that messages may be monitored.

This area is still evolving. If there is a lesson to be learned, it is to avoid using electronic messaging for confidential messages.

Cordless Telephones

These little hummers are great, right? Almost everyone has at least one at home, office, wherever. You plug the base unit into the wall and the battery-powered part of your phone in your pocket; your phone is always nearby, whether you are in the yard, by the pool or walking around the house. No wires, no hassle and, unfortunately, ***no confidentiality***.

These cordless portable phones are actually tiny FM radio stations. Just look on the bottom of your base unit or in your operating manual. Your cordless phone is a

> "[T]elephone system that operates under Part 15 of the FCC[7] Rules."

Everything you say and hear is broadcast by radio waves. And if you are broadcasting, you can almost ***bet*** that someone is listening in on (and perhaps recording) your "confidential" conversation.

For about $75, anyone can purchase a scanner at Radio Shack that will receive the signals broadcast by your cordless "telephone system." You can even set that new scanner to listen to any particular signal all the time (like your neighbor's house, or the office next door, or down the block), and it is unbelievably easy to record any intercepted radio signal. So what? Who cares? The answer is, ***your clients care!!!***

Federal Law: Federal law[8] prohibits intercepting any "wire" or "oral" communications[9]. Older caselaw indicated that the exclusionary provisions apply when at least one participant in a telephone conversation is using an ordinary (*i.e.*, noncordless) telephone. *United States v. Hall,* 488 F.2d 193 (9th Cir.1973).

But recent cases identify an emerging view that users of cordless telephones do ***not*** have ***any*** justifiable expectation of privacy in their conversations. The clear emerging rule indicates that anyone using a cordless phone might just as well be holding that conversation on a radio call-in show. No warrant is required to record a criminal defendant's cordless phone conversation overheard on a private citizen's cordless phone four blocks away. *Tyler v. Berodt,* 877 F.2d 705 (8th Cir.1989).

The Wiretap Act provides no protection against interception of cordless telephone transmissions because they are "broadcast by radio in all directions to be overheard by countless people." *Edwards v. Bardwell,* 632 F.Supp. 584, 589 (M.D.La.), *aff'd,* 808 F.2d 54 (5th Cir.1986) (table; unpublished per curiam, No. 86-3310).

Cordless phones come with a manual that alerts the owner that conversations are transmitted by radio and can be heard by others; there is no expectation of privacy. *State v. DeLaurier,* 488 A.2d 688 (R.I.1984). *See also: United States v. Hoffa,* 436 U.S. 1243 (7th Cir.1970) (no expectation of privacy under fourth amendment analysis for conversations over mobile telephones), *cert. denied,* 400 U.S. 1000, 91 S.Ct. 455, 27 L.Ed.2d 451 (1971).

Washington Statute:
RCW 9.73.030 provides a fairly strict prohibition against intercepting, recording or divulging private communication without consent of all parties.[10]

Title 9.73 RCW also provides several exceptions to the rule, including monitoring calls related to maintenance, repair and operation of the system by the common carrier providing communication services [11]; emergency calls reporting fires, crimes, disasters;[12] calls threatening extortion, blackmail, bodily harm or other unlawful requests or demands;[13] anonymous calls at "extremely inconvenient" hours;[14] communications involving hostages or barricaded persons;[15] videos and/or sound recordings of arrested persons;[16] conversations discussing a felony in which a police officer is a participant or one party has given permission (provided authorization is obtained from a judge or magistrate);[17] recordings of persons illegally in a building.[18]

In 1989, the Legislature added exceptions to allow interception of calls made by inmates of state correctional facilities, except calls between the inmate/resident and an attorney.[19] The 1989 amendments also allow police supervisors to authorize interception of conversations involving manufacture, delivery or sale of controlled substances when there is reasonable belief a consenting party is in danger.[20]

Violation of Title 9.73 RCW is a gross misdemeanor[21] and subjects the violator to civil damages, including mental pain and suffering, or liquidated damages of $100 per day (up to $1,000) ***plus*** reasonable attorney fees and litigation costs.[22] Surprisingly few civil cases are reported.

Washington Ethics: The WSBA Rules of Professional Conduct Committee recently released an informal opinion,[23] which indicates in part:

> At least with respect to cordless phones, the Rules of Professional Conduct Committee believes that RPC 1.6 requires that the lawyer advise the client that the conversation may not be confidential, and give the client the option of conducting the discussion at a more secure time and place.[24]

The informal ethics opinion also submits that *cellular* phones ***may*** be

distinguished from *cordless* phones. However, to be on the safe side, if either party is using a phone that is not wired to the wall, you should assume someone is listening to (and even recording) the conversation you are having with your client on your portable phone.

Illinois Ethics: A committee of the Illinois Bar Association issued a 1990 opinion[25] that requires attorneys to inform a client when mobile communication equipment is being used and, specifically, to warn that such conversations cannot be treated as confidential.

Wisconsin Ethics: The State Bar of Wisconsin recently produced two excellent short videotapes[26] intended for law office personnel as well as attorneys. The programs illustrate common inadvertent breaches of confidentiality, such as discussing confidential legal matters on the telephone with one client while another client is in the office, and discussing confidential matters in a restaurant where others could overhear. The videotapes specifically address the problems associated with holding confidential conversations over mobile telephones. The Wisconsin Bar virtually demands simply cutting off the discussion until you can reach a "wired" phone.

California Ethics: Bay Area attorney Demetrious Dimitriou reports that the Bar Association of San Francisco Ethics Committee, together with the Law Office Automation Section, drew a standing-room-only crowd for its November 1991 CLE seminar, "Confidentiality and Technology." Even representatives of the FCC attended to discuss the latest issues regarding inadvertent disclosure of confidential information.

With the proliferation of fax machines, car phones, and even car fax machines, the problem of keeping communications confidential has become ***the*** hot issue. The message is clear. If there are no wires, there is no confidentiality.

Cellular Phones

There you are, sitting in the mall enjoying a cafe latte, getting in a few billables talking with clients on your cellular phone. Life was great... until you read this.

First came "car phones."[27] Now we have "cellular" telephones (a/k/a "cell" or "sell" phones). You see, and hear, them everywhere you go: restaurants, movies, concerts, the beach, the ski slopes, etc. For a monthly fee you can stick a phone in your pocket, briefcase, or car, and literally ***never*** miss another call.[28]

Problems: Cellular telephones are *similar* to cordless telephones, but there are significant differences. Both use radio frequencies[29] to transmit and receive voice communications, but cordless phones usually have a very limited range—typically a few hundred feet from their base unit—while each cellular phone can transmit for about one mile. Thanks to a coordinated, federally administered, network of licensed operators across the country, cellular phones have virtually unlimited range.[30]

Myron Peck, a staff attorney with the FCC Common Carrier Bureau in Washington D.C., explains that there are 306 *Metropolitan Statistical Areas* and 427 *Rural Service Areas*; each *area* has two licensed cellular carriers; each *carrier* is licensed to operate 350 ***pairs*** of frequencies in various numbers of individual "cells."

Because each cellular phone is a tiny radio transmitter and receiver, it is as simple to intercept a cellular phone call as it is to listen to police radio calls. For a few bucks, you can even install a scanner in your car and follow someone (like opposing counsel), listening to everything that is said over a cellular phone. If you are really serious (like some industrial spies), for several more dollars you can get scanning equipment that tunes to specific phone numbers!

The FCC itself monitors various frequencies, testing power, quality, and clarity (but not content) of random calls.[31] And there are hundreds of private citizens with the hobby of scanning cellular frequencies to eavesdrop on (and often record) your "private" conversations. Whether they are violating

any laws in doing so is an interesting question.

Federal Statutes: Until the 1968 Wiretap Act (later amended by the 1986 Electronic Communications Privacy Act), the Communications Act of 1934 prohibited interception and use, divulging, or publishing the existence, contents, substance, purport, effect, or meaning of radio communications.[32] The prohibition did not apply to citizens band ("CB") radio, "ham" radio, or commercial radio broadcasts.[33]

The federal statutes prohibit intentional interception of, attempts to intercept, or use of contents of "wire, oral, or electronic communication."[34] Violation is punishable by imprisonment up to five years plus a fine. Interception of the *non*radio portion of a conversation using cellular phones, mobile radio service, or paging service carries a potential penalty of one year plus fine, while interception of the *radio* portion of a conversation using cellular phone, mobile radio or paging service is subject only to a fine of up to $500.[35] (The statutes also provide hefty fines for unauthorized interception of satellite signals.)

Courts have held that cordless telephone conversations are not "wire communications," so interception is not a violation of the statute.[36] The Ninth Circuit held in a much cited (and often criticized) case that the federal statutes ***do*** prohibit intercepting the portion of a conversation involving ***in any way*** phones connected by wires, but ***not*** conversations between two mobile telephones![37]

Other courts have held that federal statutes prohibiting interception of radio communication are ***not*** violated where the speaker has no reasonable expectation of privacy and, because mobile telephones utilize radio transmissions, there is no reasonable expectation of privacy.[38] The reason is that anyone with a scanner or another mobile phone tuned to the same frequency can easily tune in to the call.[39]

The rule of nonconfidentiality of conversations using mobile equipment has been applied to both discussions of criminal activity between attorney and client[40] and to cellular phone calls.[41] Until this equipment is secure from eavesdropping, confidential conversations should ***never*** take place when ***either*** party is using a cordless, mobile, or cellular phone.

Solutions?: Before you despair and deep-six your new cellular toy, wait. There are four possible options you could consider.

(1) Do not say anything confidential over your portable phone that you would not say in public. After all, you **are** in public when you broadcast your conversation on the radio (even when it is a tiny telephone-shaped radio). This is the easiest, and cheapest, solution. ***Just remember, if there are no wires, you are broadcasting.***

(2) Buy an encryption device (a/k/a/ "scrambler"). If you thought a cellular phone made you look important, this should impress even the most blasé client. Of course encrypters are terribly expensive, and only work if the person with whom you are speaking has identical equipment. But this way you and your client ***both*** get to play James Bond.

(3) Ask your cellular provider about encrypting only ***your end*** of the conversation. For a fee, many providers can scramble the signal between your phone and the central cellular switcher. An eavesdropper listening to your phone would hear only unintelligible electronic gobbledygook (unless, of course, your client is using a cellular phone that is ***not*** encrypted).

(4) If you haven't yet gone cellular, ***wait.***

According to David Danaee, director and vice president of engineering for McCaw Cellular Communications Companies (Seattle, WA), in 1992 a new generation of cellular equipment which virtually eliminates being scanned will debut. Instead of using traditional methods of radio broadcasting, these new-generation cellular phones will transmit in digital code (the same technology used to make compact disks). Of course, the new equipment will be more expensive (at least at first),

but if people try to tap into your call, all they will hear is totally indecipherable electronic beeping (sort of like listening to satellites on a short-wave radio).

The cellular industry is not converting to new equipment just to solve attorney concerns about client confidentiality. By digitizing communication signals they can squeeze about 20 calls into the same frequency now occupied by just one signal frequency,[42] thereby increasing the number of phones and the number of calls. Regardless of motive, digital coding should resolve any problems of confidentiality, ***unless*** one of the parties is using an "old" cellular phone.

Shoes and Ships and Sealing Wax

Closing the Barn Door After the Cat is Let Out of the Bag

Most attorneys are more familiar with confidentiality in the context of protective orders than in inadvertent breach through electronic indiscretion. But recently the validity of protective orders has been questioned, at least in some cases.

Unless you have been living in a cave, you know that plaintiff attorney organizations (*e.g.* Association of Trial Lawyers of America [ATLA]) have launched a campaign to emasculate protective orders. The ATLA Board of Governors adopted a Resolution in 1989 strongly disfavoring what is termed "secrecy orders" or "secrecy agreements."

We Have Met the Enemy, and He Is Us[43]

Trade secrets have always been recognized as highly confidential and sensitive information which should be, and is, protected from disclosure. If a trade secret is shown to be essential proof in certain litigation, a protective order[44] is fashioned under CR 26(c) to prevent competitors from learning it.

Confidentiality orders can affect various aspects of litigation. Such orders may completely prohibit disclosure of any documents or information obtained during discovery, and some go even further and require return or destruction of all documents after the case is completed. This is particularly useful to protect trade secrets, such as client lists, food product recipes, drug formulas or competitive pricing techniques.

With an order of broad scope, the defendant certainly solves the concern about having sensitive information falling into the hands of a competitor. Broad orders force any future plaintiffs to conduct discovery without taking shortcuts by relying on information obtained in prior cases.[45]

Many orders are less restrictive, but still limit or prohibit the opposing party, experts or attorneys from using discovery in subsequent cases. These "case-specific" limitations seem fine at the time, but may be challenged if subsequent cases appear.

Plaintiffs argue that confidentiality orders are contrary to the public interest and violate attorney ethical rules by restricting the right to practice, relying on Rules of Professional Conduct, Rule 5.6.[46] While this rule has historically been interpreted to mean that lawyers cannot agree to forego representation of other plaintiffs as a condition of settling a case, ATLA contends that the rule should be given broader implications. Their chief contention is that defendants often obtain confidentiality orders unnecessarily and convince the courts to seal information obtained during discovery, thus unfairly increasing the cost to subsequent plaintiffs pursuing the same defendant.

It was recently reported that some imaginative plaintiffs' attorneys were faced with a dilemma: each had information which, if pooled, would save an enormous amount of time and money, but each was barred from sharing the prior discovery by a stipulated confidentiality order entered as a condition of settling their previous litigation. They wanted to avoid the time and expense of rediscovering the information, but they were barred by their agreements. Instead of seeking an order from the court to lift the confidentiality bar, they simply formed a "law firm." As partners, they reasoned, they could (and ultimately did) share the information freely. It is unknown at this point whether there will be any repercussions from this novel method of circumventing the intended effect of the stipulated confidentiality orders.

Confidential Settlement Agreements

Just about everyone has dealt with one of these little gems. Usually, your client is willing to settle for less/more than the case is worth, but only if the exact terms and conditions are strictly confidential. Typically, the stipulation and release agreement simply incorporates conditions that require both

parties to keep the terms confidential and provides for substantial liquidated damages in the event of breach. Sometimes the defendant's motivation is to head off other claimants who might smell blood; other times the plaintiff wants to hide the proceeds from an ex-spouse (or creditors).

At first, it may seem difficult to comprehend why anyone would care very much after the case is over. But problems do pop up from time to time. For example, in *Anchorage School Dist. v. Anchorage Daily News*,[47] an asbestos company claimed it had relied on a protective order in agreeing to a settlement with the Anchorage School District (in a federal case involving asbestos use in school rooms). But the state court allowed access to the terms of the agreement through the state's Freedom of Information Act (FOIA). The federal court vacated the seal on the file when it learned of the state court's action.

At least one court has held that the plaintiff's stipulation to a protective order may not be sufficient; the order may be vacated subsequently unless the defendant provides the "good cause" evidence discussed above.[48] Such orders may be modified after entry.[49]

Confidential Discovery

In *Seattle Times v. Rhinehart*,[50] Rhinehart sued *The Seattle Times* for libel arising from articles about his charismatic quasi-religious organization. The newspaper served discovery requests for lists of members and donors claiming it needed the information to prepare for trial ***and*** that it intended to publish the lists in future stories. The trial court entered a protective order prohibiting publishing the lists, and the newspaper appealed asserting the order violated its rights under the first amendment. Court ruled that use of information obtained during discovery in a civil case could be limited to purposes associated with preparing for trial.

The U.S. Supreme Court affirmed, noting that discovery was not public at common law, and in practice it does not usually take place in public. It relied in part on *NAACP v. Button*[51] for the rule that there are constitutional interests (of religion, association and privacy) in keeping membership and donor information confidential. The court also stated that the limitation was on using material obtained through discovery, but there was no prohibition on publishing the same information obtained through other means.[52]

During the mid-1980s, several cases addressed the question of enforceability of protective orders in the context of public health and safety. The first involved the first cigarette case to result in a plaintiff's verdict, and the next was the Agent Orange litigation.

In *Cipollone v. Liggett Group, Inc.*[53] the U.S. District Court judge reviewed the federal magistrate's protective order (which prohibited disclosure of any information obtained during disclosure) and concluded the defendants must show "good cause" under Rule 26(c) for any designation of confidentiality. On appeal the Third Circuit explained that broad allegations of harm unsubstantiated by clearly articulated reasoning or specific examples would not support a blanket protective order, and that if a party claimed disclosure of information produced during discovery would cause "embarrassment," there must be demonstrated serious harm that

> would cause a significant harm to the [tobacco company's] competitive and financial position.[54]

In response to the Third Circuit's mandamus order, U.S. District Court Judge H. Lee Sarokin entered a new order that "good cause" required proof that absence of a protective order would result in financial harm, or that fairness at trial would be jeopardized, or that the parties were estopped from disclosure by prior agreements of confidentiality. He also held that the plaintiff could use the information obtained during discovery in future cases.[55] The Third Circuit refused to vacate Judge Sarokin's order and held that permitting use of discovery in future cases did not justify a second mandamus.[56]

Meanwhile, over in the Second Circuit, the Agent Orange cases were winding their way through the federal system. Again, where public safety and health concerns are involved, the courts seem inclined to allow disclosure of materials obtained during discovery.

The trial court modified a sealing order, thereby requiring defendants to make a showing of good cause to preclude plaintiffs from disclosing discovery materials.[57] Later, the Second Circuit observed that, until very recently, the public had routine access to all discovery because it was filed with the court, and Rule 5(d) had been amended solely because of concerns over storage space, not public access to discovery materials. The court ruled,

> . . . the public has a presumptive right of access to discovery materials[58].

In 1988 the First Circuit echoed this view when it stated,

> Rule 26(c)'s good cause requirement means that as a general proposition, pretrial discovery must take place in the public unless compelling reasons exist for denying the public access to the proceedings.[59] [citations omitted]

Courts have held that, even where information is clearly confidential, plaintiffs should be allowed to share discovery so long as access by the *public* is prevented.[60]

The best solution is by no means definite, but it does appear that where issues of health and safety are involved, the federal courts will probably presume that discovery materials should be disclosed. A protective order is appropriate where the party claiming confidentiality makes a clear showing that disclosure should be prohibited when it would result in (1) financial harm, (2) compromise fairness of a trial or (3) prior agreement by counsel establishes estoppel.

Conclusions

You would not dream of holding confidential discussions with a client in the middle of a crowded room, so why do so by allowing others to intercept confidential communications by E-mail, fax, cordless or cellular phone? If your conversation can't wait for a truly private meeting, at least get to a wired phone. There are so many ways to eavesdrop on a portable phone that it would be virtually impossible to seriously argue you or your client had a reasonable expectation of privacy. Do not risk confidentiality for convenience.

Protective orders ***may*** be an effective way to preserve confidentiality of trade secrets or other business information, but they are under siege by plaintiffs' attorneys and their organizations. Even if the court initially agrees that discovery materials or settlement terms should be confidential, the seal may be vacated by a third party. Nevertheless, protective orders will likely continue to be an effective means to safeguard your client's interests.

Clients rely on the promise of confidentiality that attorneys have historically promised. If that promise is hollow or impermanent, our profession is certain to lose the confidence and faith entrusted in us by the public.

Endnotes

[1]A lawyer shall not reveal confidences or secrets relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in sections (b) and (c). Rule 1.6, *CONFIDENTIALITY*, Rules of Professional Conduct.

[2]*Abate et al. v. A.C. & S., Inc. et al.*, Baltimore, MD, Circuit Court, Consolidation File No. 89-23674 (June1991).

[3]Enforcement of this last term is impossible, but it seems to add an additional indication of intent to preserve the privilege.

[4]"Do Employees Have a Right to Electronic Privacy?" *The New York Times*, p. 8 (December 8, 1991).

[5]"Psst! Who's Listening at Work?," *The Oregonian*, p. D-1 (December 11, 1991).

[6]Pub. L. 99-508 (Oct. 21, 1986), 100 Stat. 1848 (*codified at* 18 USC 2510-2521).

[7]"Federal Communications Commission."

[8]Title III of the Omnibus Crime Control and Safe Streets Act, Pub. L. No. 90-351, Sec. 802, 82 Stat. 212 (1968); *codified as amended* 18 USC Sec. 2510-2521 (1982) [Wiretap Act *a/k/a/* 1986 Electronic Communications Privacy Act].

[9]18 USC Sec. 2511.

[10]Except as otherwise provided in this chapter, it shall be unlawful for any individual, partnership, corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, or record any:

> (a) Private communication transmitted by telephone, telegraph, radio, or other device between two or more individuals . . . without first obtaining the consent of all the participants in the communication;
>
> . . .

[11]RCW 9.73.070.

[12]RCW 9.73.030(2)(a); RCW 9.73.090(1)(a).

[13] RCW 9.73.030(2)(b).

[14] RCW 9.73.030(2)(c).

[15]RCW 9.73.030(2)(d).

[16] RCW 9.73.090(1)(b).

[17] RCW 9.73.090(2).

[18] RCW 9.73.110.

[19] RCW 9.73.095; RCW 9.73.145.

[20] RCW 9.73.200-.240.

[21] RCW 9.73.080.

[22] RCW 9.73.060.

[23] Informal Opinion 91-1: "Confidentiality and Use of Cordless Telephones," *Washington State Bar News* (October, 1991).

[24] *id*, p.23.

[25] Illinois State Bar Association Committee on Professional Ethics, Opinion 90-7.

[26] "*Law Office Confidentiality Part I and Part II.*" Available from the State Bar of Wisconsin, P.O. Box 7158, Madison, WI 53707-7158, telephone (800) 728-7788 (Becky Weiner or Gary Abrams).

[27] Which are really only two-way radios with a range of about ten miles.

[28] Hardly a leap forward, it might be argued.

[29] Frequencies assigned to cellular phones are located within 800 to 900 Mhz, which is the high end of the UHF channels on your home television. The FCC reports that some older television sets can be tuned to receive the cellular frequencies.

[30] The FCC has divided the country into a series of discrete "cells." The size of each "cell" ranges from 1-mile square (or less) up to 12 miles. When you dial the cellular phone, it searches for an unused frequency available within that specific "cell." As the cellular phone moves from one location to another it changes "cells," and new frequencies are required. Sophisticated switching equipment captures the call and transfers the communication from "cell" to "cell." Each individual call is transmitted from the local "cell" to the central switcher where it is connected to the land lines operated by the local telephone carrier (and billing is calculated).

[31] 18 U.S.C. 2511(2)(b).

[32] In 1968 the Federal Wiretap Act (18 U.S.C. 2510 - 2521) took over regulation of wire and oral communications. S.Rep. No. 1097, 90th Cong., 2d Sess., *reprinted in* 1968 U.S.Cong.& Ad.News 2112, 2196.

[33] 47 U.S.C. 605.

[34] 18 U.S.C. 2511 - 2521.

[35] 18 U.S.C. 2511 (4)(a-b).

[36] *People v. Fata*, 529 NYS 2d 683, 139 Misc.2d 979 (1988).

[37] *U.S. v. Hall*, 488 F.2d 193 (9th Cir.1973).

[38] *U.S. v. Rose*, 669 F.2d 23 (1st Cir), *cert. denied sub nom.U.S. v. Hill*, 459 U.S. 828, 103 S.Ct. 63, 74 L.Ed.2d 65 (1982).

[39] *U.S. v. Hoffa*, 436 F.2d 1243 (7th Cir. 1970) *cert. denied* 400 U.S. 1000, 91 S.Ct. 455, 27 L.Ed.2d 451 (1971).

[40] *Edwards v. Bardwell*, 632 F.Supp. 584 (M.D.La. 1986) *affirmed without op.* 808 F.2d 54 (5th Cir.1986).

[41] *Edward v. State Farm Insur.*, 833 F.2d 535 (5th Cir.1987).

[42] When all existing frequencies in a discrete cell are in use, no new calls can be made until someone hangs up. Recent FCC statistics indicate that with cellular phone use expanding virtually geometrically, all cells in the top 10 U.S. cities (including New York, Chicago, and Los Angeles) are now, or soon will be, totally saturated almost constantly. New customers are still assigned a cellular telephone number, but it is on a frequency already occupied by several other users.

[43] If you don't recognize this famous line from Walt Kelly's timeless comic strip, *Pogo*, get back, get back, get back to where you once belonged!

[44] CR 26(c) lists eight approaches the court could take

> . . . to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense.

[45] A prospect that delights most defense attorneys, but has caused much teeth gnashing among plaintiffs and their attorneys due to the time and expense caused by "duplicating" prior discovery.

[46] A lawyer shall not participate in offering or making:

. . .

(b) An agreement in which a restriction on the lawyer's right to practice is part of the settlement of a controversy between private parties.

[47] 779 P.2d 1191 (Alaska 1989).

[48] *Vassiliades v. Israely*, 714 F.Supp. 604 (D.Conn. 1989).

[49] *See: Sharjan Inv. Co.(UK) Ltd. v. P.C. Telemart, Inc.*, 107 F.R.D.81 (S.D.N.Y.1985); *Broan Mfg. Co. v. Westinghouse Elec. Corp.*, 101 F.R.D. 773 (E.D.Wis.1984); *Krekel Publications, Inc. v. Waukesha Freeman, Inc.*, 98 F.R.D. 745 (E.D.Wis.1983).

[50] 467 U.S. 20 (1984).

[51] 371 U.S. 415 (1963).

[52] "[W]here . . . a protective order is entered on a showing of good cause as required by Rule 26(c), is limited to the context of pretrial civil discovery, and does not restrict the dissemination of the

information if gained from other sources, it does not offend the first amendment." *Seattle Times v. Rhinehart*, 467 U.S. 20, 32 (1984).

[53] *("Cipollone I")* 106 F.R.D. 573 (D.N.J. 1985).

[54] *("Cipollone II")* 785 F.2d 1108, 1121 (3d Cir. 1986).

[55] *("Cipollone III")* 113 F.R.D. 86 (D. N.J. 1986).

[56] *("Cipollone IV")* 822 F.2d 335 (3d Cir.1987).

[57] *In Re "Agent Orange" Product Liability Litigation*, 597 F.Supp. 740 (E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir.1987).

[58] *In Re "Agent Orange" Product Liability Litigation*, 821 F.2d 139 (2d Cir.1987).

[59] *Public Citizen v. Liggett Group Inc.*, 858 F.2d 775, 789 (1st Cir.1988), *cert. denied*, 488 U.S. 1030 (1989).

[60] *See: Wilk v. American Medical Assoc.*, 635 F.2d 1295 (7th Cir.1981); *Kamp Implement Co. v. J.I. Case Co.*, 630 F.Supp. 218 (D.Mont.1986); *Johnson Foils, Inc. v. Huyck Corp.*, 61 F.R.D. 405 (N.D.N.Y. 1973); *Garcia v. Peeples*, 734 S.W.2d 343 (Tex.1987).

***Bar News* Editorial Advisory Board member *J. Scott Miller* practices law in Spokane.**

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

Evidence. In action for partition among descendants of deceased parents, plaintiffs claimed interests in inherited land as tenants in common with defendants. Trial court properly refused under dead man statute (RCW 5.60.030) to permit defendant to testify that she furnished money to purchase land and that title was taken by others merely as trustees for her benefit. Appellate court rejected defendant's arguments that testimony did not relate to "transaction with the deceased" as phrase is used in statute and that plaintiffs had waived protection of statute by cross-examining her as to matters barred by statute. ***Thor v. McDearmid***, __ Wn.App. __, 817 P.2d 1380 (Div. 3, 10/10/91).

—K.B. Tegland

Planning and zoning. Plaintiff land developers, otherwise entitled to preliminary plat approval, were denied approval unless they agreed to contribute impact fee for road improvements. Plaintiffs refused so to contribute and challenged county's imposition of fee. County argued that plaintiff's development was so situated as to require contribution of fee under county road ordinance and that impact fee imposed as condition of plat approval was "voluntary" under RCW 82.02.020. Court of appeals (1) stated that impact fee under these conditions was "voluntary" under RCW 82.02.020, but (2) held that plaintiff's project did not fall into category of developments for which county code required fee. Out of three judges, two concurred in result, but disagreed as to first point. (*Comment.* Court's reasoning on first point is specious. To "consent" to a thing under threat of denial of something to which a person is otherwise legally entitled is not "voluntary"; it is coerced. By the court's reasoning, it is not rape if a woman permits sexual intercourse only because of a threat of harm to her child, nor is a confession coerced if it is given because prisoner is denied food and water. –W.B.S.) ***Cobb v. Snohomish County***, __ WnApp.__, 818 P.2d 1106 (Div. 1, 11/4/91).

—W.B. Stoebuck

Real property. Residential Landlord-Tenant Act, RCW 59.18.060, requires landlords to "use ordinary care to keep the premises fit for human habitation" and also to perform 11 listed duties, such as to maintain structural components and to keep common areas clean. Court holds, inter alia, that language quoted above creates no duty to maintain premises except in 11 specific ways listed, i.e., quoted language merely introduces 11 specific kinds of duty and has no independent meaning. Therefore, landlord was not liable for personal injuries caused by allegedly dangerous condition on leased premises that was not one of 11 specific items. (*Comment.* Decision on point described is subject to some question. "Fit for human habitation" is a phrase that has been given meaning by a number of American decisions, including *Foisy v. Wyman*, 83 Wn2d 22, 515 P.2d 160 [1973]—W.B.S.) ***Aspon v. Loomis***, 62 Wn.App. 818, 816 P.2d 751 (Div. 1, 9/16/91).

—W.B. Stoebuck

by **Lindsay Thompson**

Olympia, January 3, 1992

Present: The president and governors. Also present: Judge Gerry Alexander (Court of Appeals); William P. Bergsten (Legal Foundation of Washington); Mary Gallagher Dilley (Administrative Law Judges' Assn.); Judge Susan Dubisson (District & Municipal Court Judges' Association); Frank Edmondson (Government Lawyers Assn.); Judith R. Eiler (SKCBA Trustees); Sheryl Garland (Washington Women Lawyers); Dennis P. Harwick (WSBA executive director); Judge Edward Heavey (Superior Court Judges' Assn.); Grant Johnson (WYLD); Mark Shepherd (SKCBA/YLD); Pat Sutherland (Prosecuting Attorneys' Assn.); Lindsay Thompson (*Bar News* editor); and Robert D. Welden (WSBA General Counsel).

The Board's decision to meet every six weeks instead of monthly meant, inter alia, scheduling a meeting January 3-4 and adding to the general holiday hubbubbery. Your reporter, who customarily retreats to the bucolic precincts of his youth in North Carolina, had to cut short his familial revels and return to Kelso New Year's Eve to meet his reportorial responsibilities. With time changes, this entailed celebrating New Year's twice, then stumbling up to Olympia. Unfortunately, the meeting overlapped printing time for the January issue, thus this belated report.

At Least They Wear Colors Found in Nature: The president called the meeting to order at 8:30 a.m. and reported on his activities. He said he had attended meetings of the Benton-Franklin and Whitman County Bar Associations and had discussed the question of unionization of the WSBA staff with them. A straw poll found Benton-Franklin lawyers opposed 52-3; in Walla Walla the opposition was 45-0. "What color were their necks?," asked Governor Alva Long.

Making More Free Time to Give Free Time: The president asked the Board to increase the recommended number of hours Washington lawyers are urged to give to pro bono projects each year from 30 to 50. As an alternative, lawyers in practice fewer than 20 years could contribute $350 to a pro bono project; lawyers in practice more than 20 years could contribute $500 in lieu of meeting the hourly target.

Governor Lem Howell remarked that if a member was retired or thinking about retiring, it sounded as if they would be under pressure to do this: "like keeping up their CLE hours."

Governor John Schultz wanted to consult his constituents. "The last time we talked about raising the number of pro bono hours they were opposed," he said. "Not that they don't want to give of their time; they just don't like having the Bar Association constantly telling them what to do." Governor John Slater agreed. "Whenever we talk about raising it, members fear we'll make it mandatory next."

The matter was continued to the February 14-15 meeting in Tacoma.

Instructions to the Delegation: The American Bar Association, which, like the European Community, the Permanent Court of International Justice, and the WSBA Alternative Dispute Resolution Section, is constantly casting about for things to regulate and thereby become more necessary to the successful traverse of day-to-day life. The ABA's latest contribution is a weighty tome called the McKay Commission Report. Working from the apparent premise that if you throw enough bleeding hunks of meat at anti-lawyer groups, they will, sated, eventually go away, the McKay report offers up unified bar association disciplinary systems, holding that they should be wholly run by the state judiciary, as part of expanded regulatory functions which would include mandatory fee arbitration, alternative dispute resolution, lawyer practice assistance, lawyers' substance abuse counseling, and "a central intake office to receive, screen, and dismiss or forward complaints to the appropriate agency."

ABA Delegate Tom Fitzpatrick of Seattle wrote to the Board expressing concern over the negative effects that standard solutions imposed from above would have on the WSBA disciplinary process, and wondering if the Association's ABA delegates ought to be instructed on how to deal with the report at the next ABA meeting. He thought systems like Washington's, in which the judiciary delegates disciplinary functions to subordinates like a state bar, should be declared to be in compliance with the aim of the McKay Report. Ordinarily, ABA delegates go uninstructed.

Governor John Slater said, "[T]he concept of the report is a complete reversal of our present system. Ours has not only worked well, it is under improvement."

Governor Steve Tubbs concurred. "Aspects of the McKay report would involve the court in creating a lawyer-practice advisory committee, for example, which would put them in the middle of the state budget crunch. These changes would get the camel's nose under the tent." Slater moved to instruct the ABA delegates to defend our current system and oppose the McKay report to the extent it differs. The motion was unanimously approved.

Calvin Coolidge Named Patron Saint of CLE: CLE Director Diane de Ryss gave the Board a lengthy report on the work of the Continuing Legal Education Department and changes she has made to improve its offerings and efficiency. Printing of materials for courses has been brought in-house, she said, reducing each CLE volume's cost from $9 down to $1. New forms, redesigned to use less paper as well as recycled paper, have been cut in cost from 12 cents to seven cents per unit, and the catalogue from 27 cents to 16 cents. Targeted mailings, aimed at persons who might more particularly want to know about a CLE, have replaced mass mailings to the entire WSBA for every CLE program.

Several governors wondered if section midyear meetings should be required to be held in conjunction with the WSBA convention to boost attendance. De Ryss thought it a bad idea. "Midyears are a unique opportunity for the sections to learn and interact. They target their members, and the sessions work well. They also tend to have program offerings of a more advanced level than a convention CLE would. If you combine them into the convention you will see a certain dilution of the program to fill out the crowd."

But Governor Wayne Blair said ABA sections have midyear meetings in conjunction with the ABA meetings, and the quality doesn't suffer. He thought the governors should meet with the section heads to discuss these issues directly.

Governor Joe Nappi asked for a report on why CLE revenues

were so far off in 1990-1991. De Ryss said, first of all, they were too optimistic. This year expenses are down and revenues are up, she reported, so a repeat performance seems unlikely.

Paperwork Reduction: De Ryss next asked the Board to recommend to the Supreme Court an amendment to APR 11. It would allow CLE reports to be filed by members every third year instead of every year. She said the CLE staff was drowning in paperwork every year, trying to check the math on 20,000 CLE forms over a few months. The new plan would divide the WSBA membership into thirds.

Governor Tom Chambers suggested that once the Supreme Court amends a rule they don't come back to it for some time, and amendments to APR 11 present a good time to reconsider his proposal to increase CLE hours requirements for lawyers. He suggested increasing the requirement from 15 to 20 hours, and asking the CLE Board to study how to take into account the travel costs rural lawyers have to incur to attend CLEs.

Governor Alva Long suggested helping rural lawyers out by increasing the amount of credit one could get from video or audio tapes to one half, of ten hours.

Governor Steve Tubbs suggested bifurcating the issues. "The reporting amendment will get lost in an argument about hours if we package them together," he told the Board. Chambers then moved to split the issues, referring his proposals to the CLE Board for study. The motion passed 7-3, Nappi, Schultz and Slater opposed.

Then Governor Joe Nappi moved to approve the proposed three-year reporting amendment, but without the emergency clause which would ask the Supreme Court to approve it, pronto. He thought the emergency clause was being overused and there was no reason this amendment couldn't be addressed by the Court in its normal rulemaking cycle. Governor Monte Hester thought the opposite. "CLE tells us they are drowning in work the way things run now. That's an emergency." Governor Wayne Blair moved to approve the reporting amendment, without the emergency clause, but got no second.

A motion to approve the amendment was then offered, and passed 8-1, Howell opposed and Long not voting. Monte Hester then moved to allow a carryover of CLE credit from one three-year reporting cycle under the new rule to the next, up to 15 hours. De Ryss thought it a poor idea, since one could be relying, for years on end, on pretty ancient CLE credits if one stacked up enough in one year. It passed, 7-3, Chambers, Howell and Tubbs opposed.

Wayne Blair then moved to delete the emergency clause, but he was then persuaded by further Board debate that if the Court considered it on the normal rulemaking calendar it wouldn't go into effect until 1994. He withdrew the motion. Monte Hester moved that the Board send the Court an explanation of why an emergency exists. It passed, 8-0, Howell and Long abstaining.

More Budget News: Budget and Audit Committee chair Lem Howell reported the committee met in December and approved a number of money-raising measures, as well as some cost-containment plans. The fatted calf du jour was the ABA delegation, which was put on a strict per diem reimbursement plan. Travel reimbursement will be limited to

the cost of air fare from Spokane to Seattle.

"It's a perception problem," Governor Steve Tubbs told the Board. "Members think the ABA delegation gets sent off to exotic playgrounds to indulge themselves in ABA politics..."

"They do," interjected Alva Long.

"...while ascribing no merit to that view," Tubbs continued, "we felt it was necessary to put some limits on ABA costs to deal with that perception. This is a realistic plan." It passed, 10-0, as did a plan to increase the charge for fee arbitrations from $25 to $50 (first increase in 12 years), and to increase fees for the law clerk program from a one-time $50 fee to a $200 assessment as of May 1, 1992 and an annual $500 charge as of October 1, 1992.

Legislation: Meeting in Olympia means it's the season of the Gathering of the Honorables Under the Big Dome Nearby. Legislative Committee chair Dick Manning, WSBA legislative liaison John Fattorini, and House Judiciary Committee chair Marlin Appelwick appeared before the Board to discuss the main item, finding a way to increase funding for the state's collapsing county law libraries. Recognizing the entire funding system set up by RCW Chapter 27.24 will need to be overhauled, the Legislative Committee put together a Task Force to be chaired by former WSBA president Pat Comfort (approved by the Board, 10-0). Applewick told the Board this is not a good legislative session to be coming asking for new program funding, since the Honorables will be making large cuts in most funding, but that he was committed to do what he could for the county law libraries on a short-term basis, and would amend a filing fee increase bill to include a $5 increase earmarked for law libraries if the Board supported it (they did, 10-0).

The Three Bears School of Legislative Drafting: Another proposal was one to increase the dollar definition of a felony from $250 to $1,000. A rather labored debate can be summarized this way: prosecutors oppose it, defense lawyers favor it.

Governor Joe Nappi said he thought $250 was too low. On the other hand, he thought $1,000 was too high. He moved that the Board support an increase to $500. It tied, 5-5. The president broke the tie, voting in favor of the amendment. The main motion then passed, 10-0.

A Superior Court Judges' Association bill to reform jury selection by increasing jury fees, shortening terms and the like, passed 10-0. Tax Section chair Mike Carrico made his annual appearance with tax legislation no one understood; the Board voted to support it, 9-0, Long not voting. A bill to require cities and counties to report how much they pay labor relations consultants and characterized as being targeted at a Yakima lawyer the public-employee unions dislike, and which the committee recommended not supporting, was not supported, 8-0, Long and Blair not voting.

Round Up the Usual Suspects: Governor Lem Howell reported on the Presidential Search Committee, which he chairs. The committee sought nominations widely, and got some. All but one of the persons nominated who have not been on the Board of Governors before declined for one reason

or another. One thought the request was flattering but premature, since she had been trying just to get on the Court Rules Committee for five years.

Persons agreeing to be interviewed for the 1992-1993 presidency of the Association on January 11 were former governors from the Seattle area: Paul Gibbs, Paul Cressman, Steve DeForest, Jim Turner, Ron Gould, and Jay White, and Seattle lawyer Mary Wechsler.

Howell told other Board members they could attend the interviews but couldn't ask questions. Governor Wayne Blair thought that was "dumb" and wanted to know why it was done that way; Howell said he thought it was adopted several years ago to keep him quiet. The matter was unresolved when the Board moved on to another topic.

Wrap-up in Olympia: President Delay wielded a mean gavel; the meeting ended in one day. Before they adjourned at 4:45 p.m. to meet with the Thurston County and Government Lawyers' associations, the Board also did these things:

- they appointed Governor Mike Larsen, former governor Steve DeForest, and attorney Shawn Otorowksi as an ad hoc committee on professionalism, to jump-start some ideas a DeForest-chaired committee recommended a couple of years ago;
- approved a resolution congratulating the National Conference of Commissions on Uniform State Laws on its 100th anniversary;
- heard a report on the Lawyers' Assistance Program Revolving Loan Fund having achieved 501(c)(3) tax status;
- appointed Seattle lawyer Frank Shoichet to the Washington State Board on Trial Court Education; put over appointments to the Limited Practice Board; appointed Bellingham educator James G. Roberts to the Character & Fitness Committee; and appointed Eric Jeppesen of Bellevue to succeed Wayne Blair on the Evergeen Legal Services Board;
- debated personal entertainment and speaker choices for the 1992 bar convention;
- voted to disband the Law School Liaison Committee after hearing from the current and immediate past chairs that it has no real purpose any more;
- voted 6-3 to refer the question of whether to regulate paralegals to the Legal Assistants' Committee, that committee to be augmented by the appointment of Seattle lawyer Mary Wechsler, State Rep. Ron Myers, Michael Fitch, Kathleen Morrow and a YLD representative to be arranged, Governors Schultz, Slater and Tubbs opposed;
- and heard reports on revision of the WSBA bylaws and the Board's Disciplinary Liaison Committee.

Future meetings: Tacoma, February 14-15; Vancouver, Washington, March 27-28; Board of Governors Planning Retreat, Seattle, April 11; Spokane, May 8-9; Bellingham, June 19-20; Oak Harbor, July 31-August 1; Vancouver, British Columbia, September 16.

Announcements of Interest to WSBA Members

WSBA: Notice of Hearing on Petition for Reinstatement:

A petition for reinstatement after disbarment has been filed on behalf of **Dominic T. Santiago**, who was disbarred on June 15, 1987. He had previously been suspended from practice on January 6, 1987. At the time of his suspension and disbarment, Santiago practiced in Seattle.

Hearing on Santiago's petition will be conducted before the Board of Governors on Saturday, March 28, 1992, beginning at 1 p.m. On or before the date of the hearing, anyone wishing to do so may file with the Board of Governors a written statement for or against reinstatement, such statements to set forth factual matters showing that the petitioner does or does not meet the requirements of RLD 9.6(a). Except by its leave, no person other than the petitioner or petitioner's counsel shall be heard orally by the Board of Governors.

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

Commission on Judicial Conduct:

Reversal of Censure:

The Washington Supreme Court, Dolliver, J. reversed the Commission's censure of **Janice Niemi**, holding that dual service as a judge pro tempore and state legislator did not violate Canons 1, 2(A), 7(A)1, 7(A)3, or 7(A)4 of the Code of Judicial Conduct and did not violate the separation of powers doctrine. *In the Matter of the Disciplinary Proceeding Against Janice Niemi, Judge Pro Tempore of the Superior Court for King County*, 117 Wn.2d 817 (1991).

Order of Admonishment: Pursuant to WAC 292-12-020(6) of the Commission on Judicial Conduct Rules as revised and adopted on December 5, 1989 ("CJCR"), the Commission on Judicial Conduct ("Commission") and The Honorable **Philip Y. Killien** ("Respondent"), Judge of the Seattle District Court, King County, Washington, do hereby stipulate as follows:

STIPULATION

1. While serving in his capacity as a District Court Judge in Seattle District Court, King County, Washington, Respondent presided over the small claims matter of *Kevin Cooper v. King County*, case number 498790. At the conclusion of the trial of the matter, Respondent entered a judgment in favor of the Defendant, King County.

2. Later that same day, the Plaintiff, Kevin Cooper, returned to the courtroom alone. A representative of the Defendant was not present. Without invitation, Mr. Cooper began complaining in general about his personal problems. Despite Respondent's protests that he could not talk with Mr. Cooper, Plaintiff insisted that Respondent hear him out. Mr. Cooper became increasingly emotionally distraught and, at times, tearful.

Feeling sympathy for Mr. Cooper,

Respondent listened to his complaints until Mr. Cooper brought up Respondent's earlier judgment in his case. At that point, Respondent advised Mr. Cooper that the case was over and the he could not and would not reconsider his decision. In response, Mr. Cooper became even more distraught, and Respondent, being touched by the depth of Mr. Cooper's despair, became concerned that perhaps he had not listened to Mr. Cooper's side thoroughly enough during the trial. Respondent decided at that point that justice would best be served by granting Mr. Cooper a new trial before a different judge.

3. At the time, Respondent considered the fact that small claims court was established for the intended purpose of handling matters with informality and he was mindful of the provisions of RCW 12.40.080 which provides (in pertinent part):

> ...the judge may informally consult with witnesses or otherwise investigate the controversy between the parties and give judgment or make such orders as the judge may deem right, just and equitable for the disposition of the controversy.

In granting Mr. Cooper a new trial, Respondent's intention was to serve the ends of justice, but he acknowledges that his action in granting a new trial *ex parte* was violation of Canons 2(A) and 3(A)(4) of the Code of Judicial Conduct.

FINDING

Based on the above stipulated facts, the Commission finds that Respondent's conduct, as described above, was a violation of the Code of Judicial Conduct, Canons 2(A) and 3(A)(4), even though Respondent believed he was acting to further the interests of justice. Accordingly, pursuant to RCW 2.64.055 and 2.64.010(1), the Commission cautions Respondent not to engage in the conduct described in Paragraph 1 above in the future.

AGREEMENT

Respondent does hereby agree to accept admonishment as described in RCW 2.64.010(1) and further agrees that he will not repeat the violation in the future.

In re the Matter of Honorable Philip Y. Killien, No. 9101090-F-27, filed December 9, 1991.

Important Notice in re North Dakota UCC Financing Statements:

North Dakota law requires every secured party to *refile*, between January 1 and June 30, 1992 all UCC financing statements filed in North Dakota. Any financing statements not refiled by June 30, 1992 in the filing office where the original was filed, WILL LAPSE at midnight on June 30, 1992. N.D.C.C. sec. 41-09-28.1.

Complete instructions on refiling are contained in Bulletin #1, "UCC/CNS Central Indexing System Re-Filing Procedures," available free from the North Dakota Secretary of State, 600 East Boulevard Avenue, Bismarck, ND

58505-0500, (701) 224-3662, fax (701) 224-2992.

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 January 1991 is 4.00%. The maximum allowable interest permissible for **February 1992** is therefore **12%**. Compilations of the average coupon equivalent yields from auctions of 26-week treasury bills appear in the *Bar News* on page 39 in October 1987 for 1982-1984; on page 37 in June 1989 for 1984-1985; on page 51 in June 1990 for 1985-1990 and on page 55 in June 1991 for 1985-1991.

State Law Library—Books Recently Cataloged

Listed below are some of the new titles recently acquired by the State Law Library, and available for loan by phone from (206) 357-2136, or by mail from Washington State Law Library, Temple of Justice, P. O. Box 40751, Olympia, WA 98504-0751. A quarterly *Books Recently Cataloged* list, generally containing 100-175 new titles, is also available. Copies may be obtained by mail from the above address.

On January 7, 1991, the State Law Library began circulating the video collection of the Office of the Administrator for the Courts (OAC), which has more than 150 titles and over 175 videos. A catalog of titles is available from OAC; call Judicial Education at (206) 753-3365, ext. 3248, for a copy.

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

Civil Rights--Interpretation and Construction

The Bill of Rights: original meaning and current understanding. Edited by Eugene W. Hickok, Jr. Charlottesville: University Press of Virginia, c1991. Pp. 499. ***KF4749.A2B56 1991***

DNA Fingerprints

Kirby, Lorne T. *DNA fingerprinting: an introduction.* Breakthroughs in Molecular Biology, v.2. New York: Stockton Press, c1990. Pp. 381. ***RA1057.55.K57 1990***

Drunk Driving

Taylor, Lawrence. *Drunk driving defense.* 3d ed. Kept up to date by supplements. Boston: Little, Brown, c1991. Pp. 958. ***KF2231.T39 1991***

Lawyers—fees

Talmadge, Philip A. *Attorney fees in Washington: annotated statutes, cases and commentary.* Redmond, WA: Butterworth Legal Publishers, c1991. Pp. 349. ***KF553.A3 1991***

Trial Practice

Nelson, Noelle C. *A winning case: how to use persuasive communication techniques for successful trial work.* Englewood Cliffs, NJ: Prentice Hall, c1991. Pp. 394. ***KF8915.N45 1991***

King County District Court, Seattle Division—policy in re: civil motion confirmation process.

In the event that a civil motion or order to show cause is to be argued, excluding motions for default and supplemental proceedings, counsel must notify the Civil Department by phone at (206) 296-3550 or in person by noon at least two court days prior to the hearing.

In the event that confirmation is not made, the motion or order to show cause will be placed at the end of the calendar and *heard as time permits.*

Civil motions will be heard by the Honorable John G. Ritchie on the first and third Mondays of each month at 1:30 p.m. in Room E-326 of the King County Courthouse.

Relocation: Office of the Circuit Executive, Ninth Circuit:

The office of the Circuit Executive for the United State Courts for the Ninth Circuit has relocated to 121 Spear Street, Suite 204, P.O. Box 193846, San Francisco, CA 94119-38466. The telephone numbers remain the same: (415) 744-6150 and FTS 484-6160. This court is the largest of the 12 federal circuits, consisting of over 300 judicial officers and almost 4,00 support personnel. The circuit executive is the chief administrative officer for all nonjudicial functions of the federal courts in the nine western states in the circuit, and the office is responsible for professional and management assistance to the court of appeals, 15 district courts and 13 bankruptcy courts. It provides technical and automation support, legal advice, space and facility planning and supervision, personnel selection and training, management analysis and consulting and press relations.

Change of office designated by U.S. Bank of Washington, National Association for receipt of service of writs of garnishment and levy.

Pursuant to RCW 6.27.080, U.S. Bank of Washington, National Association announces that effective January 1, 1992 the following office will receive service of writs of garnishment and levy: Loan Recovery Department, U.S. Bank of Washington, National Association, No. 7307 Division St., Suite 208, P.O. Box 3588, Spokane, WA 99220-3588.

Said writs served on the Seattle main branch and the Spokane main branch will be effective to attach only accounts at those respective branches.

February 1992

4 How to Probate an Estate and Handle Post-mortem Matters, Wenatchee. *Sponsored by:* WSBA CLE/WYLD. *For information:* (206) 727-8202.

6 Real Property Foreclosures, Vancouver, Washington. *Sponsored by:* WSBA CLE/WYLD. *For information:* (206) 727-8202.

7 Coping With the Growth Management Act, Bellingham (video with moderator). Also presented February 28 in Spokane. *Sponsored by:* WSBA CLE/WYLD. *For information:* (206) 727-8202.

7 Legal Malpractice. *Sponsored by:* WSTLA. *For information:* Claire Gordon, (206) 464-1011/(800) 732-9251.

7 Intellectual Property Litigation, Seattle. *Sponsored by:* WSBA CLE/Industrial & Intellectual Property Section. *For information:* (206) 727-8202.

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

13 Real Property Foreclosures, Spokane. *Sponsored by:* WSBA CLE/WYLD. *For information:* (206) 727-8202.

14 Washington Labor and Employment Law, Vancouver, Washington. *Sponsored by:* National Business Institute, Inc. *For information:* (715) 835-7909.

14-15 WSBA Board of Governors meeting, Tacoma. *For information:* (206) 727-8200 or contact your local governor.

15 *Bar News* deadline, April 1992 issue.

16-21 Ski-mender Weekend. *Sponsored by:* WSTLA. *For information:* Claire Gordon, (206) 464-1011/(800) 732-9251.

19-20 8th Annual Hazardous Waste Conference, Portland. *Sponsored by:* Lewis & Clark Law School. *For information:* (503) 244-1181.

20 Basic Bankruptcy in Washington, Seattle. Also presented February 21 in Spokane. *Sponsored by:* National Business Institute, Inc. *For information:* (715) 835-7909.

20 Advanced Real Estate in Washington, Vancouver, WA. *Sponsored by:* National Business Institute, Inc. *For information:* (715) 835-7909.

21 How to Probate an Estate and Handle Post-mortem Matters, Mount Vernon. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

21 Real Property Foreclosures, Seattle. *Sponsored by:* WSBA CLE/WYLD. *For information:* (206) 727-8202.

22 The Winning Edge—Computer-assisted Litigation, Vancouver, B.C. *Sponsored by:* CLE Society of British Columbia. *For information:* (604) 669-3544.

26 Maritime Personal Injury Law in Washington, Seattle. *Sponsored by:* National Business Institute, Inc. *For information:* (715) 835-7909.

27-28 Shirtsleeves Interaction—Simulated Transactional and Litigation Sessions Covering State of the Art Issues in Computer Law, San Francisco. *Sponsored by:* Computer Law Association. *For information:* Barbara Fieser, (703) 560-7747 or Stephen Hollman, (408) 283-1222.

28 Medicine for Attorneys, Seattle. *Sponsored by:* WSTLA. *For information:* Claire Gordon, (206) 464-1011/(800) 732-9251.

28 Coping With the Growth Management Act, Spokane (video with moderator). *Sponsored by:* WSBA CLE/WYLD. *For information:* (206) 727-8202.

28 Guarded Condition-Legal Challenges for Healthcare Providers, Seattle. *Sponsored by:* WSBA CLE/Health Law Section. *For information:* (206) 727-8202.

29 Introduction to Computer-assisted Legal Research, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

March 1992

6 Franchising in Washington After the 1991 Amendments, Seattle. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

6 International Business Law: Russia and Vietnam, Portland. *Sponsored by:* Lewis & Clark Law School. *For information:* (503) 244-1181.

11 Reproductive Health Hazards in the Workplace, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

13 Incorporating Small Businesses, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

NOTICE TO ATTORNEYS

The State of Washington, Department of Corrections, intends to issue a Request For Proposal (RFP) for the purpose of obtaining legal services for felony offenders committed to the custody of the Department of Corrections.

Successful proposers will provide legal services to eligible inmates in contracted service areas. Representation will be for civil matters only. Contracts shall be for the period of July 1, 1992, through June 30, 1993, and will contain an option for the Department of Corrections to renew for three additional one-year terms. Contract awards are contingent upon funding by the state legislature.

Copies of the request for proposal may be obtained on or after February 25, 1992, by mail or in person, from the Department of Corrections, Office of Contracts and Regulations, at the following address:

Department of Corrections
Office of Contracts and Regulations
410 West 5th, P. O. Box 41106
Olympia, Washington 98504-1106
(206) 753-5770

13 The Science Behind Environmental Law Made (Almost) Easy, Seattle. *Sponsored by:* WSBA CLE/ELUL. *For information:* (206) 727-8202.

15 *Bar News* deadline, May 1992 issue.

17 Real Property Foreclosures, video replay, Ellensburg. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

19-20 Tapping International Markets: Structural Options for Washington Businesses. *Sponsored by:* WSBA CLE/International Law & Practice Section. *For information:* (206) 727-8202.

20 Recessionary Times—What the General Practitioner Needs to Know, Seattle. *Sponsored by:* WSBA CLE/General Practice Section. *For information:* (206) 727-8202.

22-26 National College of Probate Judges, Seattle. *Sponsored by:* National Center for State Courts. *For information:* (804) 253-2000.

25 The Making of the Constitution, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

27 Essentials of Evidence, Seattle. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

27-28 WSBA Board of Governors meeting, Vancouver, WA. *For information:* (206) 727-8200 or contact your local governor.

31 Real Property Foreclosures, Bremerton. *Sponsored by:* WSBA CLE. *For information:* (206) 727-8202.

April 1992

3 Washington Growth Management Act, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

11 Misdemeanor Practice in Washington, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

14 The Civil Rights Act of 1991, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

15 *Bar News* deadline, June 1992 issue.

16 Essentials of Evidence, video replay, Port Townsend. *Sponsored by:* WSBA CLE/WYLD. *For information:* (206) 727-8202.

16 DNA Fingerprinting Conference, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

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

28 Essentials of Evidence, video replay, Wenatchee. *Sponsored by:* WSBA CLE/WYLD. *For information:* (206) 727-8202.

May 1992

1 A Day on Trial, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

8-9 WSBA Board of Governors

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

12 Essentials of Evidence, video replay, Aberdeen. *Sponsored by:* WSBA CLE/WYLD. *For information:* (206) 727-8202.

15 *Bar News* deadline, July 1992 issue.

20 Successful Solo and Small-firm Practice, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

29 Estate Planning in the 1990s, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

June 1992

5 Sexual Harassment in the Workplace, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

10-12 Oregon Trial Advocacy Academy, Portland. *Sponsored by:* Lewis & Clark Law School. *For information:* (503) 244-1181.

11 Drafting Buy-sell Agreements, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

15 *Bar News* deadline, August 1992 issue.

19 Insurance Agents' and Brokers' Duties and Liabilities, Seattle. *Sponsored by:* UW CLE. *For information:* (206) 543-0059.

19-20 WSBA Board of Governors meeting, Bellingham. *For information:* (206) 727-8200 or contact your local governor.

23-27 XVIIIth International Congress, International Academy of Law and Mental Health, Vancouver, British Columbia. *For information:* Simon Verdun-Jones, (604) 291-3032 or 291-3213; fax (604) 291-4140.

July 1992

15 *Bar News* deadline, September 1992 issue.

31-Aug 1 WSBA Board of Governors meeting, Oak Harbor. *For information:* (206) 727-8200 or contact your local governor.

31-Aug 2 Legal Writing Institute Summer Conference, UPS School of Law. *For Information:* (206) 591-2201.

August 1992

15 *Bar News* deadline, October 1992 issue.

September 1992

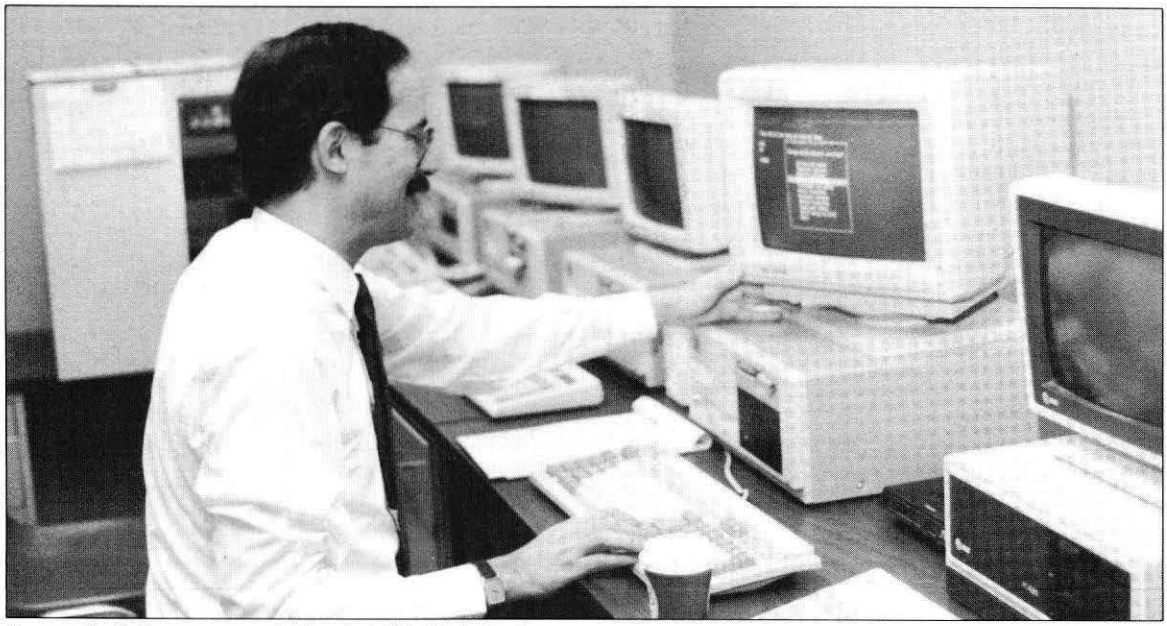
15 *Bar News* deadline, November 1992 issue.

16 WSBA Board of Governors meeting at Annual Meeting and Convention. *For information:* (206) 727-8200 or contact your local governor.

October 1992

15 *Bar News* deadline, December 1992 issue.

It's C.O.L.D.,



Sysop ***Jeff Jernegan*** *at the L.A.W. BBS station*

by **Mark P. Kuffel**

As the time approached I found myself saying, "If I could just practice law...," but I knew I couldn't. My turn was next—managing partner. I steeled myself for the job. I was committed to bringing the dreaded monster to its knees: ***overhead.*** Preparation would be the key. For two years I had attended law office management seminars. But after several months in the role of managing partner it became apparent that I was losing the battle to reduce overhead. It continued to grow.

An old friend of my partner had called seeking information on possible candidates for a seat on the executive committee of the WSBA Law Office Economics and Management Section. He asked me to consider it, and after several days, I decided it couldn't hurt and it might help; I was fortunate to receive the appointment.

Through my participation in LOEM, information came even more rapidly. New concepts and innovative techniques all had the same common denominator—get efficient; be organized. But how? "Computers," was a frequent response. "Computers," I thought, "What's wrong with carbon paper?" My learning curve was accelerating—screens, hard drives, floppies, keyboard (it's not just a small piano?).

Then one day the phone rang:

"Mark?"

"Yes..."

"LOEM and the General Practice Section need to form a new division."

"What new division?"

"The Computerization of Law Division. Can you help?"

"I don't know."

"Sure you can!"

"O.K., but I know very little about computers."

"You'll learn."

Soon the Computerization of Law Division (COLD) was born—a joint division of the LOEM and the General Practice sections. Its mission: to assist practicing lawyers in using the computer in the law office and to facilitate the low-cost, broad-scale, standardized availability of legal databases to practicing lawyers in Washington. And I have learned about the following things:

Information retrievable through:

LAW BBS Telecommunication Access System

Available through, and provided by, our Bar.

This is a bulletin board system for sending out messages to other attorneys in the state, shareware, pleading forms for numerous types of cases, slip opinions and access to the complete set of RCWs, WACs and Washington Court Rules.

Equipment needed: IBM-PC or compatible; MS DOS 3.3 or higher, *or* a Macintosh with DOS conversion capability; Hayes-compatible modem (preferably 2400 or 9600 baud); communication software (such as Procomm or Telix); and an accessible phone line.

To subscribe to this system, you should contact:

LAW BBS
Washington State Bar Association
500 Westin Building
2001 Sixth Avenue
Seattle, WA 98121-2599
(206) 727-8312

Cost:$10 fee to cover costs of the diskette, copying and mailing.

Long distance: No current charge to access the system except the cost of the long-distance telephone call.

I have used the LAW BBS to do keyword/phrase searches of the RCWs in several cases. For instance, if I wanted all citations or references which include the words crop and lien, I would do a keyword search on those two words and receive a listing of those citations. I could then view each citation individually.

and It's HOT

Sysops ***Jim Wagemann*** *and* ***Ed Hiskes***

Judicial Information System

JIS-LINK is a system set up by the OAC (Office of the Administrator for the Courts), which allows you to access information on a statewide computer network. Currently, the only on-line information is that of SCOMIS (Superior Court Management Information System) which allows access to the superior court records of all counties in the state of Washington (except Spokane and Garfield). JIS-LINK is currently working to make available DISCIS (District Court Information System), the system used by the district/municipal courts.

In order to subscribe to this system, you should contact:

Office of the Administrator for the Courts
1206 S. Quince Street
Mail Stop EZ-11
Olympia, WA 98504
(206) 753-3365
Fax: (206) 586-8869

Equipment needed: IBM-PC or compatible; MS DOS 2.x or higher *or* Macintosh with DOS conversion software; Hayes-compatible modem (preferably 2400 or 9600 baud); communication software (such as Procomm or Telix); and an accessible phone line.

Cost: $100 for one-time installation fee
$25 per hour (no minimum usage charge—if not used during a month, there is no charge)
No long distance—number is toll-free

The information available using SCOMIS is invaluable. Recently, I had a case where I was ready to file a complaint against a party, and I needed to know whether or not he was currently married or whether he and his spouse had divorced and, if he was divorced, when the divorce occurred so as to determine whether or not to make his spouse a party to this action. It turned out that he was still married during the relevant time period set forth in the complaint and, therefore, I needed to make his former spouse a party to the action. I also obtained the cause number for the divorce action, and then I called the clerk's office and obtained the maiden name of the partiy's former wife for purposes of adding her name to the complaint and having her served.

Litigation support through:

Discovery ZX 3.1

Discovery ZX is a full-text litigation support system which gives you the ability both to load the full text of depositions (or other discovery materials) onto your PC and to do keyword searches and summaries, as well as numerous other applications. Some of the tasks which you have the ability to perform are (1) identify specific words and the number of times they are used in a deposition, (2) quickly look up important testimony on the screen, (3) organize favorable and unfavorable admissions in the case, (4) organize all the information deponent "A" said concerning deponent "B" or subject "X" and compare this testimony against other testimony given by another deponent, (5) organize all material that supports filing a motion for summary judgment, (6) identify and sort events in a case in chronological order, (7) identify and sort testimony by user-selected issues or subjects (i.e., work history, breach of contract, etc.), and (8) type summaries of depositions as one reads the deposition on the screen and be able to search on those typed summaries as well as print them out.

System requirements: IBM PC/XT/AT computer or compatible; 10MB hard disk or greater; 512KB available memory or greater; and DOS 2.1 or 3.0 or greater.

Available through:
Stenographic Legal Services
(800 443-8007
(602) 497-1082
Cost:$10
(Three program diskettes)

I find this program very helpful in cases where there are numerous depositions. It makes summarizing and

cataloging the information in these depositions more manageable. There are also other programs with similar features available from other software developers.

Billing packages through:

Timeslips III

This is a sophisticated electronic stopwatch that simplifies crucial but often-neglected professional tasks: tracking activities and expenses, printing customized invoices, managing multiple projects, and maintaining clear records. Unlike a rigid database or accounting system, Timeslips lets you add new users or clients, change billing rates, and modify activities or expenses on the fly. In fact, Timeslips will let 250 of your colleagues handle 3,400 clients with up to 128 projects per client.

Timeslips III is the only program that features a memory resident stopwatch timer module to time activities. It captures more billable time and automatically calculates the total fee. With Timeslips III reports, you can see how you spend your time, evaluate which jobs are the most profitable and determine how you can cut down on "wasted" time. Reports can be generated by account, job category, date or any way you find useful.

The basic single-user version of Timeslips III sells for $299.95, and the network edition sells for $699.95. To purchase or obtain additional information, call (800) 338-5314. In Canada call (800) 359-3343. In Massachusetts, call (508) 768-6100.

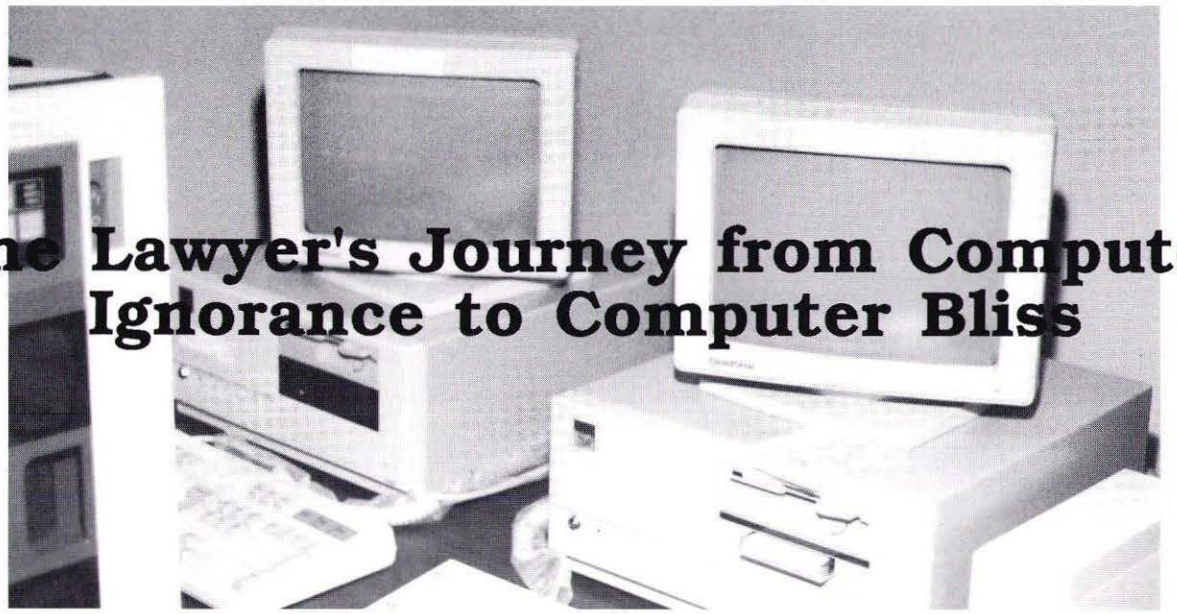
Timeslips has several support packages, such as Certified Consultants Program, PercentEdge, Timeslips III Import Manager, Timeslips III Remote, and Timeslips Accounting Link.

There are also other programs with similar features available from other software developers.

Our firm has loaded numerous client accounts into the system, and we are now producing professional-looking billings in a quick and efficient manner.

In spite of everything that I have learned and the technological advances that I have been exposed to, some things never change. Two minutes before the drop-dead deadline, I find myself dictating the last words of this article to my legal assistant, Brenda, who is contemporaneously loading those words onto the LAW BBS which Jennifer Klamm can download at the WSBA onto a floppy in order to view and print it. Well, maybe things have changed!! Amazing, huh? Oh, by the way, although I am able to access information which was electronically inaccessible before, and aspects of my practice are better organized and are operating more efficiently, I have concluded that there's not a darn thing you can do about overhead. Just make more money—at least the profit-to-overhead ratio looks better!!

Mark P. Kuffel is on the executive committee of the WSBA Law Office Economics and Management Section and serves as one of its representatives on the Computerization of the Law Division.



One Lawyer's Journey from Computer Ignorance to Computer Bliss

by **Edward F. Shea**

A child of the '50s, I thought of computers as those room-sized machines with some parts spinning and whirring in a room in which military types worked feverishly with nerds to find the solution to the latest alien threat to invade our planet. And I knew who those nerds in the white lab coats were: they were the older brothers of my classmates in advanced math class who viewed my befuddled attempts to solve various equations at the blackboard with a mixture of amusement, pity and awe. Why and how I ended up in advanced math class at Boston Latin School is a story that will some day appear in the "Humor" section of *Omni* magazine: for now it is sufficient to note that graduation flung us to our respective destinies in the '60s, during which time electronic calculators became essential equipment and, curiously, aliens had all but stopped their invasions of our planet. Rarely did you see in movies those war rooms with banks of computers or those math/science wizards in white lab coats —we were watching our cultural revolution on television and were focusing on people problems. By then I had mastered addition, subtraction, multiplication and division on the electronic calculator and entered the practice of law.

Well, the '70s came and went, and as the '80s began, it seemed as if everyone was talking about "mainframe computers" and "mini-computers" and "micro-computers" and something called "personal computers," but at prices that only large firms in Seattle could afford. We did not practice in those areas, but in the Tri-Cities. From that vantage point we were aware that the large firms and those that were considered "progressive" were installing "hardware" and buying "software" and, I suspected but could not confirm, wearing white lab coats.

Quick to spot professional one-upmanship, and determined to counter it, I preached to all who would listen that you did not need computers to be efficient and that you could deliver equally efficient services if you just streamlined your office, pleading and billing procedures. So we did and smirked that we did not have to invest all of that money in expensive "hardware" and "software," and could still deliver a less expensive service, charge less, gain more clients and enjoy a larger net income. We did sit through a demonstration of an early version of a personal computer; the asking was $8,000, as I remember it. In my ignorance, I thought of it as a very expensive electronic typewriter and resisted the temptation to have the latest gadget at the office. I comforted myself with my sermon on increasing office efficiency and remembered *THE FIRST RULE OF CONSUMERISM IN THE ELECTRONIC AGE:" JUST WAIT—THEY WILL MAKE IT BETTER AND CHEAPER LATER."*

But there were market forces out there which persisted; articles in journals and magazines trumpeted the glories of those firms that had "computerized." The testimonials proclaimed that although the initial investment was high, it had made the firms more competitive and had given them the edge in delivering professional services to their clients and had enabled them to research at the speed of light using national "data banks" through "modems." Now there was a new language to learn—"computerese"—and something called "DOS." Slowly, I realized that others were installing "hardware" and "software," usually a word-processing and billing package.

Litigation publications were featuring an ever-increasing number of articles on the use of computers in the preparation of cases and at trial. Newspapers were frequently publishing articles announcing the latest products and increasing profits of IBM, Apple, Digital, and Microsoft, whatever that was.

Now it was not just some trendy Seattle thing, but a real presence right here in River City, and we were onlookers. Other law firms were displaying the latest installation to their clients and we were feeling like the 1950s family across the street watching the delivery men unload a brand new television: "Look, Mom! The Smiths are getting a TV. Are we ever going to get one?" In truth, there is an element of that in some aspects of the practice, but we try to resist it and never admit it. So we asked each other why we should not

buy a computer since the prices were now down to about $2,500. The answer was that beyond its use as an expensive typewriter and an apparently efficient billing system, we did not have a clue as to other possible uses for a computer. Nor did our staff, although they, unlike us, had received computer training in both high school and community college. But they reminded us that what they did know about computers convinced them that we needed them.

The continued chant of our staff—"When are we going to get computers? We will be able to get out more work more quickly and you will make more money"—finally wore us down. That and the terrifying concept that was being repeated in articles in professional journals that if you lost a case because you had failed to find and cite a controlling precedent that a computer search would have revealed, you had committed malpractice. Given the powerful effects of fear and money, we bought three computers and a printer and the usual word processing and other software packages.

Within weeks our salesperson had left the area, and the supplier was untimely and unsatisfactorily responding to our requests for assistance. We were, it seemed, full members of the computer society. But owning a computer is not quite knowing how to operate one.

Almost at the time of installation, fate intervened in the person of a small-business man who asked us to defend him against the claim that he had stolen data from the computer of his former employer, who claimed that our client had "downloaded the data to several floppies and had then deleted the data from the hard drive of the computer when he had left in a dispute." He responded that the data was the product of his experience and judgment, that he had entered it on his own time, that it did not belong to the plaintiff and, regardless, that as a matter of conscience, he had returned the floppies with the data to the plaintiff. The plaintiff responded that the data had not been retrievable from the floppies. Without it, plaintiff had not been able to competitively bid on several major contracts and consequently had lost considerable profit and ultimately its business. Further, it seemed plaintiff suggested that if the data was now on the floppies, persons unknown had restored it during the litigation. Aha! A computer mystery within a computer case.

Necessity being the mother of all learning, we started through the process of computer education with the able assistance of an associate attorney who, as a recent graduate, had used computers in law school. "Hard drive,""floppy disk," "backup," "delete," "ASCII text," "programming,""hacker," "autoexe.bat" and "config.sys" became familiar terms even if the underlying concepts remained a bit vague. We were confronting the basic problem of man/woman in the electronic/computer age: "I know how to turn it on and regulate the volume, but I really do not have any idea how it works." And that's maddening for a litigator because you are at the mercy of an expert witness who *does* know how these computers work. So we studied, consulted experts with my playing Watson to their Holmes, and we became "book-smart" and that's all because, as our staff reminded us, we had not earlier followed their advice and purchased a

computer. If we had, perhaps we would now know a good deal about computers. So, "book-smart" would have to do.

Then came "the enlightenment"—plaintiff's expert arrived in court not simply to testify but to demonstrate on a computer wired to an overhead just why our experts did not know their ASCII from their hexadecimal. But anxiety is the constant companion of the litigator, so I put on my most-bored expression, you remember the one I used in advanced math class, and played my "trust man, not machines!" strategy. Fortunately, facts are facts and the burden of proof has not been altered by the computer, although it certainly can and did cause everyone in that case to appreciate what you could do with data and a computer—if you only had experience with one, as my staff observed.

Properly educated to the beneficial uses of the computer, I took a computerized legal research class, read the computer columns in various professional journals and, actually, anything else I had time to read. I listened attentively when judges and colleagues discussed the latest case in which the lawyers had effectively used computers. CLE programs were offering courses on the applications of computers in the courtrooms, and we were experiencing increasing use of CALR (okay, computer-assisted legal research) by our opposing counsel. As a member of a firm with three computers, I thought of us as full members of the computer society.

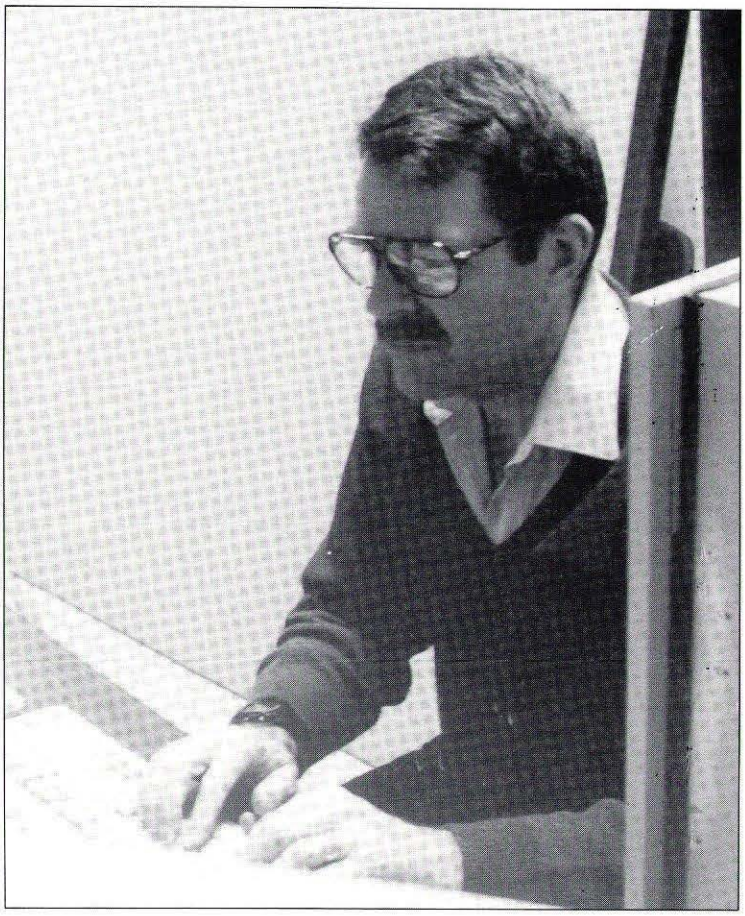
Well, not really, because it seemed that just as we were installing computers for our staff, the rules for membership changed. Now admittance required each lawyer to also have a desktop computer and, if you sought premier status, you had to have a "lap top" or was it a "portable" or a "notebook"? But we were too secure to define ourselves by the number and type of computers we had at the firm. But when the new associate arrived with his own computer, there was this awful sense that we had just witnessed the future—and it was our associate—and we had fallen behind again. We were not sure just what it was that we were behind, but it certainly felt that way.

Frankly, buying computers does not differ from buying a car: when you find yourself reading about the new models and their megabyte capacity and their HZs and their upgrade potential, just pick out one that is from a reliable source and buy it now; you will save a lot of your time. And yes, I did just that. It sits on my desk, and I use it every day. I have reached the point where I can do more than turn it on and regulate the screen color. It took the same regimen that any learning experience requires; time, effort, and a sense of humor. I have made all of the mistakes that a novice makes including the most frustrating one of all—working devotedly on a project which seems to evaporate when you inadvertently punch the wrong key or command. Our staff correctly observed that moaning and cursing were not likely to recover the data but there was a utility available that could. Now I have a "utility" which can help retrieve that missing data, but I did not the first few times, and it was awful.

My daily use is quite varied. From some simple word processing of memos to myself and staff to entry of the

names, addresses and phone numbers of key contacts in my caseload, as well as calculations, it has been worth the money and the time. In fact, it was only a few months ago that I found myself with a screwdriver in hand removing the cover of the computer to install an internal modem; of course, I was on the phone to the technical support person from the mail-order company from which I had purchased the computer and later the modem, but I was actually doing the installation. I had already loaded a communication software program on the computer and now I was ready to "go online." We had subscribed to SCOMIS and to LAWBBS and after the usual initial errors, I finally was talking to another computer and retrieving information for use in my practice—with a very pleased expression on my face, I might add.

What's in the future? We are debating the purchase of various software packages with particular interest in one which will enable us to retrieve text from a variety of sources that have been entered in the computer. That is the other subject of debate: "Do we need, and will we use, a scanning device?" There is much information that is not currently available in electronic form that we could use more easily if it were on the computer; scanning is one way of entering it and seems faster and more error-free than keyboard entry by staff. However, we still engage in the fundamental analysis of any business: "Do we buy the equipment and do it ourselves, or is there an available business which can efficiently and economically deliver the service to us?"

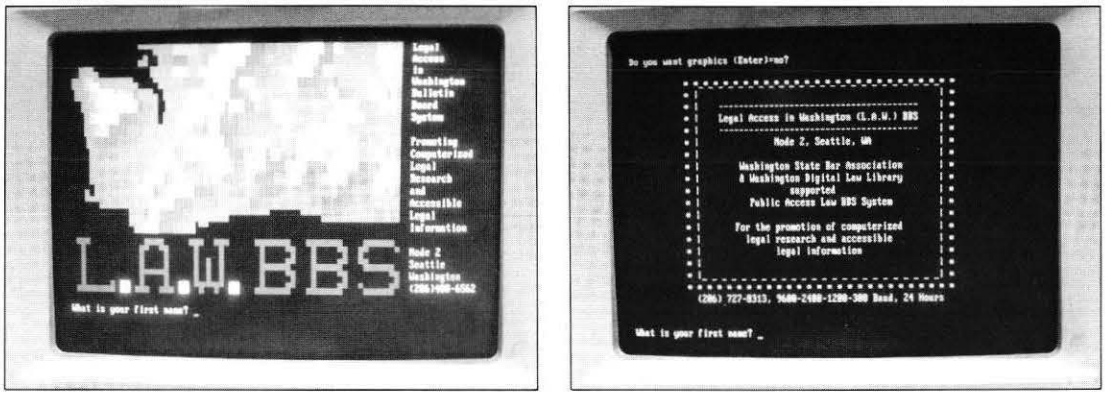


L.A.W. BBS sysop ***Bruce Gardiner***

We are about to put into use a program that enables us to retrieve and analyze the testimony taken at a trial or a deposition, which is electronically stored on the floppy disks we buy from the reporter of the trial or of the deposition. Others are already using it and are storing it on lap top computers, which enables them to access it in court—an advantage they say impresses judges and juries. So many computer applications, so little time! We do listen to the suggestions of staff on the purchase of new software packages; we send them to seminars that offer new and different computer solutions to practice problems. And I continue to try to stay current as well.

You are welcome to stop by and see what and how we are doing. I am easy to recognize—I'm the one in the white lab coat.

Ed Shea is a past member of the WSBA Board of Governors and is engaged in a general civil litigation practice in the Tri-cities with Shea & Kuffel.



L.A.W. BBS welcome screens

Computerized Legal Research—Present, Past and Future

by **Dan Martin** *(L.A.W. BBS[1] Sysop[2])*

At home in Friday Harbor, Bill Smith removed his laptop computer from his briefcase and began typing the memorandum he needed to file that afternoon in the King County Superior Court. After cutting and pasting most of the relevant argument and authorities from the trial brief he had written last fall and stored on his computer hard drive, Bill began to further research the new issue concerning the extent of the exemption for tax liability in interstate transactions presented by this case.

Pulling the phone wire from its holder, he plugged his computer into the phone jack, and started his communications program.[3] With a finger he selected the number from the phone directory and watched as the computer dialed the WSBA's L.A.W. BBS: (206)-727-8312.[4] The BBS answered the phone on the first ring, and his program "logged him in," telling the BBS his name and password.[5] After glancing at the main menu of available options, Bill typed "DATABASE," pressed [enter], and in seconds he saw the selection of legal databases he could search for legal authority. In the newly updated RCW database, he searched the entire text of all the statutes for all occurrences of the words INTERSTATE in proximity to EXEMPTION (or related words).[6] In 13 seconds, he located 20 statutes that contained the search terms. Listing them, he viewed each in turn and selected three as relevant. With a few keystrokes, he captured the full text of those statutes on his hard drive and exited the RCW database.

Then he selected the WAC database and checked for administrative regulations that might be analogous. Finding several interesting "hits" in chapter 458-20 (Department of Revenue), he wondered what the Department had ruled internally.... So Bill moved to the REVENUE opinion database and searched the administrative decisions there, also. Before leaving the enacted law databases, Bill ran the same search on the Washington Register, checking for both recent statutes and regulations. There were no helpful developments published in the last month.

Although Bill had carefully checked for relevant Washington cases last fall, he again checked the Washington 2d and Washington Appellate CASES database for any new decisions which might have been published. He was surprised to find a helpful Appellate Division case published only the week before.[7] This would give his adversary an unpleasant surprise, if he hadn't also used the L.A.W. BBS databases to check the current cases!

Since he could not get an official printed copy of the slip opinion locally for inclusion with his brief, Bill noted the citation and page numbers.[8] Leaving the CASES database, he entered the FAX command and told the BBS fax program what he wanted faxed to him. The BBS sent the 12 pages of the slip opinion to him in fax format. Later he could include that fax as a true copy of the official slip opinion with his brief for the judge's reference.

None of the other databases, including the WSBA deskbooks[9] or CLE materials[10] had been updated since he had last searched them, so he pressed the quit key and left the L.A.W. BBS database area.

Satisfied that he had accomplished his main goal, Bill leaned back and rescanned the BBS menu of options. He had erased his old copy of the King County Superior Court's Local Rules, so he located the most recent edition's filename among the hundreds of items available in the BBS file collection, and he had the BBS transmit it to him.[11] It was convenient to be able to get the files in a central location, uploaded by the Court Clerk's office as they changed. Bill thought he should verify that the King County Clerk still had the same fax number, so he joined the KINGCO topical message conference on the BBS. There he scanned the bulletin listings for the information concerning filing by fax and found the number. It was a relief not to have to physically deliver a document for filing. Fax filing has allowed attorneys from all areas to meet the deadlines that seem to press closer together each year.

Before logging off, Bill tried to scan all the message conferences for mail addressed to him. The commands he tried were wrong, so he typed "?" for the online context-sensitive help screens. The correct command ["R Y A S"] showed that he had three messages. The system operators had left a generic message to all users notifying them of the forthcoming improvements on the BBS: local access numbers for all professional subscribers were expanded to include the whole state;[12] federal law databases would be added; and the

Washington Corporation and UCC databases would be updated monthly. The next message was from the WSBA CLE department notifying him that he could fulfill his CLE requirements by completing online CLEs (reading materials and answering the questions on the BBS from his own home, at his own pace). They also offered to sell all last year's CLE program materials on a compact disk for $50, together with the searchable CASES, RCW and WAC databases.

Finally, he had a message from a sysop, replying to his question about networking his home and office computers (so he could fully access his electronic client files without going to his office). That raised another question, which Bill left in a personal reply and in a cc to all users in the LAW-TECH topical conference. It would be read nationwide on a network of legal-related BBSs, and surely someone would have an answer in a day or so.

Bill logged off the L.A.W. BBS, finished his brief on his laptop word processor, and served and filed it by faxes to opposing counsel and the King County Court Clerk's office.

It's Not Science Fiction

None of the account above is science fiction. It all exists today or is possible within the year, with sufficient interest and modest financial commitment. A call to the L.A.W. BBS will show you all the technological features mentioned except the fax-copy service. That and the Washington case searches await availability of the databases themselves by scanning, licensing or donation. The administrative law databases are being added by BBS volunteers as fast as the data is obtained from the agencies. CDs of Washington law, like those available today from CD Law and other vendors, may soon be offered by the WSBA. Within a few dozen months, every conceivable service to facilitate electronic legal research and the practice of law in Washington will be offered by your WSBA, the state government, or commercial vendors at bargain rates. The future of computerized law has arrived, and it is time to "get connected."

History

In earlier centuries, attorneys referred to rare leather-bound law books with no indices. Then, for decades, we relied on mass-produced volumes with headnote indices that often didn't classify the point in issue. In 1973, Mead Data revolutionized legal research with their Lexis computerized legal database, providing subscribers who could connect (in days before microcomputers) with indexed databases of cases permitting legal research with key word searches. Any fact pattern or issue could be located without the need for any headnote index limitations. West Publishing soon followed with Westlaw, creating their text databases by retyping hundreds of thousands of cases.

The mainframe computers required to operate these systems cost tens of millions of dollars and required large staffs to operate. Storage medium was extremely expensive, mandating centralization and databases shared by many users. Programs were custom-written for each application.

In the early 1970s, before mass-marketed microcomputers were available, Ward Christiansen hand-built a computer and started what was probably the first public BBS, literally a bulletin-board system. With infinitesimal storage available,[13] his system was used by aficionados to post messages, exchange information and share early "public domain" (free) software. Ward also wrote the MODEM7 error-correcting file transfer program that permitted easy and accurate transfers over poor phone lines at 110 baud.[14]

The high cost of large-scale storage was a limiting factor until the late 1980s. The first inexpensive storage medium was deadly slow audio cassette tape drives. Floppy disks were suitable for document creation and archiving, but they required manual changing to access the desired files. The early single-sided floppies had only one tenth the capacity of today's high density disks. A major step forward occurred when IBM started offering XT hard-drive-equipped computers. The high-speed tape storage used for data storage on mainframes shrank and became available on microcomputers for backup purposes. In the late 1980s, personal computer storage options exploded. Removable hard drives,[15] larger capacity hard drives[16], large capacity tape drives,[17] and finally high-capacity compact disk drives[18] reached the market. As demand and numbers of computers grew, competition flourished, and prices plummeted. Hard drives cost $40-60 per megabyte of capacity in 1983, but are today as low as $1.50 per meg.

Here in Washington, visionary attorneys were struggling to expand computerized legal research. Westlaw and Lexis had much of Washington's law available, but at $3 to $6 per minute access charge, the commercial legal databases were beyond the reach of most practitioners. Edward Hiskes of Richland and Jeffrey Bodé of Bellingham together sought to obtain the RCW and WAC in electronic form from the state of Washington in 1986, to make them available to the bar and public at no cost. Despite an initial setback when their suit to require the state to turn over the data was dismissed on constitutional grounds,[19] a settlement was reached whereby the data was made available to

the Washington Digital Law Library (WDLL) for several years. Ed Hiskes wrote an excellent indexing program and a search program that did nearly instantaneous full-text searches of the index and displayed the relevant statutes. Jeff Bodé and others of the WDLL distributed the entire RCW, index and search program on 35 diskettes for the price of postage. But the installation on a lawyer's computer required 55 megabytes of free space, more than most lawyers had available at that time.

In Spokane, attorney and computer buff William Sorcinelli founded the state's first legal-oriented BBS, Legalease,[20] in 1988. He added large hard-drive capacity and made dozens of legal form samples and informational files available to the public. By 1989, he had installed an early version of Ed Hiskes' search program and the RCW so it could be searched by BBS callers.

In Seattle, attorney James Wagemann was distributing the RCW disks for the WDLL, and he wondered if a BBS would be a suitable distribution channel. He met Jeff Jernegan, an attorney with years of experience running a BBS, and they conceived of the L.A.W. BBS. By August 1989, it was operating on inexpensive off-the-shelf PC equipment and software now available, and several other local attorneys[21] were recruited as co-sysops. With the goal of making legal research tools available to all practitioners and the public at the lowest possible cost, these and other volunteers contributed the time and materials necessary to demonstrate its feasibility.

The WSBA Board of Governors (BOG) also shared the belief that inexpensive computerized legal research tools should be available to all bar members. In December 1989, it resolved unanimously that all laws, regulations, and decisions be released into the public domain and to the widest possible audience at the lowest possible cost. In 1989, the BOG authorized the formation of the Computerization of Law Division (COLD), a cooperative effort between the General Practice and the Law Office Management and Economics sections. Its goals were to assist practicing lawyers in using computers in law offices and to facilitate availability of inexpensive legal databases for Washington lawyers.

In January 1990, COLD chair Steven Crossland invited the L.A.W. BBS sysops to demonstrate the system to the BOG. At that meeting, the BOG voted to sponsor the L.A.W. BBS for a pilot project and provided funding for purchasing WSBA equipment to expand L.A.W. BBS operations. By April 1990, the bulletin board was relocated at the WSBA offices and running three lines 24 hours a day. BBS volunteers worked with Ed Hiskes refining and testing the database indexing and search software which made the Washington legal BBSs unique among public-access PC-based systems. Equally important was the process of obtaining legal data to make it available.

The state of Washington also independently forged into the computer age, generally using mainframe and minicomputers, and attempted to implement a computerized statewide court administration system. The product is SCOMIS, operated by the Judicial Information Service (JIS) for the Office of the Administrator for the Courts. Subscribers may dial in with their computer and access case file information entered by the Clerk's offices, including file dockets, and plaintiff and defendant lists. With the encouragement of several appellate judges, JIS also attempted throughout 1989-1991 to develop an electronic database of judicial slip opinions that could be searched by online legal researchers. The projected cost of such use was the same as that for SCOMIS: $25 per hour.

In 1991 attorney William Gates chaired the WSBA Long-range Planning Task Force. Its recommendations recognized that the WSBA and lawyers are in the business of processing information, and access to changing information using computer technology is vital. The task force recommended that the WSBA aggressively advance establishment of electronic legal databases and create systems to enable ready, inexpensive access to the data. In furtherance of this concept, WSBA Governor Steven Tubbs strongly advocated that the WSBA make all its resources, including the CLE Deskbook series and materials, available on the L.A.W. BBS immediately.

COLD is actively pursuing all avenues to improving computerized legal research. Besides overseeing the operations of the L.A.W. BBS and its volunteers, it is commencing projects to:

(a) scan printed materials into electronic text and graphic form to create previously unavailable database assets for use by the bar and public;

(b) compile and publish inexpensive compact disks containing indexed legal databases and other materials useful to practitioners;

(c) obtain past and future electronic data from state agencies for distribution;

(d) provide education and information concerning opportunities for computerization in legal work; and

(e) modify existing law to make legal information in electronic form more accessible.

By the efforts of dedicated pioneers among the BOG and bar, (especially governors Jim Turner and John Schultz), the COLD membership, and BBS volunteers, the WSBA has contracted with the Code Reviser to make current editions of the RCW, WAC and Washington Register available to COLD for indexing and distribution. These are either on the BBS or en route.

The Washington caselaw databases pose larger problems because they do not exist in electronic form in the state computers. Reporter of Decisions Ray Krontz has proposed that an official electronic database of the entire Washington 2d and Washington App. Reports be assembled. He will have the earlier volumes "scanned" to create the computer data needed. Various private vendors have electronic databases of Washington cases at various prices. If copies of existing data files cannot be obtained by COLD for the WSBA at a reasonable price, COLD will probably propose to create its own for publication consistent with its goals.

The activities of the WDLL (and, to a lesser extent, L.A.W. BBS) volunteers generated intense interest among various state agencies and the judicial department. An initial sense of competition is maturing into cooperation among the WSBA, volunteers, and the various state offices. Ed Hiskes has recently assisted the Reporter of Decisions[22] by editing the original printer's data tapes of Washington Supreme and Appellate Court decisions into ASCII text useable both by JIS and the L.A.W. BBS. The L.A.W. BBS provided data conversion services for the project. Various state administrative agencies, beginning with the Board of Industrial Insurance Appeals,[23] have begun providing their written decisions in electronic format for the creation of databases, and the L.A.W. BBS and volunteers are providing public access to the opinions, copies of the indexed data and technical assistance.

Further, the bench and bar have formed an ad-hoc committee on computerization (B2C2) which meets monthly. It brings members of both groups and others together to try to resolve questions and accelerate the process of computerizing legal research. Much progress has been made through communication among representatives of all groups providing or intending to provide public access to electronic legal information. One recent proposal offered by Judge C. Kenneth Grosse, a supporter of public access to computerized databases, was that all Washington slip opinions be made available to the WSBA's L.A.W. BBS on disk or by modem within days of publication. When instituted, such a service will permit callers to have up-to-the-minute reporting of new decisions.

The "Far" Future

In this century, all predictions of technological advances have been substantially understated. "Progress" in the electronic field seems to accelerate uncontrollably, and what was unbelievable yesterday is commonplace tomorrow. We may never reach (or endure) the science fiction vision of attorneys sending computer-retrieved citations to a cybernetic judge to obtain a decision in the electronic courtroom, but it will only be because we mortals refuse to turn over ultimate control to a machine.

Nevertheless, I'll share my vision of a law office in 2092:

An attorney in a chair, anywhere, with a checkbook-sized pocket terminal screen. With it (s)he will communicate with courts, libraries, opposing counsel, witnesses and clients. It won't have a keyboard or mouse because all commands will be vocal. It will be a secretary, taking dictation, typing & filing. It will replace the bookkeeper, pay and send bills, do accounts and prepare tax returns. It will transmit and receive images as well as voice, and physical attendance at depositions, meetings and hearings will be obsolete.

I think I'll put my office chair in my cabin at the lake.

Endnotes

[1]Literally, "Bulletin Board System," a computer-operated message and information exchange system reached via phone from another computer equipped with a modem.

[2]System operator.

[3]He used a "shareware" program called Telix, which was equal to, but cheaper than, packages offered at the store.

[4]Also (206) 727-8313, and 727-8314.

[5]Most communications programs have programmable "scripts" that permit semi-automatic operations such as dialing and login.

[6]The search was for INTERSTATE AND EXEMPT!

[7]The BBS obtained all new slip opinions from the Reporter of Decision's office in Olympia each night, and added them to the existing decisions in the database, keeping it current.

[8]He noted them on his computer's electronic "Post-It" program.

[9]Community Property, Real Property, and Family Law.

[10]Printed for the WSBA-sponsored CLE programs for the past few years.

[11]Files are "downloaded" when they are transmitted from the BBS to the caller, "uploaded" when sent the other way.

[12]The general public always has free access to the BBS on the Seattle and regional satellite systems.

[13]This was even before floppy disks were available.

[14]110 baud (or 110 bits per second) is equivalent to about 164 words per minute, or 1/2 a page of text per minute, not much faster than a good typist can type. Today's "slow" 1200 bps modem is 10 times as fast, and the fast 9600 bps modem is common.

[15]Like the "Bernoulli Box" with durable 10 & 20 megabyte removable cartridges that behaved like hard drives.

[16]20-megabyte, 40-, 60-, 80-, 100-, 120-, 150-, 300-, 600-, 900- , and now 1,500-megabyte hard drives became commercially available.

[17]From 10- to 20-, 40-, 80-, 120-, and now 250-megabyte capacity "cassette"-sized tapes for a few dollars.

[18]Average capacity 500 megabytes per plastic disk.

[19]*Hiskes v. State*, No. C87-256TB USDCt, WDWa, Tacoma.

[20]Still growing at (509) 326-3238.

[21]Initially Jim Wagemann, Bruce Gardiner, Dan Martin, and Jeff Jernegan.

[22]Ray Krontz.

[23]Courtesy of John Fairley, with assistance of Michael Metzger.

Two-way Television Improves Communication

A Quick Look at Video Conferencing

by **Jacqueline Johnston**

Say you're the managing partner of a Seattle-based law firm with offices in several other major U.S. cities. You want to meet with all the lead partners in those offices to go over the first draft of the firm's new strategic plan, but you don't want to spend a week on the road or—worse yet—take the firm's leadership out of their offices for a meeting in Seattle.

Or what if you're a busy sole practitioner with a very hands-on client in California involved in a major real estate transactioncomplicated by sticky zoning issues. You're weary of trying to give high-level counsel over the telephone or being forced to jet south for the day every time the deal takes a new turn.

Now you can go wherever you need to and never leave town—all via video conferencing, a technology that is transforming the way the world does business.

Video conferencing brings people together across long distances through full-color, full-motion, two-way television. In short, it is a practical, economical alternative to traditional in-person meetings. In many ways, it's as easy as *tele*conferencing, with one critical advantage: You can actually see what's happening at remote sites, and they can see and hear you. Users can hold staff or client meetings, make formal presentations, discuss pending cases, prepare for litigation, show charts and graphs or three-dimensional objects, conduct executive interviews, or do whatever other business is required.

In today's highly competitive, information-intense environment, frequent meetings are a fact of professional life. Video conferencing is perfectly suited to the often break-neck pace of contemporary legal work because it can put you in immediate, face-to-face contact with colleagues in other offices, clients and business prospects.

Partners and administrators at several Seattle-area firms interviewed for this article are somewhat knowledgeable about the technology, although not all are actively involved with it. Davis Wright Tremaine, however, made a major commitment to video conferencing in 1990, when it installed dedicated rooms in two of the firm's 10 offices. That year Seattle-based Davis Wright & Jones merged with Portland's Ragen Tremaine, creating one of the region's largest firms.

"Being able to video conference between Portland and Seattle really helped during the merger transition," says Elizabeth Coplan, client service and development director. She estimates the video conference rooms are now used four to five hours every business day for monthly executive committee meetings, regular marketing updates, in-house training, and conferences between co-chairs of practice groups. "We've also encouraged clients to use it if they have business to conduct in Seattle, Portland or elsewhere but don't want to travel there," Coplan adds.

When it was first introduced two decades ago, video conferencing was an expensive form of communication fraught with limitation and technical difficulty. But today, because of remarkable advances in digital technology and development of high-speed communications networks, it is an affordable tool few businesspeople and professionals can ignore.

Initially, only Fortune 500 companies could justify the luxury of instantaneous visual communication. For example, 10 years ago the transmission cost for a coast-to-coast video conference would have been up to $5,000 per hour. Today, the same use could be as little as $90 per hour.

In the past, the other major problem with the technology was access to video conferencing facilities. If you didn't work at a big corporation, it was virtually impossible to arrange a video conference. But in the last few years many "public" conferencing rooms have opened their doors to use by any business.

Seattle got its first public video conferencing center in January, when TCI Business Services opened a full-service facility in the Unigard Financial Center at 4th and University downtown. The center provides turnkey video conference services on an hourly or bulk-use basis. Through it, users can connect with thousands of other public and private video conference rooms across the U.S. or around the world, at any time of the day or night.

Using a public room is an excellent way to familiarize yourself with video conferencing without having to invest in advanced electronic hardware and sophisticated training. It is the perfect solution for light or moderate users of

Electronic Depositions

According to a recent story in *Networking Management* magazine, video conferencing has had a big impact in one area of the profession. Legal Image Network Communications (LINC), based in Miami, is a network consisting of video conferencing rooms installed in the offices of 20 independent court reporters. The rooms are used in discovery, for taking depositions prior to important trials. The magazine quotes H. Allen Benowitz, LINC's president, who maintains that the network is very cost-effective for attorneys. "The cost for a one-to-ten-hour deposition with travel and related expenses is $3,500, assuming coach fare and billable time," says Benowitz. "That's whether it's a one-hour or a ten-hour deposition. We charge $600 per hour of transmission in the eastern or western half of the country. Therefore, a three-hour deposition is one half the cost of travel."

the technology who very well may build their own rooms at some point in the future. Also, public rooms can easily handle the overflow of meetings from super-busy private facilities.

Better, Faster Meetings

Video conferencing has many obvious benefits. It often streamlines and accelerates the decisionmaking process. Since there's usually no need to wait for additional information or get input from colleagues who aren't present, informed decisions can be made on the spot. And by traveling electronically, you can eliminate a significant portion of your firm's annual travel budget. Video conferencing also allows key people to be involved, far beyond the one or two attorneys who would normally travel to a distant meeting.

Users frequently cite six other ways meetings improve when conducted via video conference.

1. ***Productivity***. Because they are conscious of time and the need to get on with scheduled business, users report there is much less non-productive talk than in traditional face-to-face meetings.
2. ***Greater Involvement***. More people on project and client teams can participate at each site, with a minimal time commitment.
3. ***Efficiency***. Video conferencing reduces potential scheduling problems, and attorneys don't lose valuable time traveling to distant meetings.
4. ***Improved Communication***. The technology encourages frequent meetings, creating a cohesive organization and improving management control.
5. ***Higher Morale.*** Personnel in remote offices are "in the loop" and feel a greater sense of unity, and this results in increased job satisfaction.
6. ***Accessiblity of Resources.*** Branch offices can make faster and better use of each other's expertise and that of the central office.

Conferencing Checklist

For new video conferencers, conducting a successful meeting requires a certain amount of pre-planning and some familiarity with the technology. Here's a short course in how to put together a great formal meeting. Obviously preparation would be much less for internal "shirt-sleeves" meetings among people who video conference regularly and know each other well.

Preparation

- Set clear, concise, achievable objectives for the meeting.
- Define exactly who should participate and clarify each person's role.
- Confirm availability.
- Outline required support materials and distribute to each site.
- Prepare agenda and estimate meeting length.
- Appoint a meeting leader and, when applicable, site leaders.
- Determine required visuals (slides, graphs, videotape, models).

- Contact video conference center and make reservations.
- Provide room personnel with: basic information about the meeting, a name/phone number of a contact at each site, number of participants, special requirements.
- Meet with conferencing center staff to review graphics and be sure they're properly prepared.
- With new video conferencers, meet at the site and familiarize them with the room and its features. Suggest they review brief tapes of successful video conferences.
- Encourage presenters to make their remarks visually and vocally stimulating.

During the Meeting

- Coordinate all activity through meeting leader and site facilitators.
- Set a strong, dynamic pace at the outset.
- Show the whole room on the screen at first to allow other sites to know your meeting environment and position of participants.
- Introduce each person by name and review video conferencing protocol, agenda and meeting objectives.
- Build in variety. Use graphics and alternate speakers between sites. Plan a short break into long meetings. Change camera settings to focus on key speakers.
- As the meeting concludes, summarize and make assignments.
- Plan your next meeting while all participants are online.

Into the Future

Many factors will contribute to the growth of video conferencing and its increased acceptance in the legal industry. Constant technological improvements will create higher-quality systems at lower prices. It is not unrealistic to envision the day when video conferencing units are as common in law offices as fax machines and PCs.

Jacqueline Johnston, manager of TCI's new public video conference center, has 13 years' experience in telecommunications. She is responsible for operations and all sales/marketing.

NEWS FROM HOME

Martin Godsil, a partner with the law firm of Casey & Pruzan, has been elected a Fellow in the American Academy of Matrimonial Lawyers. Godsil has been in practice in the Seattle area for over 30 years, concentrating in complex marital dissolution matters.

J. Scott Miller of Spokane has been appointed to chair the Automobile Law Committee of the Tort and Insurance Practice Section of the American Bar Association. He was previously vice chair of the committee. Miller is a partner in the law firm of Turner, Stoeve, Gagliardi & Goss, and a member of the *Bar News'* Editorial Advisory Board.

John J. Holtmann has been named a partner of Boettcher, LaLonde, Kleweno, Rutledge, Jahn & Holtmann in Vancouver, Washington. Holtmann joined the firm in 1987, upon graduation from Willamette University School of Law.

Gimi D. Page has joined Morse & Bratt of Vancouver, Washington. Formerly associated with Wolfe, Mullins, Hannan & Mercer, Page emphasizes family law, estate planning, business and corporate law in her practice.

Ann DeVoe Lawler has been named 1992 convention director of planning for the National Network of Commercial Real Estate Women (NNCREW). Lawler is a partner with Ferguson & Burdell in Seattle.

Edward W. Kok has become a principal of Lukins & Annis of Spokane and Coeur d'Alene.

South King County Bar Association officers for 1991-1992 are **Andrew B. Weiner**, president; **J. Roderik Stephens**, vice president; **Roy E. Mattern, Jr.**, secretary; **Michael P. Salazar**, treasurer; and **Paula S. Pridgeon**, past president.

Duncan Bonjorni has been appointed as a municipal judge for the city of Auburn.

CHELAN/DOUGLAS COUNTY REPORT

by **STEVE CROSSLAND**

Judges **T.W. "Chip" Small** and **Carol Wardell** were both victorious superior court candidates in the November election. They were appointed by Governor **Booth Gardner** to fill the unexpired terms of judges **Fred Van Sickle**, who was appointed to the Eastern District of the United States District Court and **Charles Cone**, who retired and then joined the local firm of Johnson, Gaukroger and Johnson.

Grant Johnson is chair of the WSBA Young Lawyers Division. **Steve Crossland** chairs the Computerization of Law Division.

New lawyers were ceremoniously sworn in by the full complement of our superior court. The new inductees were **Craig Larsen, Camille Peterson, W. Gordon Edgar** and **Ray Grimm**.

Wenatchee is to be the site of at least two of the new video CLEs this next spring. "Handling of Probate and Post Mortem Matters" will be held on February 4 and "Essentials of Evidence" will be held on April 28, both at the Chieftain Motel and Restaurant.

CLARK COUNTY REPORT

by **JOHN F. NICHOLS**

What makes Joe tick?

Every year, I must report on the latest hunting-related injuries suffered by our CCBA Bwana, **Joe Mercer.** In the past, these maladies have ranged from separated shoulders and broken limbs to fractured pride. On Joe's most recent foray, he came back with a buck but also a little bug. Said critter left said deer for Mercer's more friendly confines. Finding thereon a virtual cornucopia of virgin territory. Finally nesting on vast regions on Joe's gluteus maximus. The removal of this bloated tick was most delicate and unsettling. My advice, Joe, is Hart's 90-day collar, stylish yet effective.

Other injuries:

Concerning my recent broken hand, it was a mere coincidence that it occurred right after the Beagle awards. Rather, it was the result of attempting to duplicate a Jordanesque slam dunk. Well, it did occur on a basketball court in the vicinity of the rim, in fact on the floor directly beneath the basket. In any event, once I recover, I'll get even with that 7th grader, wherever she may be.

Beagles revisited:

Due to the press of time, space and threats, not all deserving ads were

mentioned last month.

1. **Gimi Page**: for the ability to appear in two different ads with two different firms at two addresses.

2. *The Opps award:* to Arden & Brandenburg, whose catchy graphics are mislabeled and **Barry Brandenburg**'s years of experience do not jibe with his mega-digit bar number.

3. *The Best Question/Worst Answer Award:* **John Stichman**. This ad features a full-facial frontal of John, captioned in bold-underlined font, the riveting inquiry, "**INJURED?**" No, just a real bad cold.

Heritage Foundation revisited:

Many thanks to all those who commented on my recent response to **Ed Feulner**'s blast at attorneys, "Too many attorneys making too much." Among these were Lynnwood attorney **Doug Purcell**, who admits he makes too much. Doug, an arithmetic major, pointed out that based on Feulner's figures, lawyers would actually generate some $156 billion in revenues. So much for the "R" word, huh, Ed.

Our own CCBAer **Karen Feulner** advised that she is no longer related to Ed and that she hasn't been for a long time. Apparently this occurred around the time she demanded representation before being grounded. Ed advised her to talk to an insurance company. The saga continues...sequels to follow.

EAST KING COUNTY REPORT

by **RANDOLPH I. GORDON**

Two centuries ago, in 1792, the National Convention of the French Revolution undertook what so many revolutionaries have done before and since: calendar reform. The result: a decimal calendar with 10-day weeks, 10-hour days, 100-minute hours and 100-second minutes. To avoid the drift of the seasons against the calendar year certain adjustments were necessary, including a periodic leap day dedicated to holidays and sports. (To this extent, at least, the revolutionary calendar had one advantage over our leap day, which is tagged onto the end of every fourth February except in years ending in zero unless divisible by four hundred.) The calendar lasted for 13 years. Then Napoleon restored the Gregorian Calendar and received the Pope's blessing.

In 1929, the Soviet Union introduced a revolutionary calendar with five-day weeks and six-week months. The days of the week were simply numbered, with four days for work and the fifth day of each week off. (Yes, that means only six days of "weekend" each month.) Predictably, this calendar lasted only 11 years.

We know in 1992 that it was not only the days of the Soviet revolutionary week that were numbered. In Shelley's "Ozymandias," a traveler, standing before the pedestal of colossal ruin, reads, "Behold my works ye mighty, and despair!" *Sic transit gloria* was whispered to the heroes on their triumphal processions through Rome.

The calendar is important to the powerful and the powerless. The vast aggregations of humans we call governments, the smaller clumps we call communities and families, and the solitary humans we call individuals, all rely upon it. It is how we interface with the cosmos and exercise human dominion over the uncontrollable. It is also how we schedule vacations.

With respect to all the dimensions of space, we humans can exercise a measure of control. If we wish to rise or move about, we may. If we wish to move in space, it is simply a matter of choice: we either get up or use the remote control. Anyone who has ever leased office space knows that space-planning can be done by virtually everyone - and usually is. Even kings, emperors, and leaders, their dominions reaching beyond the horizon, have been stymied by efforts to extend their dominion over time. It flows unperturbably, irresistably onward, beyond our reach, time management courses notwithstanding.

Merchants have attempted to gain control over time by the simple equation, "Time equals money." And it is to the merchant to whom we owe the first use of the word "calendar," which is from the Latin *kalendarium* meaning "moneylender's account book." When the Gregorian calendar was introduced, it involved losing 11 days—going to sleep on the fourth and awakening on the 15th. Legal disputes raged. Landlords demanded a full month's rent. Workers demanded a full month's pay. Interest accrued.

Lawyers, seated where we are, can peer down the halls of power and observe that the judiciary has sought to extend its jurisdiction over time itself. Statutes of limitations, deadlines, and schedules are standard fare. But where else can one find, on a regular basis, motions to *shorten time*? Although professional sports on rare occasions demonstrate the ability to set back the clock, to my knowledge, only the King County Superior Court has a department called "Calendar Control." As might be expected, the controllers are powerful individuals to whom the appropriate obeisance must be given.

Although we cannot manufacture time, we can spend it and share it and generally have the it of our lives. At the annual EKCBA party, outgoing president **Steve Fisher** gave special awards to several individuals, including trustee **Val Hoff** and secretary, now vice president and president-elect, **Steve Toole** for their generous commitment of it. **Larry Gamroth** and **Ted Barr** were elected treasurer and secretary, respectively, and will be spending a lot of it this year. **Chris Shank** and **Charles (Ted) Watts** were elected, and **David Lawyer** and this reporter, re-elected, to the board of trustees for periods of it up to three years in duration. **Barry Hasson**, former president of EKCBA, and outgoing president of the Eastside Legal Assistance Program, would, apparently, have somewhat more of it, after years of service to the Eastside. Those who are able to donate some of it to help ELAP provide legal services are invited to call **Laura Slevin** at (206) 861-7033. Your donation of it or money will be appreciated. And, finally, those of you who have news which you feel your reporter is overlooking should take the it to fill him in. Until next it.

HISPANIC BAR ASSOCIATION

The Washington State Hispanic Bar Association held its Second Annual Holiday Banquet at the Columbia Tower Club on Tuesday, December 10. The program and presentation of awards was hosted by **José E. Gaitán**, a member of the WSHBA board of directors for 1991. He presented the organization with a proclamation from King County Executive Director **Tim Hill**, designating December 10 as WSHBA Day in King County. Seattle Mayor **Norm Rice** and Dean **Wallace Loh** of the University of Washington School of Law made opening remarks.

Guadalupe Gamboa, director of the Farmworker Division of Evergreen Legal Services, received the WSHBA Silver Gavel Award for his exceptional support and service to the Hispanic community through his practice as an attorney. The WSHBA Community Service Award was presented to **Peter G. Chacón** of the Tri-Cities for outstanding and exemplary service to the Hispanic community by a nonlawyer. **Minerva Villareal**, president of the Washington State Hispanic Chamber of Commerce accepted an honorary membership in the WSHBA on behalf of the Chamber; joining her were **Laura Delvillar**, WSHCC board member, and **Ernie Aguilar**, founding WSHCC member. Dr. **Francis Timlin**, University of Washington School of Law, received a certificate of special recognition and appreciation for his extraordinary support and assistance to the WSHBA since its inception.

Newly elected WSHBA board members are: **Antonio Salazar, Daniel Gandara, José E. Gaitán, Pamela C. Sánchez**, all of whom are from Seattle, and **Myrna Contreras-Trejo** of Yakima. Nineteen law students from the University of Washington, whose attendance was sponsored by WSHBA members, UW law school professors and private law firms, were introduced by Dr. **Sandra E. Madrid**, assistant dean. Dignitaries attending included Supreme Court Justices **Robert S. Utter** and **Charles Z. Smith** and Representative **Margarita López Prentice**. King County Superior Court judges **Michael J. Fox, Ricardo S. Martinez, Carmen Otero** and **Brian Gain** were also in attendance. Judge **Ron Mamiya** of the Municipal Court of Seattle and Municipal Court of Tacoma judge-designate **Sergio Armijo** were also present.

PIERCE COUNTY REPORT

by **GEORGE S. KELLEY**

There are several judicial appointments to report. Superior Court Judge **Karen Seinfeld** has been named to **Stanley Worswick**'s Court of Appeals position. The appointment was made with the input of a State Bar Association committee, which reviewed the qualifications of the many applicants for the job.

The Governor also appointed **Tom Felnagle** to take Seinfeld's place. Tom is a former chief criminal deputy with the prosecutor's office and presently on the Governor's staff. This appointment was made without any input from the local bar association, which caused some griping as the association used to evaluate the candidates and make recommendations. Aggrieved judicial aspirants might observe that being the Guv means never having to say you're sorry.

The Pierce County Council, in seeking the names of qualified candidates for a newly created District Court No. I judgeship, did ask the assistance of the local bar association. A diversified list of six names was provided out of which the Council selected **John McCarthy**, in spite of the fact that he is a middle-aged, white male and not on the Governor's staff. John takes office in May, which might not be a quick fix for district court congestion, but county government is broke and will need time to raise the money for the new position.

Sources at the bar office report the sad tale of the bar association's Christmas tree. It seems the staff, wishing to decorate the office for the holiday season, purchased a Christmas tree and decorated it with lights and ornaments. The tree itself looked like a prop from the Charlie Brown Christmas cartoon, but it had a certain presence and radiated good cheer. Into this scene came the Grinch in the form of the courthouse maintenance, which felt the tree was a fire hazard. Notwithstanding the fact that it was sprayed with two cans of fire retardant, the poor tree failed the blow torch test and was sent to adorn the local landfill. Next year's decorations may take the form of a nativity scene with the building maintenance playing the part of the stable ass.

Pam Mayhew, whose husband is Puyallup attorney **Skip Mayhew**, was selected as secretary of the year by the Legal Secretaries Association. She presently works for Brocato and Hogan. At one time, she was employed in her husband's law office. There may be a tag line to exit this particular paragraph, but frankly, we can't think of one. Feel free to provide your own.

Gilbert Price has rejoined Campbell, Dille and Barnett after a 20-year sabbatical in California. Rumors were that Gil was living the hippie life in northern California and later was a lawyer in San Diego. Many thought that he had found a way out of the practice and are sorry to see him slide back into his old ways. Welcome back, anyway.

SPOKANE COUNTY REPORT

BY DON CURRAN

Everett B. Coulter satisfies a love of the law, tasty food and relaxing conversation by combining an active practice and a financial interest in Milford's Fish House and Oyster Bar, one of Spokane's best eateries. Warning! A full belly does not engender a subtle wit. . . . **James A. Bamberger**, eloquent in prose and speech, shames the City Council for considering rollbacks on social services . . . . **Brad E. Smith** switches his shingle from Olympia to Spokane and focuses on litigation. . . . **Patricia L. Johnston** of Wisconsin opts to practice in Spokane with **Phillabaum & Ledlin**. Welcome! . . . Criminal lawyer **Roger J. Peven** on seeing the FBI's Ten Most Wanted list: If we'd made them feel wanted earlier, they wouldn't be wanted now. . . . Dual licensees **Kenneth B. Howard** and **R. Bruce Owens** have challenging practices in Idaho and Washington. . . . **Stanley D. Moore** has a home on a majestic rock with a magnificent view at Lake Coeur d'Alene, where the tensions of a busy practice quickly disappear. . . . Litigator **Judith A. Corbin** combines a practice and family life in perfect proportion for her. . . . **Robert B. Crary** and **John R. Clark** have a quality promotional brochure sure to impress clients. . . . A young, inexperienced attorney was unimpressed with **Valerie D. Jolicoeur's** argument and told her so. Her retort ranks among the best: I have forgotten more law than you ever knew, but allow me to say I have not forgotten much. . . . Late and revered criminal attorney **Michael J. Hemovich's** inscription on his tombstone: "The Defense Rests." Wonderful! Even from the grave he causes us to smile. . . . Fitness buff **Stanley A. Perdue** pumps the iron and develops the body beautiful, at the same time perfecting a tension-free attitude. . . . **Michael J. Pontarolo's** attitude about exercise: Every human being has a finite number of heartbeats. I don't intend to waste any of mine running around doing

exercises. . . . **Joseph P. Gagliardi**, exemplifying the best in lawyers, is recognized for his pro bono services. . . . Former judge **Charles Dorn** and **Brian C. O'Brien** associate to assure accuseds of due process. . . . **Phyllis D. Schoedel** brings femininity to effective advocacy. Whatever women do, they must do twice as well as men to be thought half as good. Luckily, this is not difficult. . . . **David P. Roberts,** celebrating 25 years of practice, receives salutes from his firm and testimonials from his peers. . . . **Douglas B. Ecton** thrives and enjoys solo practice where memos are written to inform the reader but not to protect the writer. . . . **Mary E. Schultz** heads a three-person firm and has a reputation as a skilled and patient litigator. . . . Combining knowledge and a strong humanitarian conscience, bankruptcy expert **Lisa McBride** takes 13 pro bono cases. . . . Spouses **Laurel H.** and **Douglas J. Siddoway** are paired in such esoteric fields as proxy fights, IPOs, and LBOs. . . . Assistant U.S. Attorney **Frank Wilson** gets media praise for prosecution of white collar crimes. . . . **Dennis M. McLaughlin**, late of Lukins & Annis, heads up the Portland, Oregon firm of Fountain & Rhoades, P.C. in Spokane. . . . Multi-talented **Timothy B. Fennessey** trades lawyerly skills for a brush and paints vivid colors onto a flat surface. Michaelangelos can relax. Tim's future remains with the law. . . . Handballer **Matthew K. Sanger** has a New Year's wish: Bewilder my opponent with smashing aces while wishing him happiness and serenity, but give no mercy and take no prisoners. . . And then we have the mild-mannered masters B champ **Edward Jerome Hertel II**, whose attitude is "it's not who wins, but how you play the game," or something like that. In recent competition, **Jerry** won a trip to China. That's right, to China. Fantastic! He's out there now trying to win a trip back!. . . . . **Ronald G. Morrison** and **Jerome J. Leveque** hosted a smashing Yuletide party. The next morning, a nameless imbiber with a hangover remarked: "I'd take a Bromo, but I can't stand the noise." . . . Finally, to bring this column to an end: If you recognize the truth in all that is written in this and future columns, your vision is less than 20/20.

WASHINGTON STATE TRIAL LAWYERS ASSOCIATION

by **LETHA J. OWENS**

"The civil jury is a valuable exercise in participatory democracy providing for the impact of the community perspective on the administration of justice." So wrote University of Washington law student **Liza E. Burke**, striking the theme for her essay in defense of America's civil jury system which won a $500 award from the Washington State Trial Lawyers Association.

A panel of three attorneys judged Burke's essay the winner from among entries solicited from law students throughout Washington state. The essay contest for law students was part of WSTLA's commemoration of the Bicentennial of the Bill of Rights. Burke was presented with the award during a recent WSTLA continuing legal education seminar.

Burke grew up in Seattle and is a

graduate of Roosevelt High School. After receiving her undergraduate degree in political science at the University of Arizona in 1990, she returned to Seattle. She is in her second year of law school at the University of Washington, where she is active in the Filipino Law Students Association.

Burke's essay, "The American Civil Jury: An Institution to be Preserved," argues that the seventh-amendment constitutional guarantee to a trial by jury in civil matters is a cornerstone of the American principal of participatory democracy. She contends that proposals to limit the jury system for expediency or to reduce expenses threaten to undermine this principal:

> ". . . Arguments of cost and time are based on false assumptions that justice is about quantity and not quality and that justice has a worth measurable by a monetary amount."

She concludes, "Protecting and preserving the civil jury not only enhances its functioning, but also affirms our commitment to democratic principals. It is a demonstration of faith in the capacity of the American people for self-government.

Mark your calendars for February 13 and join WSTLA at its twenty-fifth anniversary dinner, held in the Spanish Ballroom of the Olympic Four Seasons Hotel in Seattle. The keynote speaker will be national consumer advocate **Ralph Nader.**

This event celebrates WSTLA's history, and WSTLA's Historical Committee headed by **Steve Toole** is requesting that those attending bring a "memory to share." Photos, old programs of WSTLA events, reminiscences, etc., will be collected and displayed during the dinner. If you would like to help accumulate these bits of WSTLA's history, please call **Gerhard Lepzing,** WSTLA executive director, at the WSTLA office at (206) 464-1011 or toll-free (800) 732-9251.

February 27, a case evaluation clinic will be held by WSTLA as a new service to members. Two panels of experienced trial lawyers will discuss in private conferences cases submitted by members. Advice will be provided on all aspects of a case, including liability, damages, experts, insurance coverage, negotiation strategies and trial tactics. The clinic is designed to go beyond less formal discussions with colleagues and associates.

Essay contest winner ***Liza E. Burke***

To submit a case for evaluation, complete and return a case summary form to the WSTLA office. The fee for the session is $150. If you have additional questions or would like to request a summary form, please call Gerhard Lepzing, at (206) 464-1011 or toll free (800) 732-9251.

Remember: WSTLA's Annual Convention will be held in Sun River, Oregon this year over the Fourth of July weekend, July 2-5. The facilities at the resort are spectacular, and the convention should prove to be a wonderful adventure for the whole family. Watch this space and the WSTLA News for more information.

WSTLA president **James S. Rogers** had a guest editorial printed by *The Seattle Times* in December. Titled "People's Justice still effective after 200 years," the "Special to The Times" editorial commemorated the 200th anniversary of the Bill of Rights.

IN MEMORIAM

Philip S. Brooke, Sr. who was a member of the Washington State Bar for three quarters of its history, died December 5, 1991 in Spokane. He was 99. Born in Sprague, he moved with his family to Spokane in 1896. After graduation from high school, he attended Stanford University, graduating with a law degree in 1916. He returned to Spokane and joined the bar in 1917. He associated with the firm of Hamblen & Gilbert, becoming a partner in 1921. Brooke spent his long career with the firm, retiring in 1989. At one point his son, Philip S. Brooke, Jr., and grandson, Philip S. Brooke 3d, were all members of the firm.

Brooke was a trustee of St. Luke's Memorial Hospital and chancellor of the Episcopal Diocese. He was variously president of the Spokane Community Welfare Federation, a predecessor of the United Way; president of the Kiwanis Club; president of the Spokane Bar Association, member of the WSBA Board of Governors; and a member of the board of the Washington Children's Home Society.

Brooke was recently honored by the Bar Association for being its oldest and longest-active member, "a remarkable achievement and great honor," said Spokane colleague and WSBA president Joe Delay. Another Spokane lawyer, Don Curran, wrote of Brooke that "to his dying day, he was a lawyer's lawyer and the personification of professionalism."

Survivors include his son, Philip S. Brooke, Jr., and daughter, Barbara Baker, 13 grandchildren, and 11 great-grandchildren.

Margery Ryan Dunham, 100, died in November. A 1926 graduate of the University of Washington School of Law, Dunham went into real estate in Seattle. Governor Arthur Langlie appointed her state real estate commissioner later in her career. She was the recipient of the WSBA Distinguished Service Award in 1966, and was honored for fifty years' membership in the bar in 1977.

Marjorie McLaughlin Forest, 78, died November 15, 1991 of injuries suffered in an auto accident near Sequim November 1. Born in Houghton, she graduated from the University of Washington School of Law in 1936 and was Yakima's youngest lawyer when she hung out her shingle there. Forest also served on the federal bankruptcy bench while in Yakima. In 1949 she relocated to Sequim because it lacked a full-time attorney and she thought it would be a good place to raise her children.

During her four decades in Sequim, Forest served as a municipal court judge and spent twelve years as a district court judge, 1966-78. In addition to her law practice, she was active in civic affairs and youth programs, including the Pool Board and the Girl Scouts. Survivors include two brothers and a sister, three children, including Seattle attorney Ann F. Burns, and seven grandchildren. A memorial service was held in Sequim November 26, 1991.

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PROFESSIONAL

John W. Mackey, 51, died October 4, 1991 in Kent. Born in Oakley, Idaho, Mackey and his family moved to Sweet Home, Oregon, where he grew up. He earned a bachelor's degree in mathematics from Los Angeles State University, a master's degree in math from the University of Washington, and his law degree from the University of Puget Sound in Tacoma. He was a sole practitioner from 1975 until his death.

Active in the Church of Jesus Christ of Latter Day Saints, Mackey is survived by his parents, three siblings, wife, six children and three grandchildren.

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Co-author: "Debts," Chapter, *WSBA Family Law Deskbook*, 1989. "Interstate Custody Disputes," *WSBA Bar News*, Vol. 41, No. 11, November 1987.

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