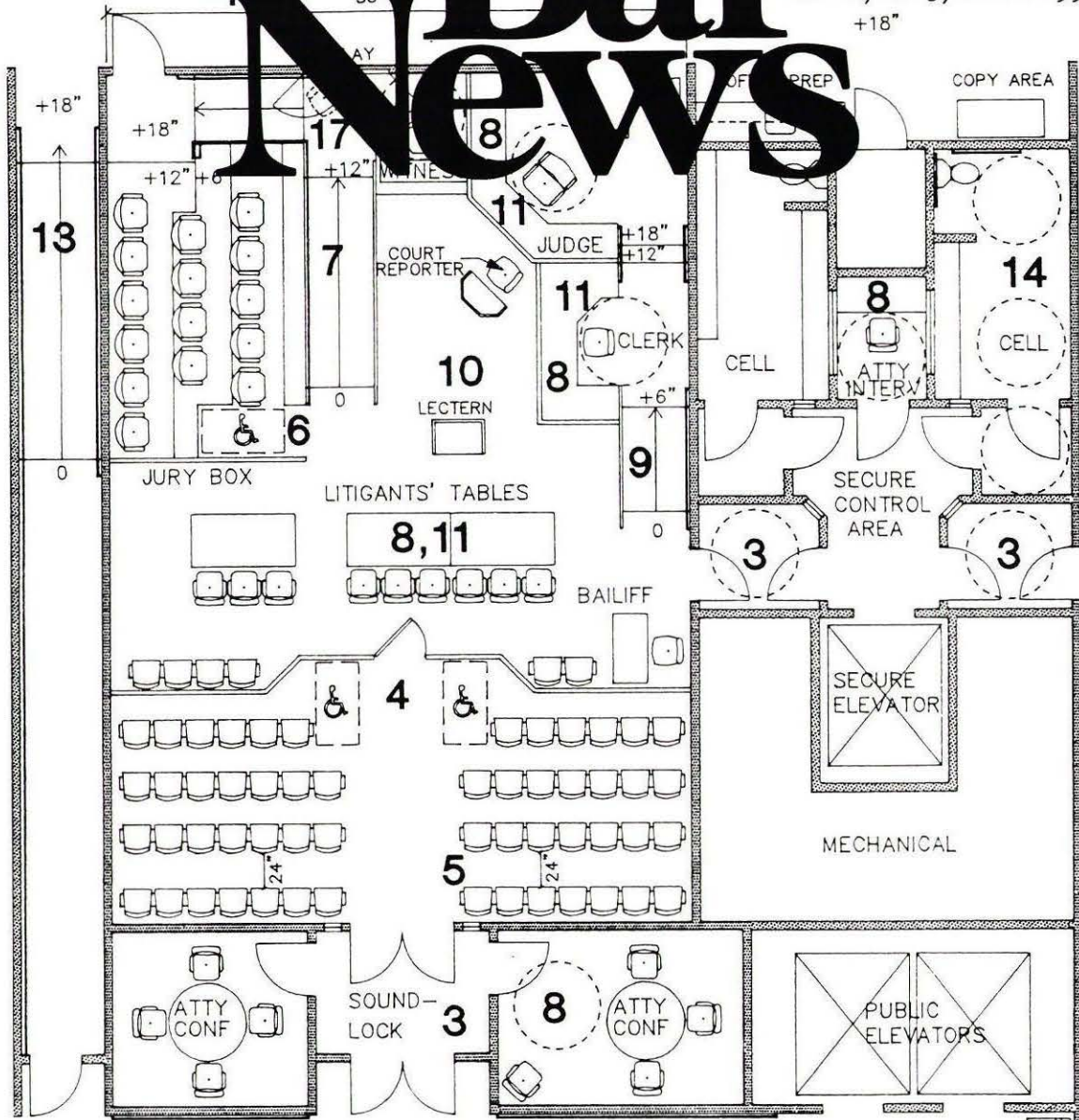


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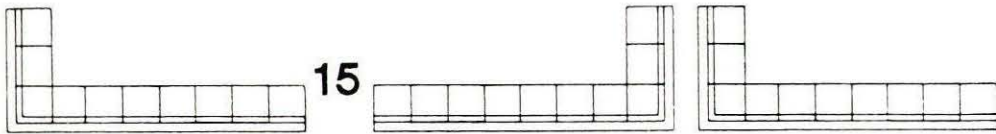
Vol. 46, No. 3, March 1992

# Bar News

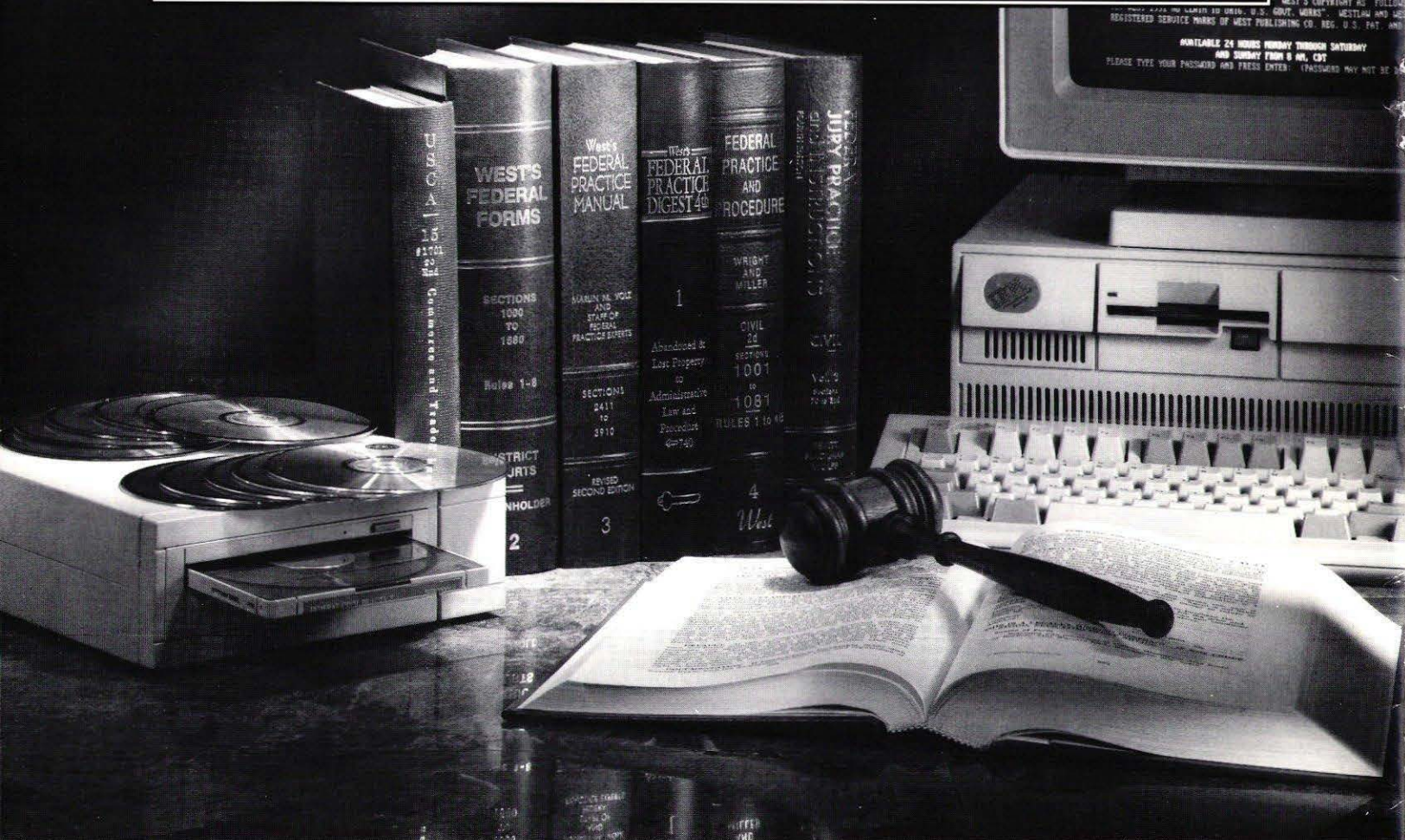


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Vol. 46, No. 3, March 1992

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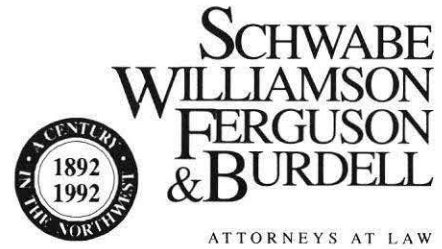
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Our cover and interior illustrations are taken from ADA-compliant designs by Space Management Consultants, Inc., 418 Vine St., Seattle, WA 98121 (206) 443-1775.

## WSBA PHONE NUMBERS

A new phone system has been installed, requiring, among other things, new telephone numbers throughout the office. For a complete listing, see *Bar News*, January, 1992, pp. 11-12.



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Dorothy J. Kelly	1981 graduate of the University of Puget Sound School of Law. Previously with the Pettit Morry Company.
Lincoln D. Sieler	1991 graduate of the University of Puget Sound School of Law.
C. David Taylor	1983 J.D. of the University of Washington School of Law. Previously associate counsel for First City Washington, Inc.
James M. Thomas	1976 law graduate of Washington University in St. Louis. Formerly with Sylvester Ruud Petrie & Cruzen in Seattle, Washington.

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

### More on Lawyers' Insurers

Editor:

In my last letter (*Bar News*, January, 1992) I indicated that Standard & Poor rated Home Insurance Company as BBB. The December 1991 edition of Standard & Poor's raises Home's rating to A-.

In fairness to Home and the many attorneys insured with them, it might be appropriate to correct my letter.

JACK QUINAN  
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Seattle, WA 98124

Editor:

I am writing to call to our members' attention several important issues with respect to our president and Board of Governors' recent action in "endorsing a new Professional Liability Program exclusively for Washington attorneys" (quote from WSBA Insurance Plan Administrator's recent brochure sent to all members).

This brochure, as well as the letter from our president advising of the designation of Kirke-Van Orsdel of our bar association's "endorsement," challenge us to ask for quotes from Kirke-Van Orsdel.

Having maintained professional liability coverage since my admission 21 years ago, I called to see what great benefits that the WSBA-endorsed coverage from Kirke-Van Orsdel would do for me, advising them that I have never had a claim during this time.

I enclose Kirke-Van Orsdel's quote of \$2,525-2,800 for \$500,000/1,000,000 with a \$5,000 deductible. My billing for the same coverage limits (\$500K/One Million) with a \$2,500 deductible was \$1,641. My current coverage is with International Insurance Co. through Crum & Forster, a long-established company.

I called the Washington State Insurance Commissioner's Office and

spoke with Mr. Ed Ives, their public information officer. He confirmed that National Casualty Company had never written lawyer professional liability insurance in Washington State or in any other jurisdiction, prior to its designation by the Washington State Bar Association!

I believe it is in the best interest of all members of our Bar Association that they be given these facts, prior to the time when they must contract for their new professional liability coverage.

BRUCE F. MEYERS  
Mercer Island

### Praise for Pro Bono

Editor:

Bravo to George Zweibel for his "Access to Justice" article in the November *Bar News*. He has been most meticulous in marshaling the facts about legal services (or lack thereof) for low-income persons in Washington state.

As a nonprofit organization concerned with the legal rights of women, the Northwest Women's Law Center hears these problems voiced every day on our Information & Referral Line. We do not disagree with much of Mr. Zweibel's analysis, but would like to offer additional information regarding his "Myth #4: Family Problems Are the Greatest Unmet Civil Legal Need of

Low-Income People in Washington" (*Bar News*, November 1991, page 14).

Mr. Zweibel correctly points out that many legal services now available to the poor do, indeed, go to the "squeaky wheel" of family problems. But this obscures the fact that a much larger number of poor persons—chiefly women—receive *no* services whatsoever, even in so crucial a matter as child custody.

Further, Mr. Zweibel mentions the pressing problems of eviction, homelessness, inability to gain access to healthcare, and utility turnoff. We would simply point out that a great many of these same problems stem directly from a poorly resolved family law problem. The inability of one spouse to find and pay for legal counsel has often resulted in that spouse—and the children—ultimately needing legal assistance for all the pressing legal problems of survival that Mr. Zweibel has catalogued.

One further point: while it is often possible to find a legal clinic or a pro bono attorney to address a very specific problem, such as eviction, unemployment claims, or utility turnoff, this is *not* the rule in family law. In spite of the considerable number of pro bono attorneys who generously offer to take family law cases, the need far outstrips the supply because so many of the cases

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are time-consuming, involve a number of complex issues (e.g., bankruptcy, tax problems, substance abuse, domestic violence), and come laden with heavy emotional baggage.

Thank you for devoting your November issue to the problems of the poor.

LINDY CATER  
Executive Director  
Northwest Women's Law Center  
119 S. Main Street, Suite 330  
Seattle, WA 98104-2515

## Budget Blues

Editor:

Four years ago, when we called for a referendum on the Board's decision to increase bar dues, we questioned why the 15th largest bar association in the country needed the fifth largest budget. It's still a good question. Not much has changed over the intervening years.

According to information compiled by the American Bar Association, last year's WSBA budget surpassed that of every bar association in the country except those in California, Texas, Florida and New York. The fact that the WSBA was unable to live within this ample budget, and has been forced to invade its reserves, is deeply troubling.

It is especially troubling because there appears to be a sentiment among bar leaders to respond to the WSBA's

current financial difficulties by increasing membership dues again. President Delay said as much last fall, when he predicted that a dues increase could be anticipated within two years, perhaps sooner.

Increasing dues is not the answer. The Washington State Bar Association does not have a revenue problem; it has a spending problem. Among the 16 bar associations whose memberships exceed 15,000 lawyers, only two charge higher membership dues than the WSBA. Why is the Washington State Bar Association unable to live within its means, when other bar associations are able to do so?

The WSBA's financial difficulties are in large part attributable to the administration of the former executive director. We recognize that. But unless the Board takes advantage of the change of administration to prune the bloated bureaucracy which developed during the 1980s, the practices which were established during that time will continue to generate unnecessary expense for the state's lawyers.

EDWARD V. HISKES, Richland  
HOWARD K. TODD, Seattle

*Editor's note: Please see executive director Dennis Harwick's reply in the "Exec's Report," page 9 of this issue.*

## Pro-union Staff Input

Editor:

Much has been published lately regarding the unionization efforts at the Bar. However, neither the Board of Governors nor the *Bar News* has sought any input from the Bar staff who are seeking to unionize. As two of the attorneys on staff who are active in the unionization effort, we write to correct that oversight.

The reasons why the staff voted 36-7 in May 1991 to authorize Local 1001 as our bargaining agent are, of course, varied. However, contrary to the reasons reported in your December "Board's Work" column, it has little to do with prior management or high expectations. It has everything to do with staff members who object to major unilateral changes in their working conditions and who seek union representation as the only means available of having significant input.

Bar management never asked the staff what they thought about major changes in working hours, vacation, sick leave, etc. before announcing these changes on March 1, 1991. Yet when the staff attempted to ask questions and raise concerns that these changes would throw their personal lives into turmoil, their questions were ignored and rebuffed. When asked why no input had been sought from the staff before making the changes, Bar management responded that such changes were their "prerogative." Bar management partially retreated from some of these major changes only after a majority of the staff had signed cards with Local 1001 and the union had requested recognition.

We are not asking for any extraordinary rights. We want the same right to union representation that is currently enjoyed by the staff (both attorneys and nonattorneys) of many public law offices. It was surprising to learn at the November board meeting that the Board of Governors had never taken a position on recognizing the union. However, we do know that the board authorized spending Bar dues to hire the Perkins firm to advise the Association.

You have reported that the election in May was unrecognized and unsupervised. The election, however, was held under the direction and certification of Deloitte Touche, a major CPA firm, and Bar management was asked to

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participate. They did not. Given the overwhelming pro-union vote, it is little wonder that Bar management has sought to ignore the election. Contrary to your report that things were quiet between May and November, the staff continued to be demoralized by management's refusal to respect their choice to unionize.

Some attempt has been made to characterize this as a problem with disciplinary attorneys, who don't want to work a 40-hour week. This is inaccurate and misleading. There are only four nonmanagement disciplinary attorneys on staff, and we regularly work more than 40 hours a week, including many evenings and weekends. Rather, this is about staff in other positions, many of whom are poorly paid and are working two jobs just to make ends meet. This is about job security for staff in politically sensitive positions. This is about having a meaningful grievance process. This is about having a say.

We have no desire for a protracted and expensive dispute, much less one which will further tarnish the profession's image. We prefer to constructively heal the differences and restore morale, but that must start with the Board of Governors' respecting the staff's decision to designate a bargaining agent for collective bargaining.

JEAN K. McELROY, Everett  
RANDY BEITEL, Seattle

### Writing for the Bar News

The *Washington State Bar News* offers you several ways to become a published author:

- Write an article based on a speech you recently gave, or a case you've researched or argued, to let fellow lawyers know about new developments;
- Review a book;
- Write a short review of a case for the monthly survey of appellate decisions, "Notes from the Academy";
- Send in a humorous anecdote or transcript for the "Afterword" column;
- Write a letter to the editor.

To discuss an idea for an article, contact the editor at the Prosecutor's Office, Hall of Justice, 312 South First Avenue West, Kelso, WA 98626, (206) 577-3080.

## Budget Deficit

The members of our Bar are entitled to know the financial condition of their Association.

The fiscal year ending September 30, 1991 resulted in a budget deficit of \$359,377. We had budgeted to the end of the year with a \$150,000 surplus, so the shortfall from budget was \$509,377. We ended the previous fiscal year with revenues over expenses of \$268,297, so the swing from one year to the next was \$627,724.

The obvious question is, how could we miss budget by so far? Although there are many ways to configure the various items in the budget, four (4) items account for the shortfall of \$509,377:

\$150,000 in "book entries," i.e., \$89,370 in noncash accounting entries to recognize accrued vacation/sick leave, \$48,175 in entries to write down the unamortized value of assets (primarily the old phone system), and \$17,000 in entries to recognize loss on the disposition of certain assets (outdated office equipment).

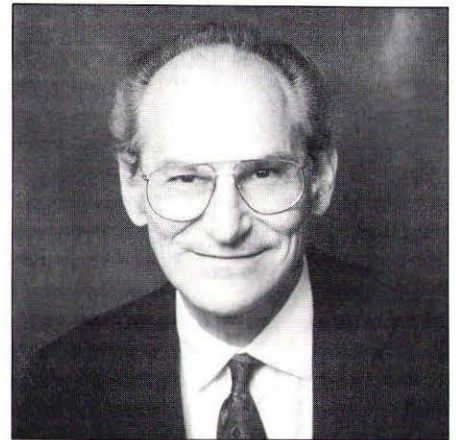
\$250,000 in unrealized CLE income. CLE income was actually about the same as the previous year, but had been budgeted for a \$250,000 increase that didn't happen.

\$80,000 in bar exam expenses. \$20,000 of the expense is attributable to a raise to bar examiners (well deserved), and the rest appears to have been simply an underestimation since expenses were otherwise comparable to previous years.

\$30,000 in liquidated damage penalties for failing to fill enough rooms at the convention in San Diego.

These four items add up to \$510,000—almost precisely the amount by which we failed to meet budget.

In the final analysis, drastic cost-cutting is only a temporary solution. The real issue is: "Do the members wish to support an increase in the Bar fees?" Prior to 1981, the regular Bar



Joseph P. Delay

fees were \$140. From 1981 through 1987 the fees were increased to \$165. Beginning in 1987 the fees were increased to \$195. There has been no fee increase since 1987.

The following is a comparison of fees charged by unified state bars (Montana was excluded because it does not handle admissions, licensing, or discipline):

State	Total of Mandatory Fees
Washington	\$195
Idaho	250
New Mexico	265
Oregon	290
	(excluding mandatory insurance)
Arizona	295
Alaska	310
Utah	350
California	478

If inflation of 4 percent on the annual dues is calculated from 1987 through 1992, there would have been an increase in our fees of approximately \$30.

With the present amount of revenue, the association cannot maintain the same level of service it has in the past. The members would well serve their association by increasing their fees by \$30 to annual fees of \$225. This amount is still much less than any comparable unified bar in the western states. The other alternative is to reduce services. The axiom that "you get what you pay for" still exists today. We still have a democratic process, so let your wishes be known to your governor.



LEGAL SERVICES TO THE POOR

The Task Forces, They Are Always With Us

Washington Chief Justice Fred Dore has named a 12-person task force to investigate better ways to get legal help to the working poor.

The "Access to Justice Task Force," chaired by Seattle lawyer Stuart G. Oles, will study how to better serve the needs of Washingtonians who fall through the cracks of existing legal-service programs. Dore said many state residents earn too much to get help from those programs, yet not enough to afford a private attorney. "Often, they don't even know if they need an attorney or who to turn to if they do. The task force will look at the cause of these

programs, review some of the past programs which have sought to address them, then consider new alternatives as possible solutions, such as a free clearinghouse, or a clinic staffed by young lawyers," Dore said. "Finding their way through our complex legal system is difficult and confusing. It's a situation that demands professional guidance."

Also appointed to the task force are Supreme Court Justice Charles W. Johnson, King County Superior Court Judge Donald Haley and District Court Judge Laura Inveen; state representative Lorraine Hine of Des Moines and state senator Gary Nelson of Edmonds; former WSBA president Lowell Halverson; and attorneys David Heller, O.J. Humphrey 3d, Bill Lanning, Michele Sales, and George Zweibel, all of Seattle.

M&A

And Then There Was One

Two prominent Northwest law firms announced their merger in January, continuing the trend of integration of large firms in Oregon and Washington.

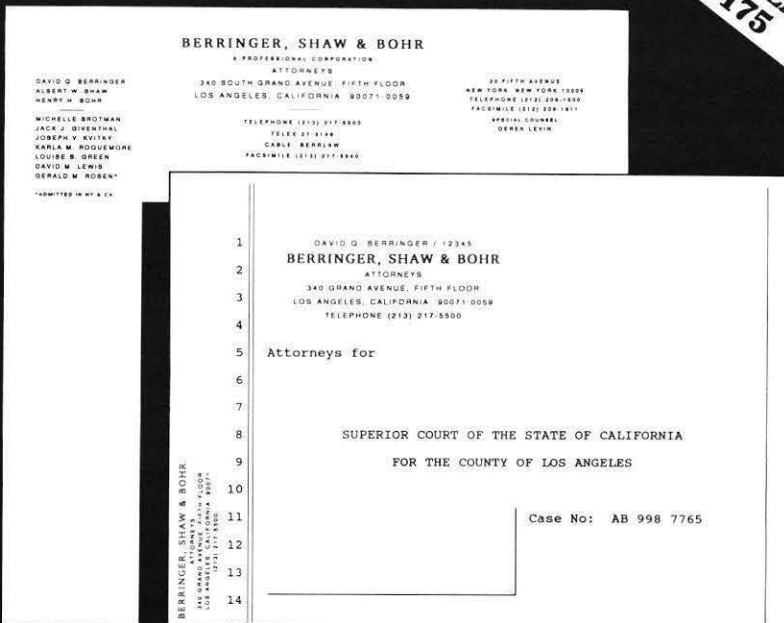
Schwabe, Williamson & Wyatt of Portland and Seattle's Ferguson & Burdell are now Schwabe, Williamson, Ferguson & Burdell in Seattle; the firm retains its old name in Portland. The merger makes the combined Seattle office's 54 lawyers the 14th largest in the Seattle area, and the seventh largest firm in the Northwest.

Jerry Banks, managing partner for Schwabe, a fixture in Oregon since 1892, said the merger gives the firm a strong presence in Seattle, essential to any regional firm. Jim Hurt, F&B's managing partner, said his firm liked Schwabe for the way it offered clients "all the benefits of a big firm, but [is] more lean and mean than other big firms. That's what clients want: big-firm service with small-firm efficiency."

Schwabe's Jerry Banks said the merger may not be the last. The firm opened a Seattle office in 1983 with four attorneys. In 1986 they merged with Lenihan, McAtter, Hanken & Borgerson. After the new merger the combined firm has 178 lawyers practicing from offices in Portland, Seattle, Vancouver, Washington and Washington, D.C.

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## "Lies, Damn Lies, and Statistics"

Elsewhere in this issue of *Bar News*—"Letters to the Editor" to be exact—you will find a letter from Howard Todd and Ed Hiskes citing several statistics about the size of the WSBA's budget compared to that of other bar associations. I have no objection to using statistics. I will use them myself later in this column. What I do object to is selective use of statistics to create misleading impressions.

Howard and Ed cite the fact that of the 16 bar associations whose memberships exceed 15,000 lawyers, only two charge higher membership dues than the WSBA.

If that seems a little suspicious, it is. The trick is the old "apples and oranges" routine. The more populous states tend to be in the eastern United States, where bar associations are voluntary associations (with the regulatory/disciplinary function residing in their Supreme Courts).

The better comparison would be with other unified bar associations in the western United States where we tend to do the same things, e.g., licensing, discipline, admissions, MCLE, client's security funds, law-related education for the public, public affairs, legislative work, etc. Using the same 1991 ABA



Dennis P. Harwick

"Bar Activities Inventory" publication for data, the comparison with our regional (and functional) counterparts looks like this:

State	Mandatory Fees	# of Staff	# of Members	Staff:Members
Washington	\$195	60	20,317	1:338
Idaho	\$250	12	2,882	1:240
New Mexico	\$265	29	4,998	1:172
Oregon	\$290	65	10,433	1:160
Arizona	\$295	62	11,489	1:185
Alaska	\$310	16	2,884	1:206
Utah <sup>1</sup>	\$350	16	5,287	1:330
California	\$478	760	122,400	1:161

<sup>1</sup> The Utah State Bar has been under a court-ordered receivership while analyzing the role of the state bar. The special task force's recommendation is for a unified state bar similar to those of other western state bars.

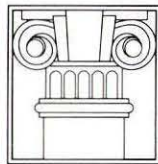
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State Association	<u>323</u>
	\$553
<b>Physicians</b>	
State Licensing Board	\$225
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	\$643
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Working Electrician	<u>1.5% of gross</u>
	\$170 minimum
<b>Linemen</b>	
Nonworking Lineman	\$243
Working Lineman	<u>1% of gross</u>
	\$243 minimum
<b>Plumbers</b>	
State Licensing Board	\$ 40
Nonworking Plumber	183
Working Plumber	<u>1.5% of gross</u>
	\$223 minimum

## Twenty Years Ago:

### Washington State Bar News

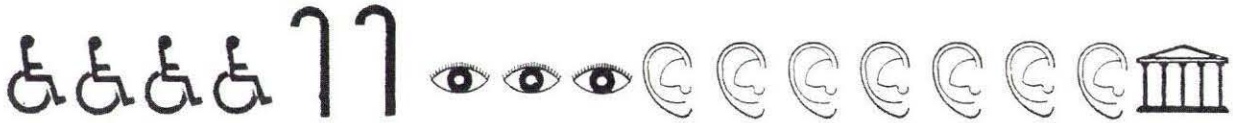
March 1972

*Bar News* editor Ed Raftis urged members to get involved in lobbying the governors to pass the "Portland Resolutions" calling for the creation of a 15-member Board of Governors based on one lawyer, one vote, and to provide for direct election of the president.

"The proponents of the Portland Resolutions did receive a setback at the Board's January 20 meeting in Olympia," Raftis noted. "The Board committed itself to amend the bylaws to require a two-thirds vote by the membership on any referendum to amend the bylaws—if the amendment to the State Bar Act is passed. Since the amendment passed, it is presumed the Board will so amend the bylaws.... If the bylaw change goes in, as long as 34% of the membership supports the Board, the remaining 66% will be on the losing end." The amendment to the State Bar Act was Senate Bill 253, which would "enlarge the Board's authority to permit, but not require, the Board to change the structure and procedures of the association—for instance, to change the size of the Board and districts of Board members, to provide for direct election of the president or to establish the office of president-elect or vice president."

The Board of Governors continued its work on establishing an open panel group prepaid legal service system in Washington. The *Bar News* reported, "Board member Jack Ripple of Spokane commented at the January Board meeting after the Board had approved a WSBA 'open panel' group legal services program: 'There is another thing I am concerned about. We have a big problem of educating our own members on 'open panel' group legal services. Is simply an article in the *Bar News* sufficient? Regardless of what else is said, I don't think that more than 25% of our members read this *Bar News*.'"

I will return to my premise that meaningful comparison. I will let the statistics are valid only when surrounded numbers shown above speak for by enough information to make a themselves.



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# Courthouses and the Americans With Disabilities Act: A New Era Opens

by Lindsay T. Thompson

**O**ver the Super Bowl weekend in January, most Sunday newspapers gave some coverage to the first phase of the Americans With Disabilities Act (ADA) coming into effect. Though *The New York Times* has called it "the most sweeping anti-discrimination law since the Civil Rights Act of 1964," only 18 percent of Americans knew anything about it last summer. One expert, San Francisco lawyer Michael J. Lotito, told the *National Law Journal*, "People still think the ADA is the American Dental Association." Title III of the Act sprang into force January 26, requiring public accommodations—restaurants, stores, other places of business—to treat the disabled as they would anyone else. This means providing goods and services in an integrated setting, unless it can be shown alternative measures provide

equal access; removal of architectural and structural barriers which prevent equal access "where readily achievable," and adjusting policies and procedures to eliminate unnecessary differences in the treatment of able and disabled employees or customers. Though passage of the act included lobbying *The New York Times* said "made the wars of Gog and Magog look like a fortnight of cricket," its implementation can be expected to produce howls of business and governmental anguish over the next few years. For example, on July 26, 1992, provisions prohibiting discrimination against the disabled in businesses employing 25 or more persons will go into effect. Within three years the act's net will drop to include employers of as few as fifteen people. A Commerce Clearing House release says, "The law's

reach will touch a plethora of diverse business activities including banks, restaurants and hotels, retailers, law firms, architects, developers, libraries, convention centers and sporting arenas. Still others to be affected are organizations representing the disabled, offices, factories, warehouses, construction contractors, transportation operations, state and local governments, government contractors, agricultural, forestry and fishing industries as well as manufacturers and wholesalers." Definitions of "disabled" have changed, and those feeling discriminated against are guaranteed the right to a jury trial, as well as attorney's fees and punitive damages. Some 43 million Americans are affected by its provisions, as will be up to 51,000 businesses by 1994. In brief, the new law prohibits discrimination in four large areas of life:

## Equal Justice Under the ADA

Seattle-based Space Management Consultants, Inc. has done interesting research into the design of courthouses. Their report, "Accessibility to Justice: Guidelines for Barrier-Free Judicial Facilities," anticipated the ADA with a comprehensive look at every element of access, from arrival, parking and building approaches; entrances, building orientation and circulation; courtrooms and ancillary facilities; even holding areas for prisoners.

The report notes that universal access means more than just throwing up a ramp or two and widening some toilet stalls. Floor finishes and spacing of seating in long hallways affect the ability of the disabled and elderly to navigate, as does door hardware requiring more arm and hand strength and dexterity than such people can sometimes muster. Sight-impaired people may find directional signs of little utility; braille directions should be included. Sound enhancement is needed to assist the hard-of-hearing.

In courtrooms, "soundlocks"—the anterooms used to buffer sound between some courtrooms and the outer hallways—need to be wide enough for a person in a wheelchair to fit in the space between the doors when coming into court. Even commonplace elements of courtroom design, like swinging barriers at the bar, can be challenges for the disabled, not to mention elevated spots like witness and jury boxes.

terms, conditions and privileges of employment; receipt of public services; participation in programs offered by government; access to goods, services, facilities and public accommodations; and access to telecommunications.

The law, in its physical manifestations, is included in the act's demands. For example, WSBA executive director Dennis Harwick told the Board of Governors in January that the act will require the association to provide accommodations for disabled persons taking the bar exam. A National Center for State Courts publication noted that, for courts, the act will require making reasonable accommodation to the known physical or mental limitations of employees. This "may include restructuring jobs, arranging part-time or modified work schedules, reassigning employees, acquiring or modifying devices to help people with disabilities, adjusting exams, providing readers and interpreters, or providing similar aids."

"Equally important, courts should recognize that people with disabilities may come before them as litigants, lawyers, jurors, victims, witnesses, employees or information seekers. Courts are required to take affirmative steps to ensure that these people do not encounter discrimination because of their disabilities." In other words, we can't just ask the court to excuse the hard-of-hearing juror: there will need to be equipment on hand in the jury box to help that person hear.

Concern—and foresight—about the effects of the ADA brought three Washingtonians to an ABA conference on court-related needs of the elderly and persons with disabilities last year. Spokane County Superior Court Commissioner Royce Moe, Evergreen Legal Services attorney D. Ty Duhamel of Wenatchee, and Seattle architect Michael Wong of Space Management Consultants, Inc., one of the country's top experts on barrier-free courtroom design, took part in the 200-delegate conference in Reno. The delegates' recommendations, called "truly visionary," call for a judicial system based on principles of "universal design," "one that meets the needs of *all* persons, including those with impairments," a conference summary says.

The conference was organized around 14 small working groups, whose members identified major concerns and drafted recommendations on a wide range of issues, from physical and communications access, linkage, dispute resolution, stereotypes, education, case-processing, court data, victims and witnesses, capacity determinations, and judicial review of surrogate decision-making.

"We all feel very strongly that this is an important and timely topic for lawyers," Commissioner Moe says. Coverage in the *Bar News* is but an early step in an extensive action plan designed to engage the Bar Association, state courts, Washington law schools and government agencies involved in making justice truly accessible to all.

Many of the conference recommendations dovetail nicely with existing bar association and governmental initiatives. For example, recommendations to develop and publicize methods of eliminating "harmful stereotyping of elderly persons and persons with disabilities...to ensure that these persons have meaningful representation and are able to participate fully in the judicial process [by eliminating] irrelevant and intrusive barriers and unprofessional behaviors" can easily be folded into current initiatives to cull out racial and gender-based stereotyping and discrimination in Washington's courts and bar associations. Wide-ranging recommendations dealing with ordering and implementing guardianships are consistent with changes ordered by recent amendments of state law. Incorporating consideration of the needs of the disabled and elderly can easily be included in existing efforts to extend alternative dispute resolution methods in Washington, as well as attempts to expedite case flow through the courts and revisions of court rules. Calls for the establishment of victim/witness programs which take into account the different situations of the elderly and disabled can be accommodated by counties with such programs in place, or included in programs yet to be created.

Probably the greatest anxiety felt in the courts will be fears of budget-busting requirements of investment in gadgets and courtroom alterations. This

isn't necessarily a problem, says Commissioner Moe. "A lot of 'high-tech' equipment is now available to assist lawyers and litigants in the courtroom, but most people are not aware of it. For example, there is a deaf court of appeals judge in Indiana who functions quite well with the help of high-tech electronics; there is the president of the Blind Trial Lawyers Association of America, who brings his computer scanner and braille printer into the courtroom so he can 'read' last-minute motions and briefs filed by opposing counsel."

Another fear will doubtless be that of major capital costs for refitting of buildings and courtrooms. This is relatively less an issue for most Washington courts than, say, courts on the East Coast. A history of major fires over the last century has meant many Washington courthouses are relatively new buildings; even some of the older ones, like the half-century-old Clark County Courthouse, have been extensively renovated and brought into compliance with prior standards for universal access with door, ramp, elevator and restroom alterations.

The Reno Conference's recommendations on this point call for the assessment of barriers for persons with disabilities in courthouses and court-related facilities in each judicial district

and the development of an accessibility plan. This process should involve presiding judges, court managers and others responsible for the operation of the courts, in cooperation with constituent groups. "The accessibility plan should be guided by the principle that compliance with the Americans With Disabilities Act is only one step in a continuing process of barrier removal," and should include timelines for compliance. Assistance and coordination should be provided by an interdisciplinary committee to be established, and watched over by, the chief justice of the state supreme court.

No question about it: the ADA will effect a sea change in American life. Even lawyers in their offices will be covered by its requirements, though the *National Law Journal* found relatively few seem aware of it, much less prepared for it. Now, like a sharp poke in the eye, the new law tells Americans to get their architectural and employment policy acts together. Washington lawyers can do their bit to move that process along, from supporting universally accessible legal facilities and refitting when remodeling is done, to advising clients the advent of the ADA isn't the end of the world. For one-sixth of the population of the United States, it's the beginning.

Then there are the nonpublic areas of a courthouse to consider. "Courthouses are also workplaces, and the people who are employed there may very well find designs for the handicapped useful. Judges, attorneys, clerks and clerical employees may be physically impaired or wheelchair users," the report reminds. Judges' chambers and the steps up to the bench can be a challenge. "Judgeships are positions of seniority," it notes; "judges tend to be older people."

Even holding cells and building sallyports are treated: the authors call for a percentage of cells in such areas to be accessible to the disabled. Counters in the clerks' offices, aisles in the law library, lighting, lectern and table heights, door hardware...all are aspects of alert design and adaptation for universal access. While the report aims at the design of new facilities, it is a useful eye-opener for anyone interested in the subject. "Design for the disabled is often beneficial to those members of the public, and those employees, who are not disabled," the report concludes. "Wider door swings, clear signage, and safe, easy-to-operate plumbing fixtures are a few examples; most people can relate to the experience of having been unable to twist a round faucet handle with soapy hands....Accessible design need not be more costly nor more difficult to construct than conventional buildings, so long as planning is done in advance for the accommodation of the conditions required for accessible design features. By incorporating the principles of accessibility for ambulatory and nonambulatory disabilities, the designer is likely to produce a building which is a superior design for all its users."

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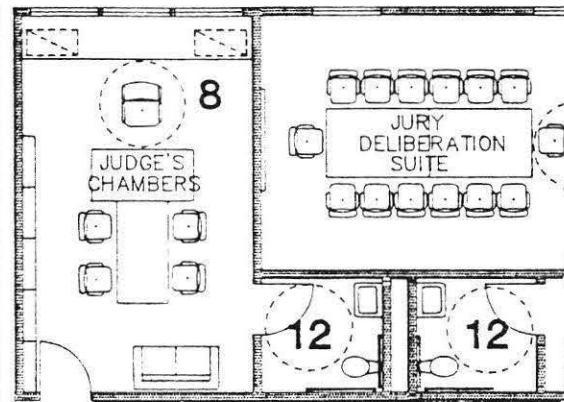
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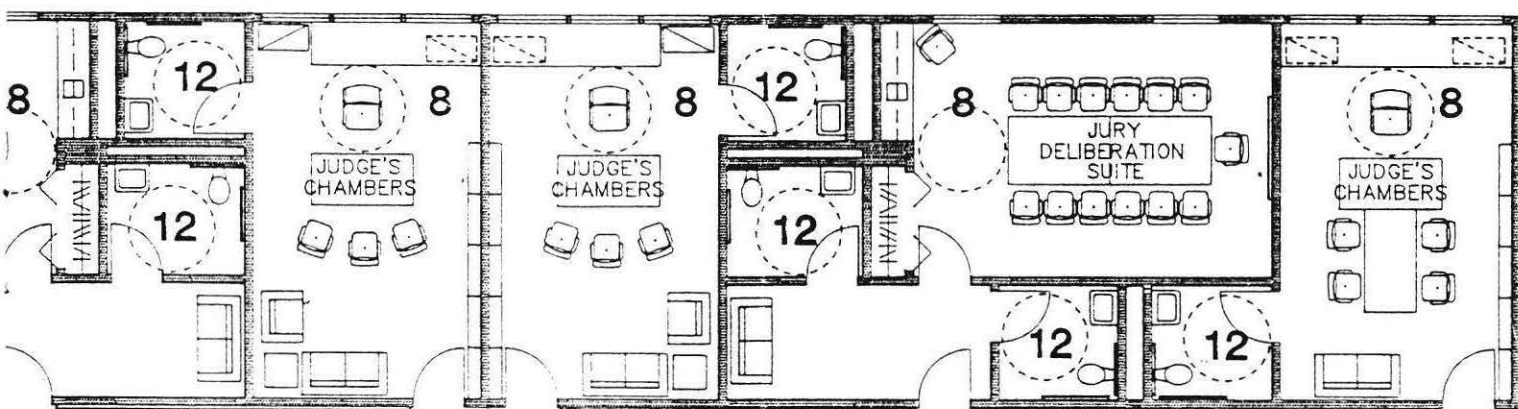
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**O**ne of the major complaints about the Americans With Disabilities Act is that it's heavy on aspirational goals and short on specifics of how to achieve them. Part of that complaint is true; part of it reflects the ignorance of the needs of the disabled "able" people have enjoyed for so long. While experts agree the ADA's full effect will be sorted out over time—and largely in the courts—here are some initial sources of further information on the ADA and its requirements:

**The Law:** The Americans With Disabilities Act is codified at 42 U.S.C. § 12101, *et seq.* (Supp. 1991). Federal regulations interpreting the Act, including Title III and the ADA Accessibility Guidelines for Buildings and Facilities, were published in the Federal Register July 26, 1991.

**The ABA:** To focus new attention on the needs of persons with physical disabilities, the ABA has renamed its Commission on the Mentally Disabled as the Commission on Mental and Physical Disability Law.

Ruth Luckasson, commission chair, explains, "The change in name indicates not only an expanded interest in the rights of persons with physical disabilities within the legal profession, but



# ADA: Resources on How to Cope

a continuing interest in the rights of persons with mental disorders and retardation who too often are the most ignored members of our society." She notes that the change also reflects the ABA's appreciation of stereotypical language.

As part of the same effort, the ABA has created a task force on member benefits for lawyers with disabilities and has established a project to address issues raised by the Americans With Disabilities Act. The task force, chaired by Robert L. Geltzer, will make specific recommendations on how the association can make its programs, services, and activities more accessible to lawyers who have disabilities. Through the ADA project, the association will provide technical assistance, research and consultation services on the requirements of the ADA; develop model plans and training manuals that explain the ADA's requirements; and provide comprehensive coverage of ADA developments in the *Mental and Physical Disability Law Reporter*. The *Reporter* began a three-part, in-depth analysis of the ADA federal regulations starting in its November-December 1991 issue.

The commission, established in 1973, is a part of the ABA's Governmental Affairs and Public Services Group, and published the *Reporter*. For more information, contact the commission at

1800 M Street N.W., Washington, D.C. 20036; tel. (202) 331-2240.

A joint conference of the Commission on Mental and Physical Disability Law and the ABA's Commission on Legal Problems of the Elderly was held at the National Judicial College in Reno, Nevada, February 20-23. The conference brought together over 200 judges, court managers and representatives of the aging and disability networks to examine court accessibility for the elderly and persons with disabilities. The conference was supported by the State Justice Institute and the U.S. Administration on Aging.

The report of the conference finds a broad range of barriers preventing the elderly and disabled access to the justice system and calls for judicial decision-making that supports the rights of adults to make their own choices under all circumstances that do not put others or their property at risk, and for a "barrier-free and technologically advanced" environment designed to meet the needs of all citizens, including those with physical disabilities.

"Inaccessible justice is justice denied," explains the report, "especially for the elderly and persons with disabilities who may have problems reaching the courthouse doors and, once inside, may have difficulty fully participating in the judicial process." The publication, "Court-related Needs of the Elderly and

Persons with Disabilities," contains 75 recommendations to make the judicial system more accessible to these groups. The recommendations were approved as the official policy of the American Bar Association at its annual meeting last fall.

Among other steps, the recommendations call for the establishment of interdisciplinary coordinating committees at the state and/or local level with representatives from the judicial system and aging and disability networks; the development of an accessibility plan for improved physical and communication access; and limited judicial review to ensure that all adults have the right to make their own life choices.

Other recommendations address the elimination of stereotyping behavior; improvement of case flow management; establishment of a specialized victim/witness assistance program; and provision of educational training for court personnel.

"Court-related Needs of the Elderly and Persons with Disabilities" also contains issue summaries and background research papers. It is available for \$30, plus \$3.95 shipping and handling, from the ABA Commission on Mental and Physical Disability Law (address above). A 20-page brochure containing the recommendations is available at no charge.

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The 270-page report goes beyond physical barriers to explore communications, attitudinal and other barriers, and it explains how courts can comply with the Americans With Disabilities Act.

Both commissions are following up on the conference, which addressed court-related needs of the elderly and persons with disabilities, with quarterly bulletins and other information on a state-by-state basis. They are also able to provide technical assistance in identifying and bringing together judicial, aging and disability leaders; developing coordinating committees on court-related needs; planning educational sessions and conferences; identifying funding sources and strategies, and planning for the evaluation of court access. The Commission on the Legal Problems of the Elderly is located at the Washington address; for more information, contact Jeanne Dooley [(202) 331-2240] or Erica Woods [(202) 331-2297].

**National Center for State Courts:** The center has been awarded a 12-month grant by the Office of the Americans With Disabilities Act of the Civil Rights Division, U.S. Department of Justice, to establish a national clearinghouse and resource center for state and local courts. Under this grant, the center will disseminate information to court officials on ADA compliance requirements, methods, and strategies. For more information, contact the National Center for State Courts, 300 Newport Avenue, Williamsburg, VA 23187-8798, [tel. (804) 253-2000; fax (804) 220-0449].

**Commercial Publishers:** Westlaw, the computer-assisted legal research service of West Publishing Company, has established an online service keyed to ADA information. "New legal and employment issues will arise as this act is implemented across the company," said Thomas J. McLeod, manager of Westlaw account management and government relations. "West already provides information on several databases, and we'll continue to expand our online resources as information needs grow in this area."

Westlaw's ADA-related databases

include federal state and regulatory information under "Federal Health Services," "Multistate Health Services Cases," "State Health Services Cases," containing all the original source material for the ADA, including cases, statutes and regulations; "Health Services—Texts and Periodicals," containing an overview of law review and bar journal literature related to the ADA; *The ABA Mental and Physical Disability Reporter*, with full text, selected coverage of materials published since 1987; and topical health services databases on Westlaw and Dialog, tracking emerging disability-related issues in law and society. For more information, call (800) 937-8529.

Clark Boardman's *Disability Discrimination in Employment* (718 pp., \$95, ISBN:0-87632-818-4), was written by Birmingham lawyer John J. Coleman, 3d, and published in November. The one-volume looseleaf treatise is intended to help attorneys working with disability cases, labor and employment issues, employments mediators and arbitrators, disability-related organizations, and veterans' groups.

Author Coleman calls the ADA "the next great target of civil rights legislation to which employers must adapt." The book covers the principal federal and state law remedies available to both public- and private-sector employees, focusing mainly on remedies available in the private sector. It considers practical dilemmas faced by employers in determining obligations and handling litigation.

The book begins with a review of the fundamental causes of action under the ADA, the Rehabilitations Act, certain specialized federal statutes and the disability and discrimination laws of all fifty states and the District of Columbia. It also discusses issues faced by the employer in determining its obligations under the law, including determining who is disabled, the formulation of job function descriptions, methods of ascertaining qualifications and evaluating reasonable accommodation options. The final section discusses litigation under federal and state disability laws, including limitation period issues, the impact of parallel proceedings, the standards of appellate review, a review of recognized

models of proof and a review of litigation strategy. To order, call (800) 221-9428.

Commerce Clearing House, Inc. announced its *Accommodating Disabilities-Business Management Guide* in January. The publisher's one-volume, loose-leaf, compliance-focused guide promises to provide easy-to-follow explanations with full-text coverage of the ADA and other related laws dealing with accommodation of individuals in employment, public accommodations, commercial facilities, transportation services, and telecommunications.

The main thrust of the publication will be the specific requirements employers and businesses must meet to comply with these laws and the regulations accompanying them. Updating reports issued every two months will include in-place reporting plus summaries of agency and court developments and a regular newsletter. It includes a "State Law Correlator" which includes a checklist referencing where users can find particular state and local requirements.

*Accommodating Disabilities* is available by subscription at \$215 per year or \$390 for two years from CCH at 4025 W. Peterson Avenue, Chicago, IL 60646 or by phone at (312) 583-8500.

Wiley Law Publications' *Americans With Disabilities Act Handbook* (528 pp., periodic supplements, \$125), by Henry H. Perritt, Jr., is in its second edition. Its publisher calls the work "the first and only in-depth analysis of the Americans With Disabilities Act." To order, write to Wiley at 7222 Commerce Center Drive, Suite 240, Colorado Springs, CO 80919-9809.

The American Hotel and Motel Association has published a new guide on jobs in the lodging industry for disabled persons. It includes references to the ADA and background reference materials. Send a self-addressed, business-sized envelope with 98 cents postage to AH&MA Inaugural Guide, Information Center, 1201 New York Avenue N.W., Washington, D.C. 20005-3931.

**Architecture:** The Public Broadcasting Services and the American Institute of Architects are conducting live video-conferences on the ADA via

PBS' Adult Learning Satellite Service. The first was February 6; two more follow: March 18 on exterior and interior architectural design and compliance strategies, and April 21 on integration of the ADA with local code enforcement programs. Among the sites listed as of January 17 (more are being added) are Ellensburg, Longview, Spokane and Tacoma; Albany, Astoria, Eugene, Grants Pass and Portland, Oregon; and Boise, Coeur d'Alene, Moscow and Pocatello, Idaho. Participants can ask questions of national experts. Each video-conference is \$95; a free 100-page ADA Handbook is provided. To receive a free program brochure and registration information for the Opening All Doors Programs, call (800) 365-4146. Credit card registration is available at (800) 343-4146, 10 a.m.-6 p.m. Eastern Time.

For information on "Accessibility to Justice: Guidelines for Barrier-Free Judicial Facilities," contact Space Management Consultants, Inc., 418 Vine Street, Seattle 98121, (206) 448-1775.

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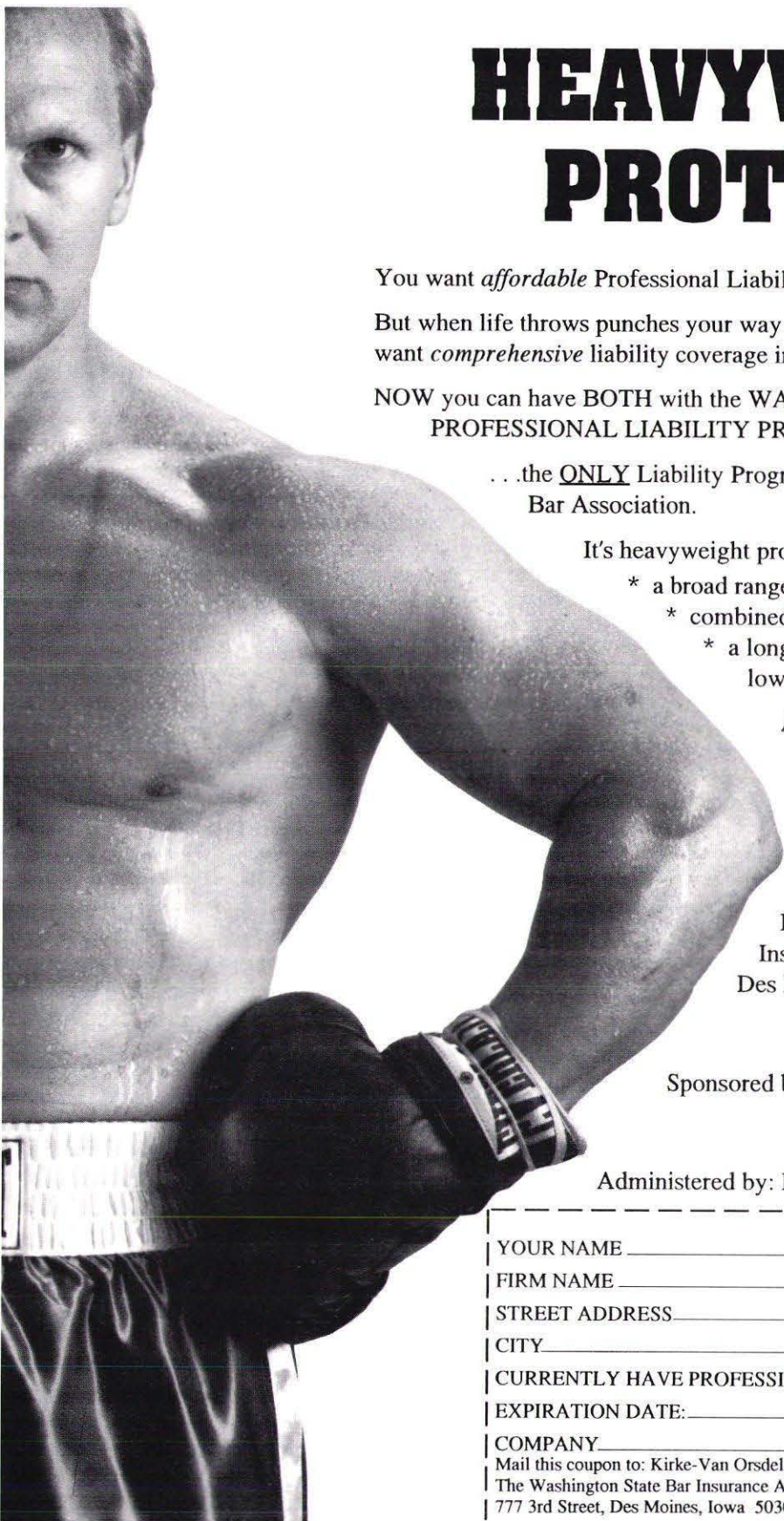
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AMAB-1



by Lindsay Thompson

Tacoma, February 14-15, 1992

**Present:** The president and governors. Also present: Judith R. Eiler (SKCBA Trustees); Sheryl Garland (Washington Women Lawyers); Dennis P. Harwick (WSBA Executive Director); Grant Johnson (WYLD); Jim Kaufman (WAPA); Judge Jim Keller (District & Municipal Court Judges' Assn.); Donna McNamara (SKCBA/YLD); Bill Phillips (WDTLA); Tony Russo (WSTLA); Judge Karen Seinfeld (Court of Appeals); Judge Evan Sperline (Superior Court Judges' Assn.); Lindsay Thompson (*Bar News* editor); Morton Tytler (Government Lawyers' Assn.); and Robert Welden (WSBA General Counsel).

**For Openers:** The president called the meeting to order Friday morning at 9:15, after an executive session of the board. The minutes of January's meeting were approved, and Lem Howell moved the approval of a resolution calling on Congress to reauthorize the Legal Services Corporation, opposing proposed legislative restrictions on the LSC's activities, and supporting the proposed 1993 budget of \$525 million. The resolution was adopted unanimously.

**Should Pro Bono Goals Be Increased?** The president then called up a resolution of his which would set new aspirational goals for Washington lawyers giving time to pro bono projects. The resolution recommended an increase in each WSBA member's pro bono contribution to 50 hours per year, and offered those unable or unwilling to make such a commitment the option of making a cash contribution to a pro bono project: \$350 for those in practice fewer than 20 years; \$500 for those in practice 20 years or more. The President said opposition from state government lawyers had raised some issues warranting further discussion and asked that consideration of the resolution be put over to the May meeting. However, because some present had come to take part in the debate on the issue, a discussion was held on the resolution. John Purbaugh, representing South Puget Sound Legal Assistance Foundation and Evergreen Legal Services, and Marla Elliott, coordinator of the Thurston-Mason County Bar Association's pro bono program, spoke in favor of the resolution. Elliott said it would bring the WSBA goal up to the level recommended by the ABA, and that would be a good thing. Wayne Blair said the board should support the resolution, and that he'd heard about both sides of the contribution issue from constituents. One governor asked if the contribution idea wasn't just "a quick escape" from any obligation; the President said he'd heard that, too, but thought it would still get some participation from persons who've avoided participation in the past, whatever their reasons.

Governor Joe Nappi told the board he'd heard from 25 to 30 government lawyers who called the proposal "an impossibility" because of potential conflicts of interest and lack of employer support for what is perceived as outside legal work. If they try to move into the private sector and an employer asks how much pro bono they did in government,

they have to answer, "None," which hampers their employment chances, Nappi continued. He then moved the referral of the resolution to the Legal Aid Committee to see how it would affect government lawyers, with a report back in May.

Governor Steve Tubbs went to the merits of the question and said he thought 50 hours too high. "For most of my constituents, the current level of 30 hours equals a good week of billable work. Going to 50 asks them to give away nearly two weeks' work." He was concerned those who don't want to take part still won't. "I see no reason to increase the hours just to tempt those who already give to give more." Lem Howell then asked to amend the referral motion to have the Legal Aid Committee define what would count as pro bono activity; the amended motion passed, 9-1, Tubbs opposed.

**Should We Require Malpractice Insurance of All Members?** The president, noting the recent bankruptcy of an uninsured Spokane County law firm charged with negligence, expressed concern at the public perception of the bar. While he is not totally in favor of mandatory malpractice insurance, he said, the issue deserves some study. He put the point on this agenda so members could have notice it will be discussed at the May meeting. In the meantime, Wayne Blair moved, let's let the Professional Insurance Committee take a look at it, especially in light of prior proposals to require malpractice coverage. The motion passed, 9-0-1, Long abstaining.

**And Speaking of the Current Market:** Governor Wayne Blair asked for a referral to the Professional Insurance Committee complaints he's received from constituents (see, e.g., "Letters," this issue, and January-February 1992) about the new WSBA-endorsed plan. Questions about the rates charged and experience of the company are being raised by members and deserve careful study, he said. The motion to refer passed 7-2-1, Chambers and Long opposed, Tubbs abstaining. On a motion by Governor Joe Nappi to reconsider, approved by voice vote, the matter was referred to committee for a report in May, and the insurance people will be called on the carpet at that meeting to answer what Governor Tom Chambers, a critic of the plan from the get-go, called "some hot questions." The reconsidered and amended motion passed 8-0-2, Tubbs and Long abstaining.

**We Could Always Activate the Emergency Response Team, But They'll Want Those Cellular Phones:** Dennis Harwick presented the board with a plan for what to do if he is kidnapped by ABA extremists or run over by a tour bus. The plan would vest his authority in WSBA department heads until the board could hire a new executive director. The plan passed 9-0-1, Long abstaining.

Harwick said 460 will take the bar exam February 18-20 in Tacoma.

**If You Tell Them How, They Will Phone... and Write...** WSBA disciplinary counsel gave a good news/bad news report on his office's work in 1991. They made inroads into the case backlog, receiving 2,200 complaints against

WSBA members, and closing 2,500. Another staff lawyer, authorized in this year's budget, has been hired. But based on the first six weeks of 1992, Ripley expects a record 2,700 complaints this year—up 10 percent.

Disciplinary board chair Henry Haas said the increase is making the work of the board's review committees, which consider complaints not dismissed at the staff level, harder. The committees may need to be increased. The president said he thought the number of committees should be doubled, and Governor Monte Hester said the board should be prepared to support the increased cost of discipline even if it means making cuts elsewhere to fund it.

Haas also thought the number of complaints could be reduced if better communication could be established with lawyers who practice in the fields generating most complaints (half are about family law, torts and criminal matters) about how to avoid complaints. Ripley will try to match up the fields of law with types of complaints to see if common patterns can be observed.

**Hail to the Chief:** Lem Howell and his cohorts on the Presidential Search Committee—Governors Chambers, Hester, Larson and Long—reported on their interviews with the seven contenders for the 1992-1993 WSBA presidency. All won praise, and then Governor Steve Tubbs requested a brief executive session to consider whether there were any matters governors needed to consider which might be embarrassing or negative. Governor John Schultz wanted to vote by secret

ballot, but WSBA counsel Bob Welden said the bylaws required a roll-call vote. Though it had to be put off 'til after lunch, the motion to meet in executive session passed 9-1, Blair opposed. From 2:45 to 3:30 the board met in private, then came out to vote, by roll call, for the next WSBA president: Governors Blair, Chambers, Howell, Larson, Long, Slater and Tubbs voted for Stephen DeForest (BOG 1987-1990); Monte Hester voted for Ronald Gould (BOG 1988-1991); Joe Nappi voted for Jay White (BOG 1985-1988); and John Schultz voted for James Turner (BOG 1987-1990). De Forest was declared the winner and will assume office in September.

**Legislation:** After lunch, the board heard a report on the Olympia scene from Legislative Committee chair Dick Manning and lobbyist John Fattorini. The main item of interest was a set of money bills designed to advance long-held priorities of the board. A coalition, loose and unstable, has formed around them: one would increase superior court filing fees to \$110 to provide funds for civil legal aid for indigents and additional funding for county law libraries and judgeships authorized but unfunded last session; a second would increase appellate filing fees and district court fees to plug a hole in the Supreme Court budget. Fattorini said if the coalition holds together, the bills might make it this year.

The board also considered and took positions on a number of other bills pending. A fuller account will appear here once their fates are known.

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**Yellow Pages Blues:** SKCBA president Peter Greenfield gently took the board to task for approving amendments to RPC 7.3(c) in November. Greenfield said the amendment, approved in November, was overbroad and unconstitutional in its restrictions on lawyer advertising. Governor Alva Long, who opposed it to begin with and told the board it flunked his "dumbness test" by failing to really prohibit anything, seconded a motion by Governor Wayne Blair to reconsider the matter. It was reconsidered on a 9-1 vote, John Schultz opposed.

Lem Howell moved to refer it back to the Rules of Professional Conduct Committee with the concerns Greenfield expressed for SKCBA for a future report on legality and enforcement. The motion passed 8-2, Larson and Long opposed.

**Unionization:** At the end of the printed agenda for the day, Governor Lem Howell moved "that the board of Governors consider unionization of WSBA staff a policy matter." Previously the effort by some WSBA employees to unionize has been left to executive director Dennis Harwick under a blanket board authorization to handle personnel matters, and Howell said he didn't want to undermine that authority, but "the issue is so basic we ought to decide what the policy is going to be. It's an issue we can't dodge any more. It doesn't belong in the Supreme Court [where the union had lodged a proposed rule to force the issue] or with the Legislature, which will deal with this for us if we don't." Mike

Larson, Alva Long and Wayne Blair agreed; John Schultz maintained the board had left the issue to Harwick, so there was nothing they needed to consider. Monte Hester said he'd heard from three constituents on the matter: "If the Supreme Court want to hear from us, they'll ask us." Governor John Slater thought such a debate would undermine the executive director's authority. "The only thing that has changed since we left this matter with him is letters board members have received." Joe Nappi called for the question, and the motion passed, 7-3, Hester, Schultz and Slater opposed.

Howell then moved that the issue be debated at the May meeting of the board. Several members wondered if the threshold issue to be considered was whether to modify the executive director's authority to deal with personnel matters. An amendment by Governor Mike Larson to have the president write the Supreme Court to ask them to take no action on the union's pending proposed rule failed 4-6 on a voice vote. After some further discussion, Howell amended his motion to make the debate in May on whether the board should allow unionization; Wayne Blair suggested continuing the matter to Saturday morning and the board agreed.

Returning to the issue the next morning, the board was told by Dennis Harwick that the Supreme Court had sent the proposed union rule to the board late Friday for comment. A motion to consider the rule in May passed unanimously.

**Money—We've Got Some:** Budget & Audit Committee Chair Lem Howell reported on belt-tightening

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measures they've imposed, and the board considered complaints by WSBA sections that the Bar has stripped their accumulated operating surpluses to meet the 1990-1991 deficit.

Not really so, said Dennis Harwick. No element of the WSBA carries over profits from one year to the next. The section surpluses were mythic, "maintained on paper from year to year." He emphasized that no one took the money. But the board recognized a problem has developed in WSBA/Section relations, and they agreed to see if they could put matters back on a right footing, starting with an April meeting between board members, administration and section heads. Several sections were given supplemental appropriations out of the contingency budget to meet certain additional expenditures the Budget & Audit Committee recommended approving after meeting with those sections.

The overall budget for 1991-1992 is going well so far, Harwick said; there's a first quarter excess of revenues over expenses exceeding \$425,000, compared to \$9,000 last year. Governor Steve Tubbs praised Harwick for taking steps to restrain expenditure in the face of flat revenues.

The board also considered the BDO Seidman accounting firm's annual report on the WSBA's finances. The final deficit

figure for 1990-1991 was \$359,377.

**Wrap-up in Tacoma:** In other action, the board heard reports from members on the 1992 WSBA annual meeting and convention; on the work of the board's Access to Justice Committee; the Washington Courts 2000 commission; the most recent meeting of the Superior Court Judges' Association, and developments in computer access to Washington Reports via the WSBA electronic bulletin board; appointed Ruth Walsh to a lay member position on the Character & Fitness Committee and forwarded the names of Mark Rotchford of Spokane and Robert Stein of Seattle to the Chief Justice for possible appointment to the Limited Practice board; met informally with members of the Tacoma-Pierce County Bar Association at the Lincoln Day Dinner Thursday night and heard reports from the board of Washington Women Lawyers Friday at lunch.

**Coming meetings:** MAR 27-28, Jantzen Beach, Portland; MAY 8-9, Cavanaugh's, Spokane; JUN 19-20, Sudden Valley, Bellingham; JUL 31-AUG 1, Captain Whidbey Inn, Oak Harbor; SEP 16, Hyatt Regency, Vancouver, B.C..



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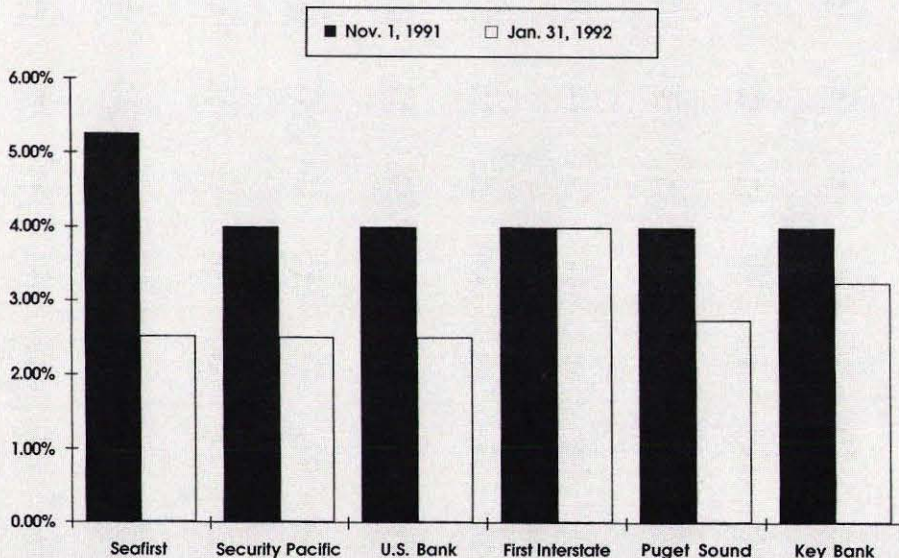


**Notices of Interest to WSBA Members**  
**Public Notices**

**Alert: IOLTA Interest Rates Drop Dramatically**

The Legal Foundation of Washington projects a \$1,000,000 drop in income in 1992 resulting from declining interest rates; 1991's income of \$3.5 million will shrink to \$2.5 million, or almost 30 percent. The six largest banks in

Washington hold 73 percent of IOLTA accounts. Only one has held its interest rates—First Interstate Bank. The foundation has recognized First Interstate's generous action and awarded the bank the foundation's annual Commendation for Outstanding Service. The following graph details the significant rate decrease.



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IOLTA dollars are the lifeblood of the nonprofits in Washington that provide free civil legal services and legal education to the very poor. The amount

available for grants to these programs will be severely curtailed, as will services to the most vulnerable poor.

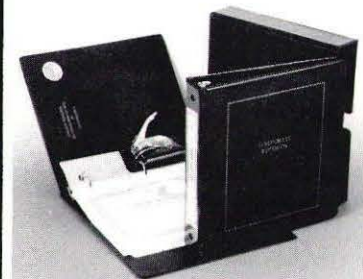
Washington attorneys should seek the highest interest rates available for their trust accounts. IOLTA funds support 37 not-for-profit grantees around the state, including coordination of pro bono programs that are sponsored or co-sponsored by 19 local bar associations. A reduction in the Foundation's income harms all of our efforts.

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## Notice of Board of Governors Election

Three positions on the Washington State Bar Association Board will be up for election this year, i.e., the Governors representing the Second, Fourth, and Seventh Congressional Districts. Those positions are currently held by John T. Slater of Bellingham (Second District), John G. Schultz of Pasco (Fourth District), and Lembhard G. Howell of Seattle (Seventh District).

The WSBA Bylaws provide that any member in good standing, except a member previously elected to the Board of Governors, may be nominated for the office of governor from the district in which he or she resides by filing a petition signed by at least twenty (20), but not more than thirty (30), active members of the WSBA residing in that congressional district.

Nominating petitions can be obtained from Jan Jackson at the WSBA Office, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599; (206) 727-8244. Petitions must be received by the executive director of the WSBA by 5 p.m. on Thursday, April 30, 1992. The Board of Governors determines the official dates of the election, but ballots are historically mailed around the first of June and counted approximately the first of July.

### Court of Appeals, Division I, Local Rule adopted in re settlement conferences:

The Court of Appeals, Division I, adopted the following local rule, effective January 6, 1992: "Whereas, the increasing caseload of the Court of Appeals requires the apportionment of court resources, and Whereas, RAP 1.2(c) and RAP 19.8(a) provide the Court may waive or alter the provisions of the Rules of Appellate Procedure in order to serve the ends of justice; now, therefore, it is hereby Ordered that mandatory settlement conferences as provided by RAP 5.5 are no longer required; and it is further Ordered that settlement conferences may be held

when all parties to the appeal agree that such a conference would be beneficial; and it is further Ordered that the provisions or RAP 5.5 pertaining to civil appeal statements are also no longer required unless a settlement conference is set. Dated this 6th day of January, 1992. Grosse, C.J."

### Fax Filing Simplified:

The King County Department of Judicial Administration has extended its fax filing pilot project through September, 1992. Jan Michels, Clerk, has issued the following revised instructions on use:

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5. If you have any faxing problems or questions about filing by fax, call the Fax Clerk at (206) 296-7795, 8:30 a.m.-4:30 p.m., Monday through Friday.

### New Address for the OAC:

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### 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 February 1992 is 4.08%. The maximum allowable interest permissible for March 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.

### Important Notice 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 refile 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.

### WSBA Nondisciplinary Action

**Interim Suspension:** By Supreme Court order entered December 19, 1991, Seattle attorney **Richard Howard Pierson**, Bar No. 11933 (admitted 1981) was ordered suspended from the practice of law pending the outcome of disciplinary proceedings against him based on his felony conviction.

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

*Editor's Note: Please note that this is not Seattle attorney Richard William Pierson, II (Bar No. 3884).*

## March 1992

**3 Domestic Relations: Professional and Ethical Considerations, Seattle. Sponsored by: SKCBA. For information: (206) 624-9365.**

**5 Family Law, Bellingham. Sponsored by: WSBA CLE/Family Law Section. For information: (206) 727-8202.**

**5-6 Fourth Annual Conference on Hazardous Waste in Real Estate Transactions, Seattle. Sponsored by: CLE International, Inc. For information: (206) 621-1938.**

**6 Franchising in Washington After the 1991 Amendments: Keeping Up with the Changes, 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.**

**12 Family Law, Vancouver, Washington. Sponsored by: WSBA CLE/Family Law Section. For information: (206) 727-8202.**

**12 Fourth Annual Washington Law Office Technology Conference: Case Preparation and Presentation in the Personal Computer Age, Seattle. Sponsored by: Advanced Computer Legal Education, Inc. For information: (303) 466-7971; fax (303) 466-5808.**

**13 Construction Liens and Bonds, Seattle. Sponsored by: SKCBA. For information: (206) 624-9365.**

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

**13 Striking Back/New Issues in Self-defense. Sponsored by: WACDL. For information: (206) 623-1302.**

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**13 Worker's Compensation: How to Adjudicate a Claim, Bellevue.**

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**14** Careers in the Balance: A Forum for Young Lawyers, Snoqualmie Pass. Sponsored by: WYLD. For information: S. Leigh Fulwood, (206) 261-5004.

**15** Bar News deadline, May, 1992 issue. For information: Lindsay Thomp-

son, editor, (206) 577-3080.

**17** Video Replay: Real Property Foreclosures—How To Successfully and Cost-effectively Handle Foreclosures, Ellensburg. Sponsored by: WSBA CLE. For information: (206) 727-8202.

**18** Child Support Enforcement, Seattle. Sponsored by: SKCBA. For information: (206) 624-9365.

**18** Alaska Environmental Law, Anchorage. Sponsored by: Federal Publications, Inc. For information: J.K. Van Wycks, (202) 337-7000, fax (202) 775-9304.

**18** Family Law in Washington: "Winning" for Your Client, Seattle. Also presented March 19 in Spokane. Sponsored by: National Business Institute. For information: (715) 835-7909.

**19-20** Tapping International Markets: Structural Options for Washington Business, Seattle. Sponsored by: WSBA CLE/International Law and Practice Section. Meeting includes the section's annual meeting, the annual international law update, and section dinner. For information: (206) 727-8202.

**19** How Secretaries Develop Managerial Skills, Portland. Also presented March 30 in Bellevue, March 31 in Everett, and April 1 in Boise. Sponsored by: Dun & Bradstreet Business Education Services. For information: (212) 312-6880.

**20** Environmental Law for Non-environmental Lawyers, Seattle. Sponsored by: SKCBA. For information: (206) 624-9365.

**20** Family Law, SeaTac. Sponsored by: WSBA CLE/Family Law Section. For information: (206) 727-8202.

**20** Getting the Judge to Say, "Yes!": The Advanced Writing Seminar for Lawyers, Seattle. Sponsored by: Kinder Legal Writing. For information: (206) 622-3810.

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

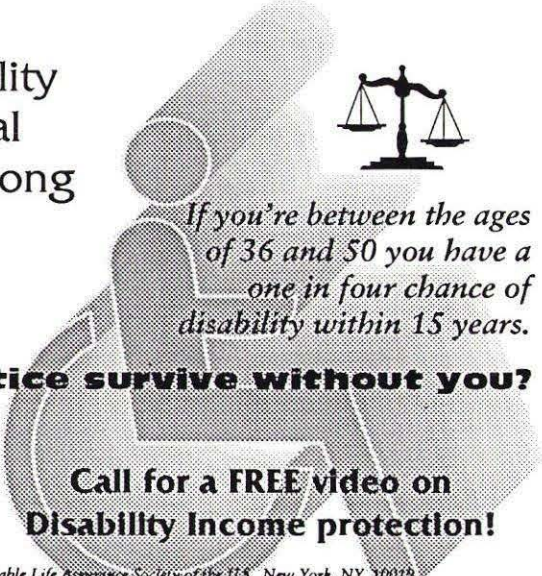
**22-26** National College of Probate Judges, Seattle. Sponsored by: National Center for State Courts. For information: Director of Secretariat Service, (804) 253-2000.

**24** Wrongful Discharge, Seattle. Sponsored by: SKCBA. For information: (206) 624-9365.

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**26** Washington Environmental Law, Seattle. *Sponsored by:* Federal Publications, Inc. *For information:* J.K. Van Wycks, (202) 337-7000, fax (202) 775-9304.

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

**27** Effective Office Systems, Portland. *Sponsored by:* Lewis & Clark Law School CLE/The Professional Liability Fund. *For information:* Linda D'Agostino, (503) 639-6911, fax (503) 768-6671.

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

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**16** Video Replay: Essentials of Evidence, 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

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**15** Child abuse program fundraiser featuring Marilyn Van Durber Atler on incest. *Sponsored by:* Colorado Voice Productions. *For information:* Lorie Platz, (303) 837-1656.

**15** Bar News deadline, June 1992 issue. *For information:* Lindsay Thompson, editor, (206) 577-3080.

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**18** Washington Construction Law, Seattle. *Sponsored by:* Federal Publications, Inc. *For information:* J.K. Van Wycks, (202) 337-7000, fax (202) 775-9304.

## May 1992

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

**5-6** Environmental Law & Management Seminar, Seattle. *Sponsored by:* Lewis & Clark Law School CLE. *For information:* (503) 768-6642.

**6** Public Contracting in Washington, Seattle. *Sponsored by:* Federal Publications, Inc. *For information:* J.K. Van Wycks, (202) 337-7000, fax (202) 775-9304.

**7-8** Environmental Law & Management Seminar, Portland. *Sponsored by:* Lewis & Clark Law School CLE. *For information:* (503) 768-6642.

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

**11-18** United Nations Commission on International Trade Law (UNCITRAL), New York. *For information:* UNCITRAL Secretariat, P.O. Box 500, Vienna International Center, A1400, Vienna Austria; voice 'phone 43-1-21131-4060; fax 43-1-232156.

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

**15** Bar News deadline, July, 1992 issue. *For information:* Lindsay Thompson, editor, (206) 577-3080.

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

**20-21** Claims and Disputes In Federal Contracts, Seattle. *Sponsored by:* Educational Services Institute and George Washington University School of Business and Public Management. *For information:* Linda McFarlin, (703) 578-8800.

**21** Advanced Real Estate in Washington, Seattle. Also presented April 22 in Spokane. *Sponsored by:* National Business Institute. *For information:* (715) 835-7909.

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

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## June 1992

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

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**15** *Bar News* deadline, August, 1992 issue. *For information:* Lindsay Thompson, editor, (206) 577-3080.

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

**19** WSBA CLE Employment Law Seminar. *For information:* (206) 727-8202.

**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

**13-17** Court Records Management, Seattle. *Sponsored by:* Institute for Court Management, National Center for State Courts. *For information:* (303) 293-3063, fax (303) 296-9007.

**15** *Bar News* deadline, September, 1992 issue. *For information:* Lindsay Thompson, editor, (206) 577-3080.

**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. *For information:* Lindsay Thompson, editor, (206) 577-3080.

**23-27** Appellate Judges' Seminar, Vancouver, B.C. *Sponsored by:*

National Center for State Courts. *For information:* Marie Owens or Sandra Roos, (312) 988-5696.

## September 1992

**15** *Bar News* deadline, November, 1992 issue. *For information:* Lindsay Thompson, editor, (206) 577-3080.

**16** WSBA Board of Governors meeting at Annual Meeting and Con-

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

**16-19** Washington State Bar Convention and Annual Meeting, Vancouver, British Columbia. *For information:* (206) 727-8200.

## October 1992

**15** *Bar News* deadline, December, 1992 issue. *For information:* Lindsay Thompson, editor, (206) 577-3080.

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## The Story of the Red Crane

On a recent trip to Nova Scotia I stayed in a hotel which had an art gallery located next to the lobby. Browsing through the gallery I discovered a print created by a Micmac Indian entitled "The Red Crane." The print was primitive and simplistic yet vibrant. I wondered what significance the crane held in Indian lore. I knew that the crane, as well as the swan, were sacred birds in ancient Roman, Greek and Celtic cultures. In Greek mythology, Apollo was metamorphosed into a crane. One of the most famous myths is of Apollo's father, Zeus, who disguised himself as a swan and made love to Leda. There is academic support for the premise that Zeus was actually transformed into a crane rather than a swan, and that portion of the myth has been confused. Was the Red Crane representative of the transformation process?

Upon investigation I was able to find the Micmac legend of the Red Crane, a large bird which transported people upon its back from one side of the river to the other side. When people had reached the far side of the river bank, they would tell the Crane how good he looked or

how much the Crane had changed in appearance. Their compliment was the fare for the trip.

Just prior to my departure for Nova Scotia, one of the attorneys in the Oregon Attorney Assistance Program had stated how valuable the OAAP programs were to her and that she felt like she had been on one side of the river and others in the group had told her she could make it across the river. After investing some time in our programs she believed she had crossed the river. In the process of moving from one side of the river to the other she knew she had changed some things about herself. I thought about her statement and I decided to purchase the print.

I realized the Red Crane also represented my personal journey in moving from one side of the river to the other. It was almost seven years ago that I first accessed the Attorney Assistance Program with my own drug and alcohol problem and was introduced to Don Muccigrosso. The Attorney Assistance Program that I joined became my personal Red Crane on whose back and shoulders I was moved from the dark into the light, from out of the pain into

the joy, from chaos to serenity; from one side of the river to the other. I am not the same person who accessed the program seven years ago; I have truly been transformed.

*Reprint courtesy of Michael Sweeney, Oregon Attorney Assistance Program Attorney.*

### Nota Bene

If you're experiencing stress, burnout, depression, or suffering from alcohol or chemical dependency, the Lawyers' Assistance Program provides free confidential assessment and referral to support you, in Michael Sweeney's words, "in moving from one side of the river to the other." For this service contact the Lawyers' Assistance Program at (206) 727-8268.

LAP staff are interested in starting a group for women attorneys with children, beginning in late April, to provide a support system for the specific challenges this creates. If you are interested, please contact Barbara Harper, at (206) 727-8265.

Every Tuesday at noon in the WSBA Presidents' Room, (4th Floor, Westin Building), LAP sponsors a job hunters' support group for WSBA members who are actively involved in the search for a new position. This is a drop-in support group focusing on the exchange of ideas, job leads, and job finding ideas. It is open to all WSBA members at no charge.

On March 23 there will be a "networking program" for WSBA members who are trying to find a job in a tight job market. Seattle Public Library, Main Auditorium 6:30-8:30 p.m. Carol Vecchio, career counselor, and Jim Latting, a lawyer who found a job through networking, will speak. You may attend the meeting without charge.

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

**Criminal law and procedure.**

(Case 1.) Judge issued search warrant based upon information given by telephone. But no tape recording was made of telephone call, and, when state tried to justify issuance of warrant on trial, judge could not recall whether his testimony about call was from his memory or from later accounts related by other persons. *Held*, evidence did not justify issuance of warrant. *State v. Myers*, 117 Wn.2d 332, 815 P.2d 761 (9/5/91).

(Case 2.) Prosecutor's closing argument, drawing jury's attention to fact that defendant had not called arguably exculpatory witness, was proper. Did not unconstitutionally shift burden of proof to defendant. *State v. Blair*, 117 Wn.2d 479, 816 P.2d 718 (9/19/91).

(Case 3.) Future dangerousness does not support giving exceptional sentence above standard sentencing range for nonsexual offense. Court refused to extend rule of *State v. Pryor*, 115 Wn.2d 445, 799 P.2d 244 (1990), which allowed exceptional sentences in sex offenses to be predicated on finding of future dangerousness. *State v. Barnes*, 117 Wn.2d 701, 818 P.2d 1088 (11/7/91).

(Case 4.) RCW 69.50.435 provides sentence enhancement for persons convicted of selling controlled substances within 1,000 feet of school bus stop. *Held*, statute violates due process. It fails to give fair notice of what activity is prohibited, because school bus stops are not marked. *State v. Coria*, 62 Wn.App. 44, 813 P.2d 584 (Div. 3, 7/25/91).

(Case 5.) Defendant, driving van, approached two girls, aged 10 and 11, and said, "I'll pay you a dollar if you'll come down to Shilshole [Bay] with me." Girls ran away. *Held*, one judge dissenting, facts sufficient to support conviction of attempted second-degree kidnapping. *State v. Billups*, 62 Wn.App. 122, 813 P.2d 149 (Div. 1, 7/29/91).

(Case 6.) After passenger in automobile was validly arrested, arresting officer searched auto incident to that arrest and discovered drugs, resulting in criminal charges against driver. Court extended to present case rule of *State v. Stroud*, 106 Wn.2d 144,

720 P.2d 436 (1986), which authorized search of passenger compartment of auto incident to driver's arrest. *State v. Cass*, 62 Wn.App. 793, 815 P.2d 57 (Div. 2, 9/9/91).

(Case 7.) Defendant was arrested with possession of pipe that contained burned cocaine residue. State charged defendant with illegal possession under RCW 69.50.401(d). Trial court held charge was improper, on ground that that statute was concurrent with more specific statute, RCW 69.50.412(1), which proscribed possession of drug paraphernalia. On appeal, court reversed, holding the two statutes are not concurrent. *State v. Williams*, 62 Wn.App. 748, 816 P.2d 825 (Div. 1, 9/9/91).

(Case 8.) During arrest, police used co-defendant to translate Miranda warnings to Spanish-speaking defendant and obtained inculpatory statements from him through this co-defendant. Because of conflict of interest between co-defendants inherent in situation, this questioning violated defendant's due process rights. *State v. Cervantes*, 62 Wn.App. 695, 814 P.2d 1232 (Div. 3, 9/3/91).

—J. Ainsworth

**Real Property.** In terse opinion, court affirmed its adherence to *Austin v. Bellingham*, 69 Wash. 677, 126 P.,59

(1912). *Austin* laid down rule that, without paying compensation, a city that impounds water for water supply may raise level only as high as line of ordinary high water, not as high as level water reaches during flood periods. *Pacific Utility Dist. No. 1 v. Tombari Family Limited Partnership*, 117 Wn. 2d 803, 819 P.2d 369 (10/14/91).

—W.B. Stoebuck

**Wills and estates.** Testator devised option to purchase land to one nephew and, if that nephew "does not exercise said option," to other nephews. First-named nephew predeceased testator, and that nephew's lineal descendants sought to exercise option. *Held*, option should be considered an "estate," so that anti-lapse statute, RCW 11.12.110, applied to it; therefore, first nephew's lineal descendants could exercise it. Testator's further provision that alternative optionees should get the option if it were not exercised by first nephew was not sufficient expression of testator's intent to avoid anti-lapse statute. Further, lineal descendants were entitled to proceeds of crops growing on optioned land at time of testator's death, but not harvested until after they attempted to exercise option. *Estate of Niehenke*, 117 Wn.2d 631, 818 P.2d 1324 (10/31/91).

—T.R. Andrews

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### Accelerating Your Cash Flow

by Gregory S. Morrison

Sooner or later we are all confronted with the situation in which our income does not keep pace with our expenses. Published studies also indicate that this can be a problem that affects large and small firms alike. But, depending on how flexible your billing mechanisms are, there are ways around it.

Most of us are stuck in the standard thirty-day-billing-cycle trap. Why? Because that's the way we've always done it, is the reply. Well, perhaps now is a good time to change. Here are some useful alternatives.

**Nonrefundable retainers.** Receipt of fees "up front" guarantees immediate cash flow from a case. However, in order to put these monies to use you must be sure that the non-refundable aspect is clearly set forth in your representation agreement. Check the ethics and trust account guidelines to be sure your agreement is in com-

pliance.

**Individual billing.** Rather than waiting for your standard billing cycle to send out closing bills or bills for short-term representation, try sending out these bills upon the conclusion of your work. This approach takes advantage of the fact your client is still in an, hopefully, appreciative mood and is expecting to pay for your services. Promptness in billing can also inspire promptness in paying. Also, over the course of 30 days, your client can become forgetful as to all of the work that was done. This can then produce a negative reaction to you and your bill.

**Accelerated billing.** Some companies have adopted a 21-day billing cycle instead of the standard 30-day cycle. The result is to increase your total billings from 12 to about 17 over the course of a year. Of course, you'll need to balance out the costs associated with this increased frequency in order to

see if it is practical for your firm.

**Regular billing.** In lieu of all of the above, bill regularly. If a client chooses not to pay you, it is extremely important to discover this as soon as possible. This also provides your clients with bills that are easier to handle, rather than one that is shockingly large.

It is also entirely possible, particularly for the sole practitioner, to use a combination of the above billing methods. As such you can be more sensitive to the needs of your clients as well as to those of your own.

---

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

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# Washington Administrative Law Practice Manual

*Prepared by the Administrative Law Section of the Washington State Bar Association. Richard A. Finnigan, James M. Van Nostrand & Laurie Flinn Connelly, editors-in chief, Butterworth Legal Publishers (1991).*

reviewed by **James R. McCurdy**

Most administrative law courses taught in law schools focus on "federal" administrative law. Students are admonished that "state" administrative law systems are so disparate among and within jurisdictions that newly admitted bar members should seek bar review materials, CLE proceedings and other miscellaneous local materials to gain a feel for and otherwise dig out the peculiarities of state administrative law. The WSBA Administrative Law Section intends to make the search for administrative law materials a one-step process with its development of the *Washington Administrative Law Practice Manual* (1991), issued by Seattle's Butterworth Legal Publishers. The *Manual* project was guided by three editors-in-chief, 11 chapter editors and 17 chapter authors.

This is a deskbook—and a sourcebook. It is not encyclopedic. It is not a treatise. The administrative-law expert likely will use it solely for quick reference. The general practitioner, however, will find a repository of valuable information for administrative-law practice. The *Manual* is organized along the major administrative-law themes: agency rulemaking, agency adjudicative proceedings, administrative investigations, civil enforcement of agency action and judicial review. Various other administrative-law topics are treated as described below. And most chapters include a "Practice Tips" section.

The first chapter, "Introduction to Administrative Law," is much more important than the title implies. Author Douglas Tesdahl develops "threshold issues." The attorney must read the introduction to gain insight into the following arguments: 1) legislative delegation of authority to agency (mandate) violates the Separation of Powers Doctrine; 2) legislative mandate does not contain adequate guidelines (Delegation Doctrine); 3) agency action

is beyond the scope of delegated authority (*ultra vires*); and 4) agency action violates the terms of the mandate

or applicable procedural rules. Attorneys often dedicate considerable efforts to debate over threshold issues. Thus, two

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criticisms arise: First, some readers avoid introduction chapters and may miss the important materials entirely. Second, as an introduction, this chapter is necessarily summary in nature. The editors are well-advised to enlarge the materials as a substantive chapter in future editions. Nevertheless, chapter one is excellent in directing the reader to properly analyze the administrative-law case, and the practice tips are helpful.

Administrative agencies legislate, adjudicate and perform the executive function by enforcing the law. Agencies legislate by promulgating substantive and procedural rules. Administrative law concerns rules that go beyond internal agency affairs to affect external parties. Authors Donald Cofer and Richard Finnigan address rulemaking under the Washington state Administrative Procedure Act and seek to answer the questions: What is a rule? When is rulemaking required? What process is required in agency rulemaking? The authors fully examine rulemaking procedures, citing RCW provisions, cases and secondary authorities.

Chapter nine covers adjudicative proceedings under the Administrative Procedure Act. Author Robert Wallis describes the adjudication sections of the act as "the wineskins surrounding the old wine of familiar administrative law principles." In addition to fully examining the sections of the APA, this chapter provides an extremely useful "Case Planning" section. The author offers an outline approach to guiding the client through agency proceedings and includes practice tips throughout the chapter. The author analyzes difficult issues of ex parte restrictions and bias. Finally, the chapter discusses the brief adjudicative proceeding which is provided in the APA as an alternative dispute resolution mechanism.

Administrative agencies require information in order to satisfy duties imposed by legislative mandates. Attorneys often question the means by which agencies secure data. Author Leslie Weatherhead discusses statutory and constitutional limitations on agency powers to gather information. The material focuses upon Fourth and Fifth Amendment restrictions. The reader

gains some insight into the methods used by agencies to inspect or otherwise gather data. The author warns that although both the United States and the State of Washington constitutions possess specific provisions intended to protect individual privacy, the balance is not constant.

Professor William Andersen and attorney Richard Heath join to present an analysis of judicial review under the new Administrative Procedure Act. This important chapter addresses the questions: What matters are reviewable? How, when and where is judicial review obtained? Who possesses standing to seek judicial review? What are the standards of judicial review if, indeed, review is available? The authors provide detailed analysis of the provisions of the APA and cite to case authority. The resulting chapter is superb.

Author Donald Trotter writes an informative chapter, "Civil Enforcement of Agency Action," which enumerates available defenses in civil enforcement proceedings. Other chapters discuss public records provisions of Washington law (Thomas Holcomb), the Wash-

## Breast Implant Litigation

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ington Public Disclosure Act (Craig Gannet and Sean Holland), the Open Public Meetings Act (Finnigan) and ethical issues confronting the administrative lawyer (Peter Jarvis).

The Appearance of Fairness Doctrine is explained in chapter two. Author Carol Van Noy provides both case and secondary authority defining the important doctrine and its application. Practice tips are presented for both private and government counsel.

Professor Lawrence Weiser authors an excellent survey of federal administrative law. But it is only an outline to aid the practitioner in getting started in such cases. There is a short bibliography at the end of the chapter.

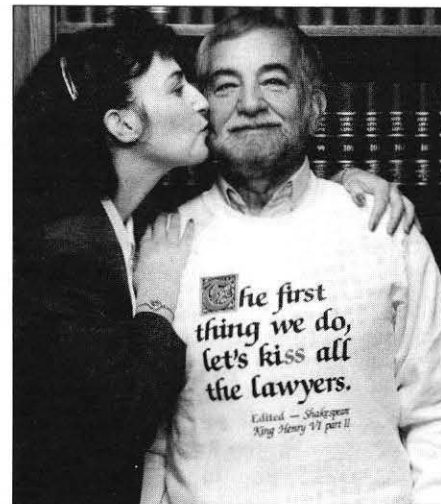
The final chapter, "Overview of Local Administrative Law," is authored by Richard Du Bey and Scott Missal, who describe generally the local administrative hearing and emphasize the informality that usually exists at the municipal level. The chapter is unnecessarily abbreviated. The material should be enlarged to provide factual data regarding Washington administrative-law proceedings at the municipi-

pal and county levels.

Drafted for the practitioner, the *Washington Administrative Law Practice Manual* likely will have a positive impact on the practice of administrative law in the state of Washington. Its usefulness goes beyond its restatement of the law to its practical suggestions. The *Manual* deserves its place in the law and government office. But there exists one glaring omission. None of the chapters addresses arguments based on the Due Process Clause. The recognized *Mathews v. Eldridge* test is mentioned only in passing in the federal administrative-law chapter. Attorneys frequently use due-process arguments in state administrative-law cases. Perhaps the "Due Process" chapter is forthcoming.

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*James R. McCurdy is associate professor of law at Gonzaga University School of Law. He received his JD in 1974 from the University of Texas School of Law.*

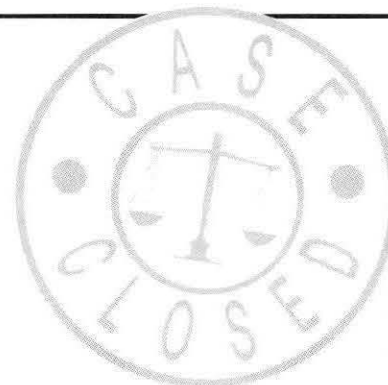


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**NEWS FROM HOME**

**Julia L. Hodson** of Oak Harbor has been certified by the National Association of Legal Secretaries as a Professional Legal Secretary. Hodson is employed with attorney **Dale K. Roundy** of Coupeville. The Certified Professional Legal Secretary examination has seven parts, and tests on written communication skills and knowledge; ethics; legal secretarial procedures; legal secretarial accounting; legal terminology; techniques and procedures; exercise of judgment; and legal secretarial skills. The exam was first administered in 1960; since then about 3,000 legal secretaries have been certified.

**Tad Connors**, a 1991 graduate of Northwestern School of Law of Lewis & Clark College in Portland, has joined **Kielpinski & Lorne** in Stevenson. He and his family live in White Salmon.

**Gwendolyn Nichols** has been named deputy prosecuting attorney for Klickitat County. She was formerly a deputy prosecutor for Okanogan County, and is a 1987 graduate of the University of Oregon School of Law.

**Gene Wilson** of Seattle, formerly chief of the criminal division in the U.S. attorney's office, has become a magistrate-judge in the U.S. District

Court, Western District of Washington.

**Dennis McLerran** left his post as director of Seattle's Construction and Land Use Department to become Port Townsend's first appointed city attorney. He succeeds **Keith Harper**, the city's last independently elected attorney. McLerran is a graduate of the University of Puget Sound School of Law.

**Jeffrey C. Barker** has been named Douglas County public defender. Barker's firm was selected by the county commissioners in November.

**V.C. "Skip" Moyers** has left his position as public defender with the Snohomish County Public Defenders Association in Everett and has opened his private law practice in Lynnwood. He is offering general legal services with emphasis in criminal, personal injury, family law and litigation.

**Michael J. Killeen**, a partner of Davis Wright Tremaine in Seattle, has been elected president of the Gonzaga University School of Law's Board of Advisors. A member of the Board since 1988, Killeen holds both undergraduate (1971) and law (1977) degrees from Gonzaga. As Board of Advisors president Killeen also becomes, ex officio, a member of the University's Board of Regents. Killeen is a member of the Seattle Goodwill board of trustees, past vice president of the Seattle-King County Bar Foundation,

and is the author of several books on labor and media law.

**William H. Song**, a partner of Davies Roberts & Reid in Seattle, has been appointed to the 15-member federal Employee Retirement Income Security Act (ERISA) Advisory Council on Employee Welfare and Pension Benefit Plans by Labor Secretary **Lynn Martin**. The council advises the Secretary of Labor on the carrying out of her mandated ERISA duties and also makes recommendations on ERISA matters to the Congress.

Washington State Ecology Department director **Christine Gregoire** has resigned after nearly four years and has joined a Seattle law firm. Gregoire became of counsel to Foster Pepper & Sheffelman, and will practice in its land use/environmental and municipal groups. Gregoire spent 12 years in the attorney general's office, including six as the first woman deputy attorney general. She is a native of Auburn and graduated from the University of Washington and Gonzaga University School of Law.

**THE JUDICIARY**

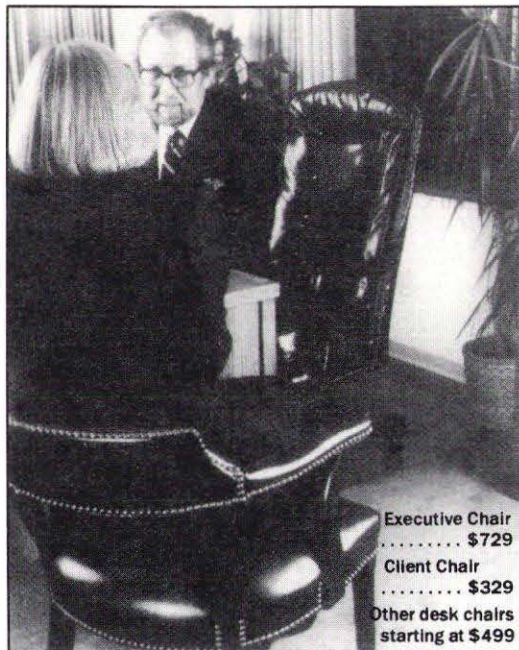
King County District Court Judge **Peter Jarvis** was appointed to the King County Superior Court bench in December, succeeding Judge **Terrence Carroll**. Jarvis was a deputy prosecuting attorney and private practitioner before moving onto the district court bench ten years ago. He will serve the remaining year of Carroll's term.

Everett attorney **Ron Castleberry** has been appointed to the Snohomish County Superior Court bench, succeeding retiring Judge **Daniel Kershner**. He will serve the remaining year of Kershner's term.

**EAST KING COUNTY REPORT**

by **RANDOLPH I. GORDON**

"History," Napoleon succinctly stated, "is fable agreed upon." What, then, of current events? One astute reader of this column in December was critical of the reference to Judge Thomas having "never discussed" *Roe v. Wade*. This, the reader pointed out, was a perpetuation of an error which entitled me



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to "be counted along with Sam Donaldson and Mary McCrory [of the *Washington Post*]." The reader brought to my attention a *Wall Street Journal* editorial entitled, "Thomas Said That? Never Mind" [12/2/91], which quotes the exchange between Senator Pat Leahy and the nominee forming the basis of the oft-repeated assertion that Judge Thomas "never discussed" the case:

Leahy: Have you ever had discussion of *Roe v. Wade* other than in this room, in the 17 or 18 years it has been there?

Thomas: Only, I guess, Senator, in the fact, in the most general sense, that other individuals express concerns one way or the other, and you listen and you try to be thoughtful. If you are asking me whether or not I have ever debated the contents of it, the answer to that is no, Senator.

The *Wall Street Journal* editorial notes that this exchange was widely reported as Judge Thomas having "never discussed" the case by such sources as the *Washington Post*, *New York Times*, Sam Donaldson (ABC), Senator Al Gore, and others. As the *Wall Street Journal* notes: "This newspaper carried a similar account." In fact, a October 16, 1991 *Wall Street Journal* article noted, at page A9, column 2: "Democrats questioned Judge Thomas's credibility when he insisted not only that he didn't have an opinion on *Roe v. Wade* ... but also that he had never discussed the 1973 case."

If one cannot trust the *New York Times*, *Washington Post*, *Wall Street Journal*, or Sam Donaldson, what is one to do? I must not have taken to heart the principles of the Skeptic philosopher cited in the December column. I have been corrupted, misinformed, and inveigled into becoming a purveyor of "disinformation." Machiavelli (reportedly) said, "He is best of all who conceiveth all things; he is good, too, who adopts a good suggestion. But, he, whomsoever of himself conceiveth, nor takes hearing from another, take it to the heart, for he is a useless man." Thus, wiser and humbler, I "take hearing" from my reader and thank him for his comments; I

apologize to Justice Clarence Thomas for the further dissemination of inaccurate reports.

Now thoroughly chastened, it is only with the greatest trepidation that I report the following unsubstantiated rumors, fables, and unverified hearsay, all of which have yet to be pressed into the bedrock of history.

**Karli Kristine Jorgenson** (allegedly) has joined the Issaquah law firm of Thomas, Whittington, Anderson, Bergan, Studebaker & Tuttle as an associate. It is rumored that she will practice in the areas of family law, commercial law and criminal law. Likewise, **Joel G. Green** (allegedly) has joined the Bellevue law firm of Oseran, Hahn, Van Valin & Watts, P.S. as an associate and will continue to concentrate in bankruptcy and insolvency matters. **W. Jeff Davis** and **Timothy X. Sullivan** have (it has been reported) both joined the firm of Revelle Ries Hawkins, P.S. with emphases in debtor-creditor/bankruptcy/taxation and commercial litigation/family law/criminal law, respectively. Davis (I have been informed) holds a master of laws degree in taxation from Boston University.

**Janet Gray** (says information from a reliable source) of Hanson, Baker, Ludlow and Drumheller has been appointed to the Bellevue Community

College Foundation as a director. The Foundation, it has been said, raises private funds for educational programs at the college.

Finally, I have seen *with my own eyes* that **John P. Maier** has become an associate with the Bellevue firm of Casey & Gordon, P.S. and will be engaged in, it is speculated, the practice of law with emphasis on litigation, family law, and real estate matters.

I dare report no more.

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### NORTHWEST INDIAN BAR ASSOCIATION

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The newly formed Northwest Indian Bar Association recently held its first annual meeting at the University of Washington School of Law in conjunction with the law school's annual Indian Law Symposium. NIBA is a nonprofit organization comprised of Native American attorneys, paralegals, tribal court personnel and others who are interested in Indian law and related issues.

Initially, NIBA plans to focus on sponsoring educational programs, starting a speakers' bureau to provide information to the larger Native American community about relevant legal concerns, taking positions on relevant political issues and policy



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initiatives facing the Indian community, and providing opportunities for members to socialize and network.

A primary goal of the association is to represent and foster the education and welfare of Native American attorneys, paralegals and tribal court personnel, as well as to provide role models and mentors in the legal profession for Indian people, particularly Native American youth and law students.

NIBA's membership is not limited to Native Americans. The association is made up of three classes of membership: (1) Regular—any person recognized by a Native American community as being an Indian, Eskimo or Aleut and who is also an attorney, judge, law school graduate, law school student or full- or part-time attorney in an Indian tribal court; (2) Associate—a person who is not eligible for regular membership, but is a tribal judge or otherwise engaged primarily in the practice or study of Indian law; and (3) Honorary—all other persons having an interest in Indian law and upon the written nomination of a regular member are invited for honorary membership by a majority vote of the governing council. People who reside or are employed in communities located in Washington, Idaho, Oregon, British Columbia and the Yukon Territory are eligible to become members.

The following officers were elected at the first annual meeting: president, Mary Pearson; vice president, Debra

Juarez; treasurer, Tate London; secretary, Shirley Leckman.

If you are interested in being added to the NIBA mailing list and/or receiving membership information, please contact Mary Pearson at (206) 774-5808 or Barry Brandon at (206) 386-7755.

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**WASHINGTON STATE  
LAWYERS' CAMPAIGN  
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The Lawyers' Campaign for Hunger Relief continues to work towards ameliorating the problem of hunger in our communities. As of December 31, 1991, we are proud to report that we received campaign contributions in excess of \$47,000. We are now in the process of making distributions to each of the charitable organizations which the campaign has targeted for its first year. We wish to thank everyone who has contributed money or time to this campaign thus far. Your generosity will not be forgotten.

However, much remains to be done. We would like to interest more volunteers in our efforts to contact firms and individual lawyers regarding their contributions to the campaign. If you would like to assist us in some way or

make a financial contribution, please contact co-chairs Brad Doyle at (206) 621-1113 or Dave Otto at (206) 292-9988, or send your contributions, made payable to Lawyers' Campaign for Hunger Relief, to 1111 Third Avenue, Suite 1010, Seattle, WA 98101.

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**PIERCE COUNTY REPORT**

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by **GEORGE S. KELLEY**

Sergio Armijo has been appointed to a newly created City of Tacoma judgeship and started work as of the first of the year. You may remember that John McCarthy, the new county judge, does not start work until May. One might speculate that John needs more time to study up on being a judge than Sergio, or that the city of Tacoma is better able to fund courts than the county.

As a Rose Bowl wrap-up, consider the sad tale of Puyallup's Tony Froehling, who, after a leisurely drive to southern California, had his truck break down 50 miles from Pasadena on New Year's morning. There were no car rentals, taxis or repair shops open, and California treats auto thieves as harshly as Puyallup treats horse thieves. Tony was forced to watch the game on the small screen of a TV set in the grungiest cheap motel in America. If any Husky fans want to purchase unused Rose Bowl tickets as a souvenir of the championship season Tony will keep a light on for you.

You may recall that the mid-January weather was unusually mild, possibly caused by climatic conditions known as "el Niño." It was so mild on a recent Sunday at Crystal Mountain that Herb Gelman was seen in a lift line without a hat. Someone reported Herb was asked by the ski patrol to put one on, however, as the sun's reflection off his head was causing the snow to melt on several of the more popular runs.

We report occasionally on lawyers who have somehow managed to escape the practice of law into real life. And, regrettably, some of them occasionally backslide. In this latter category we are sorry to include Tom Oldfield. Tom left his former position as supervisor of banking for the estate of Washington to join the prestigious north-end law firm of Sloan & Bobrick, now known as

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Sloan, Bobrick & Oldfield. Some thought that Tom's name should have gone in the middle—so the firm's initials would have been SOB—but others thought that seniority within the firm should prevail.

Noel Shillton and Mark J. Giske have formed a firm, also located in the prestigious, but rapidly becoming overcrowded, north end of Tacoma. This may be an effort by the EPA to clean up nearby Commencement Bay, a superfund site, by adding lawyers along its shoreline.

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## SPOKANE COUNTY REPORT

BY DON CURRAN

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It has been said of the Irish that they have such great respect for the truth, it's used infrequently. You may detect this Irishman's blarney in some of what you read here! . . . Indefatigable Michael J. Delay, proud of his 50 percent Italian blood and well-known for an insatiable appetite, tells us that spaghetti can be eaten most successfully if you inhale it like a vacuum cleaner . . . James P. Emacio, advisor to the county commissioners, counsels it's important to remember that if you are attempting the impossible, you will lose. . . . Gregory S. Morrison, prolific innovator of effective office management techniques, offers two work rules: (1) The Boss is always right; (2) When The Boss is wrong, refer to Rule #1. . . . Affable George R. Nethercutt, Jr. is chair of the county Republican party and urges candidates not to run a campaign that would embarrass one's mother. . . . Ever-youthful 74-year-old John E. Snoddy inspires physical conditioning by telling people: You can't turn back the clock, but you can wind it up again! . . . Kevin M. Curran's (son) favored Irish proverb: Don't give cherries to a pig; don't give advice to a fool . . . Patricia C. Williams, spouse, mother, litigator and friend to all, on inflation: Two can live as cheaply as one—if they both have good jobs. . . . K. Thomas Connolly's patience is exhausted explaining the Irish character. He summed it up as complex with contraries. Examples: irrational in important things but a tower of strength in the trivial; believes salvation can be achieved by means of a

weekly envelope; believes in leprechauns and banshees and considers anyone who doesn't to be a heathen. The Irish are a very perverse, complex people who are banking heavily that God has a sense of humor. . . . Larry A. Weiser, whose focus includes elder law, suggests the way to get along with older people is to ignore age per se. . . . David E. Michaud, advocate for handicapped people, has these positive characterizations for the disabled: the physically challenged, the differently abled, and the handi-capable. . . . Connoisseur Daniel P. Harbaugh describes Gary N. Bloom's homemade red Italian wine as "naive without any breeding, but I think you'll be amused by its presumption." . . . Michael J. Walker admits to a ski addiction not appreciated by those who feel that skiing is the art of catching cold and going broke while rapidly heading nowhere at great personal risk. . . . Nancy Gale Louthian exhorts fathers to support their children as deputy prosecutor in the Family Law Department and admonishes: Don't make a baby if you can't be a father. . . . Frank Hayes Johnson is appointed special master in a civil rights suit between the city and Spokane's gypsy leaders. It's predicted to be a rollercoaster experience. . . . Traditional Irish toast: May you be half an hour in Heaven before the Devil knows you're dead. Slainte!

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## WASHINGTON STATE TRIAL LAWYERS ASSOCIATION

by LETHA J. OWENS

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With the winds of March comes the first touch of spring to the Northwest. Time to start making your plans for the summer. First on your list should be the *WSTLA Annual Convention, July 2 - 5, 1992 at the Sun River Resort near Bend, Oregon*. This affordable destination resort offers many exciting adventures for the entire family including horseback riding, canoeing, swimming and a broad assortment of other activities. Sun River Resort is the premier family resort in the Northwest. Not to mention the annual WSTLA competitive events, tennis, golf and 3-on-3 basketball tournaments, as well as a fun run. As has become WSTLA tradition, a full calendar of family activities will be planned including the annual spouses seminar. There are also plans in the works for the best Luvera seminar ever, as well as a formal dinner dance to remember. Mark your calendars and make your reservations early. We look forward to seeing you there.

The new season also reminds us of change both good and bad. As things progress in the State Legislature, remember that one of WSTLA's chief activities is lobbying for the rights of

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injured persons in Olympia. If you are aware of a particular issue or piece of legislation you believe will help or hurt these rights, please feel free to contact **Gerhard Letzing** at the main WSTLA office, our lobbyist **Dennis Martin** at the Olympia office, (206) 786-9100, or legislative vice presidents **Wayne Lieb** of Aaby, Putnum, Albo and Causey in Olympia, and **Janet Rice** at Schroeter, Goldmark and Bender in Seattle.

Support for WSTLA's lobbying effort, as well as its other educational and member support activities, comes in large part from the commitments made by our nearly 300 Eagle contributors, both firm and individual. An enrollment drive is currently underway. Now is the time to think about your commitment to the ideals of WSTLA and raise your contribution or consider becoming an Eagle member. For more information contact **Larry Shannon** at WSTLA office, (206) 464-1011.

See "Calendar" in this issue for our CLE listings.

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## WHATCOM COUNTY REPORT

by MICK MOYNIHAN

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**Dan Olson** is healthy, happy and hip these days since receiving hip

replacements on both hips. He is looking forward to getting back out on the water, and maybe doing some snow-skiing this coming year. **George Livesey** went through the same thing some time back and it's worked well for him, but his golf skills are legendary anyway.

**Mike Lipscomb** has recently passed his amateur radio exam and so his use of the two-meter frequency will be legal from now on, we hope.

**Steve Mura**, of Chmura and Chmelik, local deejay and radio personality, was recently reappointed as the U.S. Magistrate for this area.

The new officers of the Whatcom County Bar Association are **Steve Hager**, president; **Doug Shepherd**, veep; and **Starck Follis**, secretary-treasurer, etc. Steve says that if anyone has any questions about moving to our county, paying local bar dues, the hours of the law library or where to get a cold beer, just call him.

*On the Domestic Side of Things:*

**Jon Komorowski** tied the knot this past year, and **Steve Knapp** and **Kathy Brighton** exchanged wedding vows; **Doug Robertson** and **Robin** are the proud parents of a baby girl, which is said to be better than any alarm clock.

**Dan Raas** won the WSBA award for his achievements in the pro bono area for this past year, and when he wasn't

looking, he was elected chair of the Volunteer Lawyers Program.

*In the Musical Chairs Department:*

**Laurie Powers** has associated with Raas, Johnsen, etc., and **Brett & Daugert**, Whatcom County's megafirm, has added **Breean Beggs** and **Stan Soper**. **Fred Heydrich** is now with the Simonarson firm, and they expect to move into their new digs by the time this is printed.

*And Last, But Not Least:*

**Michael Bobbink**, municipal court judge for several of those small towns out in the county, has now been appointed judge for the city of Bellingham. Judge Bobbink says things are looking up, and he may never have to work again. I can relate to that.

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## WHITMAN COUNTY REPORT

by GARYJ. LIBEY

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It's time again, after several years of silence, for a summary of who's here, who's not here, and who really cares anyway, of the Whitman County Bar Association.

South of the big city on SR 195 in Rosalia, **Don "Mickey" Sheahan** has been joined by another son, this time **Larry "I Love Republicans" Sheahan**, and the firm is again known as Sheahan and Sheahan. Keep your eye out for Larry, as he was recently voted the most eligible bachelor on the back roads between Rosalia and Pullman. Next door in Thornton is **Jim "On the Road Again" Harston**, who moved from Tacoma to work in Spokane and live in thriving Thornton in an old farmhouse.

Heading east to Tekoa is **Ted "Mr. Quiet" Rasmussen** of Keane and Rasmussen with offices and attorneys all over the place. Ted is expected to lead cheers again this year at the B tournament in Spokane and will be heard anywhere within 60 miles, unless asked to leave (again). Part-time lawyer and farmer **Dick "Sodbuster" Lehn** got smart and went back to farming full time. **Connie "Short Timer" Cowley** and **Corrine "Really Short Timer" Diteman** both kissed Tekoa good-bye for marriage and/or big city life, somewhat in that order. Former superior court judge **John Denoo** recently died, and the Bar Association

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conducted a memorial service for him in the courtroom. Now Tekoa Ted has the town all to himself.

Down south in Garfield past Steptoe Butte, Nick "Embryo" Manning and Steve "Johnny Applesseed" Bishop are apparently alive, despite their continued refusal to join the illustrious Whitman County Bar Association.

In the county seat at Colfax, Dolores "D.B. Cooper" Cooper recently subpoenaed Charles "Birdman" Shaw from Seattle to join her as Cooper and Shaw with Ken "What Kind of Berry?" Derryberry as associate. The firm moved into the former WWP building equipped with an upstairs hotel rumored to still have red lights above each door. Up the street by the State Patrol office are Lawrence "Larry" Hickman and Ronald B. "Strapper" Webster, who denies he will be more than 50 years old by the time this article is printed.

Across from the courthouse, Wes "Keeps on Ticking" Nuxoll, Gary "Nice Guy" Libey, Bruce "Wild Man" Ensley, Tim "Easy-going" Esser and Jean "The Machine" Campbell, along with former eastsider Leslie "Speaks Softly" Cloaninger, are known as the megafirm of Whitman County due to recent "lateral partner movements," and the firm's ever-expanding presence and offices on the legal cutting edge in LaCrosse, Endicott, Rosalia, Colfax and even Pullman.

Also in Colfax are superior court judge Wally "I Know Everything" Friel, often seen eating lunch with district court judge Dave "Skinny" a.k.a. "No-neck" Frazier at a low-class, greasy-spoon tavern; both of them appear to have large smiles due to the lack of signatures on the recent state salary initiative. Both judges have promised to either donate their recent salary increases to the county to pay for the prosecutor's budget or to spend their raises on sumo wrestling lessons.

Down in Pullman, Claude "The Godfather" Irwin, although semi-retired, leads Ken "Alfred E. Newman" Myklebust, Dave "Too Cool to Be a Fool" Savage,\* Kelly "Without an E" Brown,\* Jane "The Brain" Von Frank,\* Colleen "Centerfold" Harrington\* and Clarkstonian Guy "Moose" Nelson as the cornerstone law firm in the Pro-Mall (\*Smart enough to be carpetbaggers in Idaho). Due to the unanimous demand of the bar

and his firm, Dave Savage recently shaved his attempt at a beard. Although his face looks better, reliable sources indicate his personality is the same.

Several times retired in open court, Hugh "Tuffy" Aitken still leads Al "Uncle Al" Schauble, Rob "How Could the Judge Do That?" Patrick, Howard "There Ain't No Justice" Neill and Linda "Best-dressed" Ruff in their Pullman firm. However, some members have been seen carrying a carpetbag to and from Jim "Little-Biggie" McMannis' former office in Colfax, where he and Elvis "Jane" Presley have been recently seen filing papers together.

Don "Biggie-Little" McMannis and Dick "Tennis Elbow" Loucks continue their long-time solo practices in Pullman. Scott "Plead 'em" Bergstedt, another solo, handles the tough half of the district court criminal-defense contract along with Mike "2 Legit 2 Quit" Pettit, who does the easy half, now a partner with Dorothy "Guess My Name" Wiley. Doug "Matlock" Robinson does the superior court criminal-defense contract all by himself, and just about made it to Iran as an Air Force reservist, but fortunately for all his criminal defendants, he stayed to continue his soft-spoken approach to obtaining acquittals.

In downtown Pullman, Jon "Dimestore Glasses" Harlan continues

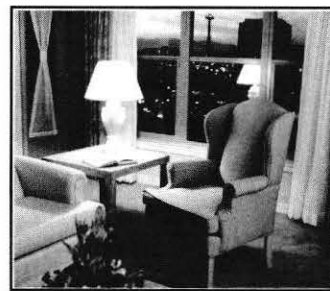
to post guard in his colorful costumes for Pullman City Hall. Jean "Yi Cap'un" Hall has an outpost in northern Pullman and is often seen and heard in the courthouse. Anna Jim "Where's Dennis?" Erickson is semi-retired, after passing the bar exam by studying the law under recently retired Phil "Don't Mention Appeal" Faris, who is enjoying retirement while pro temming anywhere he wants.

Up at the state college, Sally Savage really runs the place as "double secret" first vice president of all things, having given up her post as senior A.G. at a very tender age. Larry "What a Pill" Simonsmeier, now cheerleader for the WSU Rec-Tec Park, decided being the dean of pharmacy and/or a lawyer didn't chemically mix. At the A.G.'s office, Paul "Beaver Video" Tanaka is the boss of Mary "No Tenure" Campbell, Diane "Bureaucrat" McDaniel, and Paul "With an E" Browne, who are all trying to complicate the lives of everyone on campus. However, they promise to reveal all criminal misconduct by the Cougar football team, unlike a certain team across the state.

On campus, Ted "Mumbles" Saldin has taught bookkeeping since books were invented. Jon "BA 210" McConnell actually discovered business law at WSU years before the place became a cow-belch college. Nick

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"Slide Ruler" **Staba, Jr.** works in the College of Engineering, although no one has ever reported seeing him, and in a few more months he will be declared legally missing. **Susan "Plato" Joanis** teaches business law and philosophy, a nice combination after a brief stint with our local D.A.'s office. **Sharon "Can You Spare a Dime?" Morgan** is a recent addition to the Wazzu development pyramid scheme. Reliable sources confirmed that **Dan "Head Cougar Clubber" Peterson** commutes from Spokane to WSU to stump for Butch, and that law-degree-only **Stan "Closet Husky" Schmidt**, afraid to take our local bar exam, would rather rub elbows only with bigwigs.

The fastest-growing "law firm" in Whitman County is the county prosecutor's office, which portrays many scenes from "L.A. Law" in real life. Now **Jim "Closet Democrat" Kaufman** is joined by **Carol "No Bond" LaVerne**, **Dennis "Rocky" Tracy**, **Ron "Presumed Guilty" Shirley**, and fellow Spokane commuters **Bill "We Want Drunks" Strizlick** and **Barney "Crime Fighter" Waldrop**. More attorneys, including our sheriff, are soon expected to join the prosecutors' clubhouse. Apparently the growth management act has not yet been implemented by the county commissioners. Also, ex-officio deputy prosecutor, **Jean "Fire Them All" Conger** is now the county personnel director and happily is in charge of her former commander.

A major ethical problem has recently confronted the Whitman County attorneys. It appears that several Moscow, Idaho attorneys believed it necessary to become admitted in Washington. Now we locals see such out-of-staters as **Mike "Big Ad" Henegen**, **Andy "Eastern Accent" Schwam** and others trolling the county courthouse for all of the alleged paying clients who may exist. Our ethical dilemma is whether we should invite these poachers to our next hosted Christmas party.

Finally, to keep everyone up on attorneys who have recently been here and gone, we have:

**Bob Burke**, after transferring from Bellingham to our local D.A.'s office, left for a better golf climate in

Clarkston; **John Snyder** moved to Sandpoint to be closer to nature; **Georgia Yuan** assists the University of Idaho president in something (nobody knows, but it pays a lot); **Bob Loomis** is headed for fame and glory in a high-rise building somewhere in Spokane; **Leslie Loukala-Kaufman**, now somewhere in Spokane, married her boss, **Jim Kaufman**, and immediately told her boss to take this job and...; **Leslie Fuller** met an Air Force Captain and flew away with him; **Dianne Dougherty** and **Neil Korbas** did time in our D.A.'s office and are now both catching big, bad criminals in Spokane; **Steen Nielson** left the "IMS" ship for the fresh air of California; **Barbara King** decided twins were too much, and also left the "IMS" ship heading to Colorado for a quiet family life; **Ron Carpenter**, former D.A. and short-term attorney, is now just a file clerk for a ninesome in Olympia; **Robert Godlove** and **Luz Rodriguez** left without giving us their forwarding address; **Brian Keith** left the D.A.'s office for Arizona then California, and wherever the next woman in his life takes him; and **Matt Rutt** transferred from our D.A.'s office to the Walla Walla D.A.'s office to get closer to the prison and also get married, not necessarily in that order.

A few years ago, we honored four "50 years plus" veterans, **Hugh Aitken**, **Claude Irwin**, **Lawrence Hickman** and **Tim Kimball**, who still believe the minimum-fee schedule is ethically required to maintain competent attorneys. Amen!

Our bar hosted a Christmas party to bring 1991 to a happy conclusion. Santa Claus appeared and gave to some (un)lucky members who were "naughty and not nice" some very forgettable presents. (The list is only available upon written request.)

Finally, the census in Whitman County appears to be: those attorneys struggling in private practice, 35; those attorneys on government assistance, 23; and those unknown or something else, three.

Another report will be due next century. Happy 1992, etc.



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**Leo C. Kendrick**, 71, died December 7, 1991 in Yakima. Born in Buhl, Idaho and raised in The Dalles, Oregon, Kendrick attended Whitman College. He was an officer in the Army Air Corps in World War II, serving in England and France; after the war he enrolled in the University of Washington School of Law and graduated in 1949.

Upon graduation, Kendrick set up practice in Yakima and remained there

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for his career. Known as a skilled and tenacious trial lawyer, he was active in a variety of bar organizations and was president of the Yakima County Bar Association. He was also an elder in the Presbyterian Church, a director of the Yakima Valley Museum and Historical Society, and a member and past president of both the Chinook Chapter of Toastmasters International and the Yakima Lions Club. He and his wife, Charlotte, celebrated their fiftieth wedding anniversary last summer.

Kendrick's survivors include his mother, brother, wife, three children and eight grandchildren.

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## On Adopting A Personal Philosophy

by R. Paul Tjossem

It has been impressed on me that everyone should have a carefully considered and sound personal philosophy. Now that I am over 80, it seems to me it's about time I adopt one. My problem has been I couldn't decide between "anything not worth doing is worth doing right," or "possession is nine points of the law." Since I am trained in the law, I was inclined to the latter. But I was still bothered by the question of how much nine points are of the whole. That is to say, is it nine out of ten, nine out of one hundred, or one thousand? Now that President Bush has his thousand points of light, does this use up any points including the nine points of law? Nevertheless, and in spite of these troublesome questions, I am adopting the latter since I feel I have nine points.

It may be difficult to keep nine points in stock since people keep telling me, "I get your point." Too many of these, and my points will be gone. I am reassured, however, as people are also

telling me they see my point of view, although some do say they can't see my point of view. I am also being told I am pointed in the right direction even though I am not aware that my points are pointing.

If too many people get my point, and my stock is in danger of being exhausted, where do I go to find the necessary points of law to make up the nine I am entitled to? I have never in all of my legal research been able to find any of the nine points making up possession. I have searched the statutes, the constitutions, state and federal, the Bill of Rights and the common law, and I am reasonably sure they aren't in any of these.

It was not until I read the decision written by Justice William O. Douglas involving the Connecticut birth control statute that I realized I had overlooked searching in the obvious place, the penumbra! That is where the good judge found his right of privacy—a right which he thought he could see struggling to emerge from the Bill of

Rights. He soon realized it wasn't in the Bill of Rights at all, but in the penumbra. And I foolishly kept looking in the wrong places when I should have known that anytime you can't find a point of law in all of the usual places it has to be in the penumbra. So I looked there, and sure enough, there were nine points, brand new, untarnished and ready for instant use.

Now, if I can just keep people from getting my points I will be safe and secure with a sound personal philosophy. Hopefully, I, like the judge, having found my way around the penumbra, will be deemed to have a great judicial mind.

*R. Paul Tjossem was a WSBA member for more than 50 years. He was formerly general counsel, Lines West, for the Burlington and Great Northern Railways. His recent essay on personal philosophies was submitted by his son, Kirkland attorney Robert P. Tjossem.*

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Your Bar Association membership entitles you to special member benefits at Avis, including **10% off** SuperValue Weekly Rates and **5% off** SuperValue Weekend Rates. And you can enjoy low daily rates too. Now — in addition to your special member benefits — the employee-owners of Avis are “trying harder than ever” by offering you a **free double upgrade** certificate good on your next Avis rental. All the details are in the certificate in this ad. **An advance reservation with request for double upgrade is required.**

Time-saving services from Avis make it quick and easy to rent a car. With an Avis Wizard® Number and an advance reservation, **Avis Express®** lets you bypass busy rental counters at over 50 U.S. airports. Or join the Avis Preferred Renter<sup>SM</sup> Program to enjoy **Preferred Express<sup>SM</sup>** service available at many major U.S. airports: you just board an Avis courtesy bus and we'll drop you off at your Avis car. Your keys and rental agreement confirming your rate and rental charges will be waiting for you inside the car. And **Avis Rapid Return®** and **Avis Roving Rapid Return<sup>SM</sup>** can make car return fast and easy. (Our quick car return services are available for charge card customers who require no modification of their rental charges.)

To reserve an Avis car, call your travel consultant or call Avis toll free:

**1-800-331-1212**

Be sure to mention your Avis Worldwide Discount (AWD) number: **A640416**

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We're trying harder than ever.®



Present this certificate at the Avis counter to request a **free double upgrade**. You can drive off in a Full Size 4-door car and only pay for an Intermediate rental. **An advance reservation with request for double upgrade is required.**

To take advantage of this offer, call the Avis Special Promotion number, toll free: **1-800-831-8000**. Be sure to mention your Avis Worldwide Discount (AWD) number: **A640416**

#### Terms and Conditions

Certificate valid for a one-time, two-car-group upgrade on an Intermediate (Group C) car with a maximum upgrade to Full Size 4-door (Group E). **An advance reservation with request for double upgrade is required.** Certificate must be surrendered at time of rental; one per rental. Certificate valid at Avis corporate and participating licensee locations in the contiguous U.S. May be used with bar association rates and discounts. May not be combined with any other discount, promotion or offer. Cars and upgrades are subject to availability and car must be returned to renting location. Taxes and optional items, such as additional driver fee and refueling, are extra. Renter must meet Avis age, driver and credit requirements. Minimum age is 25 but may vary by location. Offer expires December 31, 1992.

#### Rental Sales Agent Instructions

**At Check-out:**  
In AWD enter **A640416**  
Assign customer a Group F car.  
Upgrade to no higher than Group E. Charge for car group reserved (Group C).  
In CPN, enter **UUGA997**  
Complete this information  
RA # \_\_\_\_\_  
Rental Location \_\_\_\_\_  
Attach to COUPON tape.

**Coupon UUGA997**

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# The Northwest Construction Mediation Program

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